

Endlessness of Statelessness: Seeking the Rights for Stateless Persons in Indonesia

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Abstract

Citizenship status is an integral component of human rights for ensuring protection from the state. However, not everyone within a state possesses citizenship. This reliance on legal certainty can leave stateless individuals exceptionally vulnerable when it comes to asserting their rights, especially in Indonesia. The fact that Indonesia has not ratified two key international agreements concerning stateless persons, coupled with the absence of specific regulations for their protection, further compounds their precarious situation. This study investigates the intricate legal dynamics between fulfilling citizenship rights and upholding human rights for stateless individuals, especially for former Indonesian citizens rendered stateless due to administrative actions in another country. Through descriptive and analytical research methods, the study concludes that the protection of stateless individuals' rights in Indonesia currently hinges on the discretionary actions of the central government. This discretion is not grounded in citizenship law principles but rather in fundamental human rights and the state's obligation to provide maximum protection. However, it tends to be highly subjective and case-specific for certain stateless individuals. Consequently, Indonesia is urged to develop tailored legal mechanisms to safeguard stateless persons within its borders while also preventing Indonesian citizens--such as undocumented migrants abroad--from becoming stateless.

Keywords: Citizenship, human rights, stateless persons, and statelessness.

I. INTRODUCTION

Citizens and citizenship are crucial aspects essential for nation-building. Citizenship enables individuals to establish a reciprocal relationship with their country, particularly in terms of exercising their rights as guaranteed by the state. The laws governing citizenship will never be the same from one country to another because each can choose its own set of standard laws to use when determining which individuals should be granted citizenship. Citizenship status is an important component of human rights. Several human rights treaties and laws, both international and national, affirm the existence of the right to citizenship. The Universal Declaration of Human Rights (UDHR) provides an international explanation of human rights. The UDHR not only serves as a basic declaration for the development of human rights legislation in every United Nations member that ratifies it but also serves as a basis for the development of

international conventions relating to human rights. These include the International Covenant on Civil and Political Rights (ICCPR), which governs civil and political rights, and the International Covenant on Economic, Social, and Cultural Rights (ICESR), which governs human rights in the economic, social, and cultural spheres.¹

The right to citizenship is recognized in the ICCPR as one of the civil rights that states that "Every child has the right to acquire a nationality" in Article 24(3) of the ICCPR. Although the word "every person" is used in the UDHR to describe who is entitled to citizenship, "every child" is used in this agreement because of its legal significance. The phrase "every child" in this article should not be taken to mean that only children are entitled to citizenship, but all individuals are required to become citizens after birth. It is confirmed by the Convention of the Right of the Child that states that the child shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire a nationality.²

As a guideline, Indonesia has ratified ICCPR through Law Number 12 of 2005 concerning the Ratification of the *International Covenant on Civil and Political Rights*. Therefore, the ICCPR requires Indonesia to follow its regulations. The right to citizenship is protected not only by the UDHR and ICCPR but also by the *Convention on the Reduction of Statelessness*, which states that:

"A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or; (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected."

It stipulates that all signatory states to the convention are obliged to recognize as citizens anyone born on their territory, including stateless individuals, as well as anyone applying for citizenship. A *Stateless Person* is a person who is not eligible for citizenship in any country with explicit citizenship standards.³ Without citizenship in a country, individuals lack both the responsibilities and privileges associated with being a citizen of that nation. Article 26 of the Indonesian Constitution of 1945 has confirmed that citizens encompass both individuals native to Indonesia and those from other nations who are legally recognized as citizens according to the law. This article indicates that individuals who lack citizenship or do not hold citizenship status are unable to access the same rights as Indonesian citizens.

The existence of *Stateless Persons* as a separate problem has an impact on the Indonesian state as well. According to statistics from UNHCR, *the state of Stateless Persons*

¹ David Weissrodt dan Clay Collins, 'The Human Rights of Stateless Person' (2006) 28 *Human Rights Quarterly*, h. 209

² Article 7 of The Convention on the Rights of the Child. Available online at: <https://www.unicef.org/child-rights-convention/convention-text>

³ OHCHR, About Nationality and Human Rights, Available online at: <https://www.ohchr.org/en/nationality-and-statelessness>

affects several different groups of people in Indonesia, including the following groups of *stateless persons*: The *first* group consists of ethnic⁴ Chinese Indonesians who do not have papers to show their citizenship because their status is not registered in civil registration documents and is not recognized as Chinese or Indonesian citizens; The *second* group consists of ethnic Arabs and Indians who do not have documents to verify their citizenship status because they are misrecorded in their civil registration documents; and the third group consists of Indonesian migrant workers who have lost their citizenship certificates. The inclusion of refugees and asylum seekers from warring countries or those expelled from their countries who travel to Indonesia or are stranded there to seek protection, as well as Indonesian citizens who have lost their Indonesian citizenship status, but do not obtain the protection of the citizenship status of other countries.

The relationship between the state of *Stateless Persons* and the understanding of an Indonesian citizen is important because, in accordance with the understanding of what a citizen means, a person must first fulfill certain rights and obligations to become an Indonesian citizen. However, these rights and obligations only apply to Indonesian citizens, while for *stateless persons*, it is not as easy to obtain Indonesian citizenship. Article 27 paragraph 1 of the 1945 Constitution states that "*everyone has an equal position in law and government and is obliged to uphold the law and government with no exception.*" This clause implies that the Constitution guarantees certain rights for Indonesian citizens. This shows that everyone has equal legal standing, protection, and recognition before the law, including governments and ordinary individuals.

In Indonesia, the problem of stateless persons is still unsolved. This is because Indonesia has not ratified the convention on *stateless persons*, as well as many *stateless persons* do not follow the proper procedure for moving to Indonesia or come illegally because their documents are incomplete. Accordingly, this paper aims to examine how the Indonesian government addresses the citizenship rights of stateless individuals and what legal foundations it relies on to grant citizenship rights to Indonesian Stateless Persons.

This paper will later discuss the efforts of the Indonesian government--as a country that has not ratified the convention on stateless people--to continue to protect stateless people in Indonesia or former Indonesian citizens who have lost their citizenship for various reasons. Previous studies, such as Ryanindityo and Purnomo's case study on the omission of stateless individual Danko Nizar Zlavic from a human rights perspective, have examined similar topics. Their research primarily delves into the immigration authorities' initiatives to diminish the number of stateless individuals through detention centers while also striving to ascertain Zlavic's citizenship status to uphold his human rights.⁵

⁴ United Nation High Commissioner for Refugees, "Orang-orang Tanpa Kewarganegaraan" (UNHCR, [s.a]). <<https://www.unhcr.org/id/orang-orang-tanpa-kewarganegaraan>>

⁵ Mochammad Ryanindityo, Agung Sulisty Purnomo, "PANDANGAN HAK ASASI MANUSIA TERHADAP PEMBIARAN ORANG DENGAN STATUS "STATELESS" DI INDONESIA (STUDI KASUS: DANKO NIZAR ZLAVIC)", *Jurnal Ilmiah Kajian Keimigrasian*, Vol. 2 (1) 2019, p. 93-100.

Meanwhile, from the perspective of international treaty law, Darmini, in her research, put forward several solutions to the problem of stateless persons, including accessing international treaties. Despite Indonesia not being a signatory, Darmini proposes that accession to international agreements concerning the elimination of statelessness, even without full participation, could serve as a basis for aligning Indonesian citizenship policies with the provisions outlined in these international treaties.⁶

Another prior study, similar in focus to this research, delves into "The Legal Policy of Citizenship in Fulfilling the Rights of Stateless Persons as an Effort to Fulfill Human Rights in Indonesia." This study also recognizes the absence of specific policies for the protection of stateless individuals in Indonesia, posing a challenge in upholding human rights for those physically present within Indonesian territory, as stipulated in Article 15 of the Universal Declaration of Human Rights (UDHR). However, the author contends that ratifying the Convention on the Status of Stateless Persons remains a discretionary legal decision for each country beyond external enforcement. The emphasis of this paper lies in formulating policies and regulations regarding the granting of citizenship status to stateless individuals in Indonesia.⁷ Substantial disparities from prior studies can be apparent in the perspectives and proposed remedies for stateless persons. Drawing from the concept outlined in the research title regarding the "endlessness of statelessness" within the framework of Indonesian law, this study advocates for the principle of maximum protection, which mandates that the government ensures the well-being of not only its citizens but also all individuals within Indonesia's territory. Additionally, this paper will offer diplomatic solutions for Indonesian citizens at risk of statelessness due to identity loss while residing in foreign countries. To ensure a comprehensive approach, the recommendation of this paper not only concentrates on reactive measures but also prioritizes prevention strategies to curb the growing number of stateless individuals.

II. RESEARCH METHODS

The research method used in this paper is juridical normative (*legal research*), which focuses on analyzing how laws or standards are applied in relevant positive laws. This research was conducted by reviewing several formal legal rules, as well as literature containing theoretical concepts that were then connected with the problems discussed in writing this thesis.⁸

The writing of this thesis mainly uses a legal approach (*Statute Approach*), using conceptual approach methods (*Conceptual Approach*), and a case approach (*Case Approach*). The statutory approach (*Statute Approach*) examines all laws and regulations related to the book issue being discussed or researched. It is generally written using legal

⁶ Darmini Roza, A. Cery Kurnia, "Solutions for Stateless Persons in Indonesia", JURNAL PERADABAN HUKUM VOLUME 1(1) 2023, p. 1-8.

⁷ Sekar Anggun Gading Pinilih, et.all. "THE LEGAL POLICY OF CITIZENSHIP IN FULFILLING THE RIGHTS OF STATELESS PERSONS AS AN EFFORT TO FULFILL HUMAN RIGHTS IN INDONESIA". Diponegoro Law Review, April 2022, Volume 07, Number 01, p. 17-33.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta, Kencana Prenada Media Group, 2010), h. 129.

strategies, which involve reviewing all laws and regulations related to the topic of the topical book subject. The conceptual approach (*Conceptual Approach*) departs from expert views and doctrines that develop in legal science.⁹ Both approaches will be described in the case approach (*Case Approach*) regarding the problem to be studied.¹⁰

The sources of legal research in writing this thesis can be divided into primary legal materials and secondary legal materials. In addition to research sources in the form of legal materials, legal researchers can also use non-legal materials if deemed necessary, both in the form of primary legal materials, secondary legal materials, and non-legal materials.¹¹

The data collection method used in this study is *library research*. This literature study was conducted to collect secondary data. Secondary data is data obtained by a researcher indirectly from the source (object of study) but through other sources. Researchers obtain ready-made data collected by other parties in various ways, both commercially and non-commercially. For example, textbooks, journals, magazines, newspapers, documents, regulations, legislation, et cetera.¹²

The approach that aims to find solutions to the main research problems presented is the analysis of legal materials. The process begins with the methodical collection of materials and continues with the analysis of the data collected during the research phase. Before studying legal material, certain measures should be followed: (1) Identify legal issues that need to be resolved, identify legal facts, and eliminate irrelevant details; (2) Prepare product materials, both legal and extralegal, that are considered relevant; (3) Use the materials collected to determine potential legal issues; (4) Make conclusions and arguments to address legal issues.¹³

III. GOVERNMENT EFFORTS IN FULFILLING THE CITIZENSHIP RIGHTS OF *INDONESIAN STATELESS PERSONS*

The right of everyone to obtain protection and legal certainty from the state, normal citizens, and *stateless persons*. Therefore, laws related to citizenship status and the bond between the state and its people can be used to ensure the protection and fulfillment of guaranteed human rights. The guarantee of legal protection in Indonesia is regulated in Article 28D paragraph (1) and Article 28I paragraph (4) of the 1945 Constitution. Article 28I paragraph (4) affirms that the protection, promotion, strengthening, and granting of human rights is the responsibility of the state. This can be interpreted as the state having

⁹ *Ibid*, h. 93

¹⁰ *Ibid*, h. 94

¹¹ *Ibid*, h. 27

¹² Suteki dan Galang Taufani, *Metodologi Penelitian Hukum: Filsafat, Teori dan Praktik*, (Depok: Rajawali Pers, 2018), h.215

¹³ Peter Mahmud Marzuki, *Op Cit*, h. 171

an obligation to fulfill the right to citizenship status while providing protection for those with *stateless* status.¹⁴

The guarantee and protection of the right of every person to citizenship status in Indonesia is regulated in Article 28D paragraph (4) of the 1945 Constitution. Based on the 1945 Constitution, those who have citizenship status will receive certain rights and legal protections as stipulated in the Constitution and other regulations. Legal protection itself can generally be classified into two categories, namely preventive legal protection and repressive legal protection. Preventive legal protection is aimed at preventing violations and providing certain limits in undertaking actions, while repressive legal protection is legal protection aimed at providing sanctions due to disputes caused by violations of the law.¹⁵

To provide protection to stateless persons, the United Nations (UN) issued the Convention relating to the Status of Stateless Persons in 1954 and 1961. The UN is committed to guaranteeing the implementation of the rights and freedoms of stateless persons, but Indonesia has not ratified the two agreements. As a result, Indonesia is not subject to the determination (provisions) of the agreement. The 1954 agreement ruled that no stateless person could be treated less favorably than any foreigner. Not only that, the 1954 agreement called on states' parties concerned to provide integration, facilities, and citizenship for as many stateless persons as possible. Thus, the state in which the *stateless person* resides is obliged to provide human rights protection to the people of his country or foreign nationals who are legally located in the territory of the country concerned.¹⁶ Meanwhile, the 1961 Convention stipulates that the state party concerned grants citizenship to a person born in its territory, even if it ultimately results in that person becoming stateless. In addition, the Convention also addresses the possibility of stateless persons to acquire citizenship under certain conditions.¹⁷

Although Indonesia has not ratified the two conventions (the 1954 and 1961 Conventions on the Status of Stateless Persons), it has taken various proactive steps to reduce and prevent *the stateless* situation through laws and regulations. The guarantee of protection of citizenship status is stated in Article 26 paragraph (1), Article 27 paragraph (1), Article 28 D paragraph (4), and Article 28E paragraph (1) of the NRI Constitution of 1945; it is also in Law no. 39 of 1999, which contains Human Rights, and Law no. 12 of 2006 concerning Citizenship. The elucidation of Law No. 12 of 2006 concerning Citizenship said that one of the bases adopted in the law is "on the basis of not justifying or obeying the condition of statelessness."¹⁸

¹⁴ Rahmawati Novia Sigit and Novianti Novianti, "Perlindungan Terhadap Orang Tanpa Kewarganegaraan (*Stateless People*) Dalam Hukum Internasional (Studi Kasus Etnis Rohingya Di Myanmar)," *Uti Possidetis: Journal of International Law* 1, no. 1 (2020), h. 118.

¹⁵ M. Husein Maruapey, *Pengakuan Hukum dan Perlindungan Negara (Analisis Kritis Terhadap Kasus Penistaan Agama Oleh Petahana Gubernur DKI Jakarta)*, *Jurnal Ilmu Politik dan Komunikasi*, Vol. 7(2017), h. 23

¹⁶ Khald Fadjri Siddiq dan Budi Ardianto. "Stateless Person dalam Tinjauan Hukum Nasional dan Hukum Internasional di Indonesia". dalam *Uti Possidetis: Journal of International Law*, Vol. 1, No. 3 (2020)

¹⁷ *Ibid*, h.118– 147

¹⁸ Penjelasan Umum UU No 12 Tahun 2006 tentang Kewarganegaraan

Regarding citizenship in Indonesia, the principles of *ius sanguinis* (citizenship originating in descent) and *ius soli* (citizenship originating in the place of birth) apply in Article 4 letters B-K, L, and M, which explain that a child is an Indonesian citizen if both or one parent is an Indonesian citizen. Otherwise, the basic application of *ius soli* is regulated in Article 4 letters I, J, and K, Law No. 12 of 2006 which regulates that the child is an Indonesian citizen if the child was born in the area of the Unitary State of the Republic of Indonesia even though his citizenship status was not yet evident at the time of his birth; and newborn children in the area or within the territory of the Unitary State of the Republic of Indonesia as long as the father and mother are unknown; then children born in the area of the Unitary State of the Republic of Indonesia if the father and mother do not have waragenagaraan or are not known to exist.¹⁹

Both principles are used simultaneously, with *ius sanguinis* as the main principle and *ius soli* as the exception. This matter is intended to minimize so that children are not born without citizenship status. This is in line with the 1961 Convention on the Reduction of the State of Nonnationality. Child protection can be carried out for the possibility of separation of dual nationality for children (Article 6 of Law No. 12 of 2006). The granting of limited dual citizenship is also intended to avoid statelessness. Prevention of conditions without citizenship is contained in Article 23 letter C, Law No. 12 of 2006, which states that the problem of loss of Indonesian citizenship is the following cause and effect: the loss of citizenship by the President at his own request, the person concerned is 18 years old or married, resides outside the country, and is claimed to have lost his Indonesian citizenship and "does not become without citizenship." His Indonesian citizenship will be lost forever if the person concerned does not renounce citizenship to become stateless. The provision "as long as the person concerned does not become stateless" is in an effort to prevent the person concerned from becoming *a stateless person*.²⁰

However, Government Regulation No. 21 of 2022 (concerning Amendments to Government Regulation No. 2 of 2007 concerning Procedures for Acquiring, Losing, Revoking, and Regaining Citizenship of the Republic of Indonesia) contains other provisions that allow a person to become stateless. This can be observed from Article 31 paragraph (1), which stipulates that Indonesian citizens "automatically" lose their citizenship. Therefore, a person automatically loses Indonesian citizenship regardless of whether he becomes stateless or has citizenship in another country. Thus, although Law No. 12 of 2006 is affirmed in the general explanation that Law No. 12 of 2006 "does not recognize the state of statelessness"²¹ (*apatride*), not all existing norms anticipate statelessness.

Those who lose their citizenship are given legal protection to become Indonesian citizens again through a written application to the Minister "without going through the

¹⁹ Della Palupi Anggraeni dan Tony Mirwanto, (*Analysis of Stateless Person and Dual Nationality Children in the Perspective of Indonesian Immigration*), JLBP, Vol 1, No. 2, (2019), h. 27-29

²⁰ Abdoel Djamali, *Pengantar Hukum Indonesia*, (Jakarta, PT. Raja Grafindo Persada, 2006), h. 216-217.

²¹ Pasal 31 ayat (1) Tentang Peraturan Pemerintah No 21 Tahun 2022

procedures referred to in Articles 9 to 17." This is regulated in Article 32 paragraph (1) of Law No. 12 of 2006, which can facilitate and protect the rights of citizens and aims to provide legal certainty. Another problem concerns those who lose citizenship due to other provisions of Article 23. This is not expressly regulated regarding the possibility of them becoming Indonesian citizens again. However, the possibility of regaining Indonesian citizenship for others can be achieved based on the provisions of Articles 9-18 of Law No. 12 of 2006, namely through the citizenship process. This method can only be accomplished if they have legal citizenship status from another country.²²

Another issue concerns those who are *already stateless*. Do they also receive legal protection related to their citizenship status? Are Articles 8-18 of Law No. 12 of 2006, related to how becoming an Indonesian citizen, an effort to provide protection for stateless people in Indonesia? The provisions of Article 8 regulate the way of obtaining citizenship of the Republic of Indonesia (RI) by foreigners through naturalization. Naturalization or citizenship can be interpreted as the process of changing the status of a foreign resident to a citizen of a country. The formulation in the article stipulates that people who are not Indonesian citizens (foreigners) can obtain Indonesian citizenship through application. The status of stateless persons is clear as "Foreigners." The definition of foreigner based on Article 7 of Law No. 12 of 2006 is "a person who is not a citizen of the Republic of Indonesia."²³

Therefore, to become an Indonesian citizen, one must fulfill the provisions in Article 9 of Law No. 12 of 2006 and Article 3 of Government Regulation No. 21 of 2022. These provisions cannot be fulfilled by foreigners with stateless status because they will not have the documents mentioned above, including immigration documents or official travel documents. Law no. 6 of 2011 concerning Immigration states that a travel certificate is a valid certificate issued by an authorized official from a country, the United Nations, or other international organizations to travel between countries containing proof of themselves or the identity of the holder (Article 1 number 13). On the other hand, immigration documents are travel documents of the Republic of Indonesia, as well as stay permits issued by immigration officials or foreign bureau officials (Article 1 number 14).

A person who crosses the border of a country unlawfully according to relevant laws and regulations is called an illegal immigrant if they do not have the appropriate documents. Illegal immigrants are those who enter a country without legal permission or legal rights.²⁴ Thus, the provisions of this article do not provide an opportunity for those who are stateless to become Indonesian citizens. This is inconsistent with the 1961 Convention on the Reduction of Statelessness, which determines the likelihood of stateless persons obtaining citizenship under certain conditions. Therefore, those with

²² Koesmoyo Ponco Aji, "Implementasi Hak Asasi Manusia Dalam Undang-Undang Kewarganegaraan Republik Indonesia", Jurnal Ilmiah, Vol 1 No. 1, (2018), h. 89

²³ M Alvi Syahrin, "Naturalisasi dalam Hukum Kewarganegaraan: Memahami Konsep, Sejarah, dan Masalah Hukum," Jurnal Thengkyang 1, no. 1 (2019), h. 36-53.

²⁴ Cambridge Dictionary: <<https://dictionary.cambridge.org/us/dictionary/english/illegal-immigrant>>

²⁵ *stateless* status may find it difficult to obtain their citizenship to Indonesian citizenship through naturalization.²⁶ This is related to the articles in Law No. 12 of 2006 and Government Regulation No. 21 of 2022 that only regulate limited protection for Indonesian citizens so as not to become stateless persons, but do not regulate the protection of those who are already *stateless* persons.²⁷

The absence of the rule of law creates uncertainty for the stateless. They are vulnerable to human rights violations such as statelessness because human rights have developed in three generations: individual freedom provided the basis for the first generation's focus on civil and political rights; the second generation's emphasis on economic, social, and cultural rights placed humans in a more privileged position than other social groups; third-generation human rights include such things as the right of a country to self-determination, the right to peace, the right to development, the right to an environment suitable for life, et cetera; these rights are based on the solidarity of the nation.²⁸

Quite a few stateless people are from various countries in Indonesia and are considered illegal immigrants. Therefore, the regulations imposed on them are immigration regulations, such as deportation or placement in state detention centers. Resolution through immigration laws often does not solve the problem of their citizenship status, instead raising new problems. One example of a case in Indonesia is the case of Danko Nizar Zlavic, who has been detained in the Jakarta Immigration Detention Center since 2002 because he does not have a valid travel document or stay permit. Until Danko Nizar Zlavic died in 2017, he was still a detainee because his citizenship status was not known with certainty. As mentioned above, he is a *stateless person* in Indonesia, and for 15 years, he remained in the state detention center.²⁹

This happens because no country wants to accept him as a citizen, and he is rejected by his home country. This means that for 15 years, he has been unable to hold citizenship, and the problem has not been resolved, which should have been obtained through special efforts by UNHCR and the Indonesian government by making policies/legal rules that accommodate the possibility of granting citizenship through naturalization with certain considerations and conditions. The naturalization of *stateless persons* must have positive and negative impacts on various matters related to citizenship.

²⁵ Respati Triana Putri dan Nanda Bayu Pamungkas, "Indonesia's Selective Policy Against Illegal Immigrants In The Framework Of Asean Cooperation", JLBP, Vol 2, No. 1, (2020), h. 100

²⁶ United Nation High Commissioner for Refugees, (Mencegah dan Mengurangi Keadaan Tanpa Kewarganegaraan), (UNHCR, [s.a]), <<https://www.unhcr.org/id/wpcontent/uploads/sites/42/2017/05/Mencegah-dan-Mengurangi-keadaan-tanpa-Kewarganegaraan-BAHASA-FINAL.pdf>>

²⁷ Lalu Muhammad Iqbal dalam Berita Satu, "Indonesia Akui WNI di Filipina #1" (BeritaSatu, 2017) <<https://www.youtube.com/watch?v=UxslcEBrzTQ&list=PLm9oulgwokUgkB7JgzABBYCiNKFNSOPp&index=1>>

²⁸ Al Khanif, "Hukum Dan Kebebasan Beragama Di Indonesia", (Yogyakarta: LaksBang Mediatama, 2010), h. 35

²⁹ M. Ryanindityo, "Pandangan Hak Asasi Manusia Terhadap Pembiaran Orang Dengan Status 'Stateless' Di Indonesia (Studi Kasus: Danko Nizar Zlavic)," Jurnal Ilmiah Keimigrasian 2, no. 1 (2019), h. 97–99.

Therefore, naturalization requires strict screening so that not just anyone can become an Indonesian citizen.

Similarly, Indonesians who have lived abroad for generations without residency or immigration documents are not recognized by the country where they are located or the State of Indonesia because there are no valid documents showing that they are Indonesian citizens, or vice versa, people from abroad who live for generations in Indonesia without documents. Examples are descendants of *Indonesians or Persons of Indonesian Descent* (PIDs) living in Davao City, Philippines, or vice versa, Filipinos living in Bitung, North Sulawesi. They are all undocumented residents. The Indonesian government's step to reduce and resolve this problem is to enter into an agreement and cooperation with the governments of the Republic of Indonesia and the Philippines, UNHCR Manila,³⁰ so that in the end, they can receive documents from the *United Nations High Commissioner for Refugees* (UNHCR).³¹

The 1930s and 1940s were key decades that laid the foundation for the establishment of domestic laws in the Philippines regarding *stateless persons*.³² In 1940, the Philippines passed the Philippine Immigration Act of 1940, which regulated the president's authority to accept aliens. At the international level, the Philippines, in 1955, became a signatory to the 1954 Convention on the Status of Stateless Persons. However, after signing the 1954 Convention, the Philippines did not ratify it. In 2010, UNHCR, as an international organization dealing with stateless persons, encouraged states to accede to and ratify the 1954 Convention so that stateless persons receive human rights protection. UNHCR also encouraged the Philippines to ratify the 1954 Convention and jointly conduct a *Round Table Discussion on statelessness*,³³ which discusses the phenomenon of *stateless persons* in the Philippines. The results of the *Round Table Discussion* show that several groups of people in the Philippines are at risk of becoming *stateless persons*, which even the government was not aware of.³⁴

These groups include the following: groups of children of Filipino descent who do not have official documents related to their identity (undocumented); groups of people conceived or born outside of the undisputed Philippine territory such as Saudi Arabia and Japan; *undocumented* children of Filipino descent born in northern Borneo/Sabah;

³⁰ Putrie Agusti Saleha dan Benny Teh Cheng Guan, "The Legalization Process of Persons of Indonesian Descents (PIDS) in Mindanao and Their Reasons to Remain in Mindanao after Nationality Awarding", *ISTED*, July 17-18, (2021), h. 2

³¹ "KJRI Davao Lakukan Pencatatan Keturunan Indonesia Di Filipina - ANTARA News," <<https://www.antaranews.com/berita/828600/kjri-davao-lakukan-pencatatan-keturunan-indonesia-di-filipina>>

³² Francis Tom Temprosa, "Statelessness in Philippine Law: Expanding Horizons of the International Stateless Person Protection Regime," *Ateneo Law Journal* 58, no.29. (2013): h. 38.

³³ *Ibid*

³⁴ *Ibid*

people of Indonesian descent in Mindanao; Indigenous people of the *same sea or Badjaos*; and *undocumented* children residing in the Philippines.³⁵

In 2012, the Governments of the Philippines and Indonesia, with the support of UNHCR, mapped and identified more than 6,000 People of Indonesian Descent (PID) whose nationality has not been determined in the Southern Philippines. Given their status, these people's access to their rights is often challenged. As a result of the 6th Joint Commission for Bilateral Cooperation (JCBC) held in Jakarta, Indonesia, on February 24, 2014, the two countries agreed on the importance of determining the legal status of PID in the Southern Philippines to provide better legal protection. The protection and process of confirmation and registration of PID citizenship was launched in 2014. After four stages of registration, the project has registered 8,745 PIDs. Of these, the first group of 664 people in Glan, Sarangani, Southern Philippines, was confirmed for citizenship in March 2016.³⁶

The granting of citizenship is because the 1945 Constitution adheres to the principle of providing the greatest protection for the entire nation, stated through Article 28 E part 4 of the 1945 Constitution where everyone has the right to citizenship status. Granting nationality to IDPs or people without documents is a discretionary decision from the government. The essence of discretion is to make quick, precise, and beneficial decisions on issues not regulated by law or governed by unclear rules (norms).³⁷

In Law No. 30 of 2014 concerning Government Administration, discretion is defined as decisions or actions taken by government officials to overcome certain problems in the administration of government, such as laws and regulations that provide choices but do not regulate, are incomplete or unclear, or cause the government to stop. Since granting citizenship to stateless individuals is not required by Indonesian law, this practice is seen as an option. However, granting citizenship status to those who are stateless is a necessity, but it needs or needs to be regulated in the law. Acting as a state of law, all forms of government action in carrying out state responsibilities must be sourced from the law or must always be within a legal framework that can be implemented in accordance with agreed legal provisions, be it in legal policy in economic, social, customary, or legal aspects itself. Citizenship status can be a gateway for everyone to the protection of international law, especially in international legal trade.³⁸

Provisions in Article 24 of Law Number 30 of 2014 concerning Government Administration state that officials who exercise discretion must ensure that their actions meet several criteria: in accordance with the purpose of discretion as referred to in Article 22 paragraph (2); does not contradict the provisions of laws and regulations; in line with the General Principles of Good Governance; based on objective reasons; free from

³⁵ UNHCR, "Submission by The United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report", Universal Periodic Review: The Philippines. 3rd Cycle, 27th Session, 2011

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ Novianti, "Status Kewarganegaraan Ganda Bagi Diaspora Indonesia Dalam Perspektif Hukum Internasional," *Kajian* 19, no. 4 (2016), h. 25-311.

conflicts of interest; and executed in good faith. The legal consequences of discretion can be divided into three categories. First, the decision is taken outside the authority because it is not in accordance with the process of using discretion, resulting in invalidity. Second, discretion that has been made can be canceled if it is used in a manner that is not in accordance with the general principles of good governance, the purpose of granting authority, or the procedure for exercising discretion. Third, discretion is invalid if it is carried out as an arbitrary act given by an unauthorized official.

In carrying out public policy, discretion is a very important phenomenon. The current situation requires flexibility to achieve the best results. Discretion for the government is important in a legitimate state, but it cannot be used carelessly. This implies that there are criteria that authorities must meet before they can make their own decisions, such as "a. Intended to carry out public service duties; b. It is an active attitude of action from the state administration; c. The attitude of action is intended to resolve important problems that arise suddenly; d. The existing law is unclear or does not regulate the matter; e. Such actions are in accordance with the Principles of Good Governance."³⁹

From what has been said, it is clear that the General Principles of Good Governance (AAUPB), particularly the prohibition of abuse of power and the principle of arbitrariness, are crucial guidelines in exercising discretion and formulating government policies. In other words, if there is an arbitrary part in a government program, it will be labeled as a "deviant policy." In the context of good governance, the general principles of good administration serve as a set of guidelines for professionals of government and state administration. Theories of function in law and society can explain the relationship between AAUPB and discretionary measures. According to this perspective, AAUPB is a justification for decision-makers and key action-takers in administrative law. These guidelines help provide the best interpretation of a policy and monitor it to ensure the policy continues to meet the criteria of a society that at the same time has demands for *fairness and justice*.

IV. GOVERNMENT POLICY OF BASIC RIGHTS TO *STATELESS PERSONS* IN INDONESIA

Citizenship status cannot be separated from Human Rights (HAM). In the realm of international law, there is a declaration explaining human rights, namely the *Universal Declaration of Human Rights* (UDHR). The UDHR is a reference basis for lawmaking in each country associated with the United Nations in the protection of human rights. Initially, the UN planned to make human rights determinations that must be followed by each member state in the UN Charter Text. However, because there was antipathy or rejection from some countries due to concerns over sovereignty, the conclusion was decided to include only a few small parts of the question of human rights in the UN

³⁹ Hadi, I Gusti Ayu Apsari "Pertanggungjawaban Pejabat Pemerintah dalam Tindakan Diskresi pasca Berlaku Undang-undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan", Jurnal Kertha Patrika, No. 1 Vol. 39 April (2017), h. 37

Charter. In addition the UN instructed the Human Rights Commission to fully formulate human rights provisions in the UDHR.⁴⁰

Since the UDHR is only a declaration and not an enforceable legal document, it can only serve as a moral obligation and a set of principles for all states. However, moral responsibility here must be understood as actions that reflect concern or loyalty to the community, state, and state more broadly. All provisions related to the rights contained in the UDHR, including the right to citizenship status, must be respected and recognized as a form of government concern in defending human rights, even though the UDHR is an unenforceable declaration.⁴¹

Although the UDHR is merely a declaration and not a legally binding treaty, its universal recognition means that it is on par with other international laws and serves as a standard by which to measure a country's human rights arrangements. This has resulted in UDHR becoming an important tool in strengthening human rights enforcement.

Therefore, the ICCPR binds Indonesia, and states have a responsibility to enforce its provisions. In addition to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Convention on the *Reduction of Statelessness* establishes the right to citizenship in Article 1, paragraph 1,⁴² “*Stating that all peoples have the right to self-determination and calling on all States, including States responsible for the administration of Unincorporated Territories Self-Government and Trust Territories, to promote the realization of such rights. This article had great significance at the time of the adoption of the Covenant in 1966 because at that time there were still many colonies.*”

This explains why all states that are party to the Convention are obliged to grant citizenship to every eligible person, whether that person is a refugee or a child born within the jurisdiction of that country. In addition, it is clarified that the *Convention on the Reduction of Statelessness* does not reject applications for citizenship based on the exceptional circumstances listed in Article 1 paragraph (2). In fact, the explanation is contained in Article 1 Part 2 Letter d of the *Convention on the Reduction of Statelessness*,⁴³ which “*Establishes the obligation of each State Party to respect the rights recognized in the present Covenant. This article also ensures that its implementation applies to all individuals who are in its territory and who are under its jurisdiction without any distinction whatsoever.*”

Therefore, each state party to the Convention shall accept applications for citizenship from stateless individuals referred to in this article. However, because Indonesia has not joined the *Convention on the Reduction of Statelessness*, neither Indonesia nor its citizens are subject to any existing requirements.⁴⁴

⁴⁰ Bahder Johan Nasution, *Negara Hukum dan Hak Asasi Manusia*, (Mandar Maju, 2017), h. 208

⁴¹ *Ibid*, h. 246-247

⁴² UU No. 12 Tahun 2005 tentang Pengesahan *International Covenant on Civil and Political Rights* (Kovenan Internasional Tentang Hak-Hak Sipil dan Politik)

⁴³ *Ibid*

⁴⁴ Melda Kamil A., “*Kedudukan Hukum Internasional dalam Sistem Hukum Nasional*”, *Jurnal Hukum Internasional* 5, (2008), h.508.

From the conception of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, there was hope to resolve this *stateless* problem. It seemed to be resolved immediately, referring to the provisions of Article 4 letter K, which states that Indonesian citizens are "children born in the territory of the Republic of Indonesia if the father and mother are stateless or their whereabouts are unknown." Thus, a child born to stateless parents is prevented from inheriting that same status after the enactment of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, but not his parents. The *stateless* problem lasted for a long period of time without a clear solution from the Government of the Republic of Indonesia. The uncertainty of this status results in the non-fulfillment of basic rights as citizens, such as the right to obtain an identity card (KTP), civil registration deed, or public services. This marginalized condition causes children born to parents who are treated as stateless to then also be denied their human rights as guaranteed in the Convention on the Rights of the Child, especially regarding the right to obtain their citizenship identity (in this case, birth certificates).

According to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, there is no citizenship for people who do not have any citizenship. This means that people who want to apply to become Indonesian citizens must have foreign citizenship from another country. When viewed from legal principles, Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia is not retroactively justifiable, but allowing stateless settlers without clarity to be able to obtain citizenship status is also considered unwise.

If the government's policy remains firm in maintaining the settlement of granting citizenship status only to those who have foreign citizenship status, there needs to be another discussion with foreign governments whose descendants become settlers with stateless status in Indonesia. The Indonesian government can also make policies aimed at solving *the problem of statelessness* in Indonesia with the sole purpose of humanitarian concern and respect, recognition, and protection of human rights. As a solution, the Ministry of Law and Human Rights hopes that the Administration and Population Officer will immediately provide clarity on the status of residence for *stateless* settlers to be used to subsequently take care of naturalization applications to become Indonesian citizens. Law Number 12 of 2006 concerning Indonesian Citizenship regulates the procedures for obtaining Indonesian citizenship. There are several ways foreigners and stateless people become Indonesian citizens, among others, through citizenship granted by the state to foreigners who are considered meritorious or for reasons of state interest.⁴⁵

Every individual in Indonesia has the freedom to determine his citizenship status in accordance with Article 28D paragraph (4) of the Constitution of the Republic of Indonesia of 1945. Due to the lack of specificity regarding citizenship in the Constitution, the right to citizenship was further regulated by subsequent laws. Human Rights Law of 1999 (Human Rights Law), Law No. 39. Everyone has the right to own, obtain, change,

⁴⁵ Winarno, *Kewarganegaraan Indonesia dari Sosiologis Menuju Yuridis*, (Bandung: Alfabeta, 2009), h.131

or maintain his citizenship status, as stated in Article 26 paragraph (1) of the Human Rights Law.⁴⁶

Article 26 paragraph (2) of the Human Rights Law outlines that everyone, without exception, has the right to choose his citizenship and enjoy the rights derived and attached to his citizenship, as well as the obligation to fulfill the obligations of his citizenship in accordance with the law. The second example, Article 53 paragraph (2) of the Human Rights Law, states that every child, from birth, has the right to name and citizenship status. In accordance with paragraph three of Article 24 of the ICCPR, every child has the right to become a citizen. As Indonesia is a signatory to the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Law in Indonesia reflects ICCPR principles related to citizenship rights.⁴⁷

After reading this, it should be clear that the right to citizenship includes the right to own, acquire, change, maintain, and choose citizenship and the right to enjoy the rights derived and inherent in that citizenship. The status it acquires is an inseparable part of human rights, and our country has guaranteed the authority of the right to citizenship status in the Constitution of the Republic of Indonesia of 1945 and the Law on Human Rights.

V. CONCLUSION

In certain cases, stateless individuals within Indonesian territory can have their rights fulfilled by the government through the initial granting of citizenship status. Article 28D paragraph (4) of the Indonesian Constitution mandates that the government exercises discretion in upholding the right to citizenship. This discretion is further supported by the implementation of the anti-apatride principle and the concept of maximum protection for everyone within the country's territory. Consequently, even though Indonesian citizenship law does not explicitly address stateless persons, the government can use its discretion to fulfill its commitment to ensuring that former citizens and their descendants who have lost their Indonesian citizenship can regain it. Additionally, to reduce and prevent statelessness, the government should establish specific regulations to prevent Indonesian citizens abroad, whether due to marriage or migrant workers, from becoming stateless. However, fulfilling the rights of stateless individuals goes beyond merely granting citizenship. Although the Immigration Law and Citizenship Law do not arbitrarily confer status on stateless Indonesian individuals, Indonesia must also focus on protecting and upholding their human rights in other areas based on the principle of maximum protection. This includes safeguarding them from discrimination and ensuring their rights to health and housing are protected.

⁴⁶ Pasal 26 ayat (1) UU Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

⁴⁷ Pasal 24 ayat (3) UU Nomor 12 Tahun 2005 tentang Pengesahan *International Covenant on Civil and Political Rights* (*Kovenan Internasional Hak-Hak Sipil dan Politik*)

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