



Stateless Person In Indonesia: Consequences and Legal Protection

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Abstract

This study aimed to examine what the legal consequences are for those who are stateless persons and how the government's legal protection for people with status as stateless persons in Indonesia. The method used to achieve this goal is through normative legal research. Legal materials will be collected by means of an inventory, classification, identification, interpretation and descriptive analysis. The results indicated that there are various causes of statelessness, such as: disintegration of the nation, political factors, the application of different citizenship principles between countries, bureaucratic obstacles, racial, religious discrimination and etcetera. The state of statelessness will result in the lack of rights and obligations and protection of them from any country. Indonesia has attempted to provide legal protection for those with statelessness through concrete efforts by collaborating with UNHCR, entering into agreements between countries, discretion and regulations in existing legislation. However, the existing regulations still need to be revised the obscurity of several norms relating to protection of stateless persons.

1. Introduction

Having citizenship from a country is something that everyone desires, because it will show the legal bond between himself and the country where he is registered as a citizen. Member of a country (citizen) is regulated in the national laws of each country. This provision is contained in Article 1 of The Hague Convention on the Conflict of Nationality Law of 1930, which states that: Each country determines according to its own rights who are its citizens, which states that: Each country determines according to its own rights who are its citizens. This law should be recognized by other states to the extent that it is consistent with international conventions, international practice and generally recognized legal principles with regard to nationality.¹ A citizen is a member of a country.²

With his citizenship status, a citizen will get legal protection from his country, even when they are not in their country. Citizenship can be referred to a state legal status owned by

¹ Arsensius Arsensius, "Perlindungan Orang Asing Dalam Hukum Internasional," *Jurnal Varia Bina Civika* 75 (2009).

² Kurniatmanto Sutoprawiro, *Hukum Kewarganegaraan Dan Keimigrasian* (Jakarta: Gramedia Pustaka Utama, 1993).

people who have membership in a certain country, not owned by people who are not members of that country.³ Everyone's right to citizenship status has been guaranteed in international and national law. This is stated in the Universal Declaration of Human Rights (UDHR) in Article 15 section (1) which affirms that: Everyone has the right to a nationality. In Indonesia, this guarantee is contained in Article 28D paragraph (4) of the 1945 Constitution, which emphasizes that citizenship status is the right of everyone.

Although citizenship status is important and is a human right, not everyone is lucky to have citizenship. Many people in various parts of the world including Indonesia live without citizenship status (stateless person) for various reasons. Stateless person according to Convention relating to the Status of Stateless Person of 1954 in article 1 is a person who is not considered a citizen by any country in the implementation of the law of that country. According to the United Nations High Commissioner for Refugees (UNHCR), around 12 million people worldwide live without a clear citizenship status.⁴ Their presence from year to year continues to increase. For the example is Rohingya Muslims in Myanmar, a total of about 725,000 people occupy the northern part of Arakan (Rakhine State of Myanmar) bordering Bangladesh. They are related to the Bengali Chittagon in terms of ethnicity, language and religion.⁵ In addition, there are also Bedoin ethnicity in Kuwait who did not acquire citizenship when the state of Kuwait became independent in 1961, ethnic Nubians in Kenya, Kurds in Iraq, Afghanistan and etcetera. They spread to various other countries in the world, including Indonesia, whether they are refugees or not.

Based on the UNHCR data collection, it is stated that the groups of people who experience statelessness in Indonesia include:⁶

1. Chinese Indonesians who do not have documents to prove Indonesian citizenship because their citizenship status is wrongly recorded in their civil registration documents and they are not recognized as Chinese or Indonesian citizens;
2. Arabs and Indians who do not have documents to prove their citizenship;
3. Indonesian migrant workers who lost their citizenship under the old Citizenship Law and were unable to acquire citizenship under the new Citizenship Law;
4. A small number of Indonesians who were exiled out of Indonesia due to the political conflict in 1965 and became stateless;
5. Other people who become stateless because they are classified as migrants without citizenship documents.

This data has not been added to other refugees from other countries who came to Indonesia in a stateless state to seek protection in a third country, as well as Indonesian citizens (WNI) who lost their Indonesian citizenship status but did not obtain citizenship status from other countries.

In general, stateless persons can occur due to various factors, including: the occurrence of national disintegration, political factors, conflicts of law such as the application of different

³ Andi Pide M, *Pengantar Hukum Tata Negara*. (Jakarta: Gaya Media Pratama, 1999).

⁴ "Orang-Orang Tanpa Kewarganegaraan - UNHCR Indonesia," accessed May 2, 2022, <https://www.unhcr.org/id/orang-orang-tanpa-kewarganegaraan>.

⁵ Chris Lewa, "Asia's New Boat People," *Forced Migration Review* 30 (2008): 40-42.

⁶ Aldyan Faizal, "Perlindungan Dan Pemenuhan Hak Stateless Person Eks Dan Keturunan Warga Negara Indonesia Atas Status Kewarganegaraan," *Jurist-Diction* 3, no. 4 (2020): 1215-48.

citizenship principles, the provisions of each country's national laws and regulations, the occurrence of discrimination (race, religion, ethnicity, etcetera) and also because of administrative/bureaucratic barriers. Administrative barriers, as one of the most common cases in Indonesia, can be seen from the presence of people who have lived in Indonesia for decades from generation to generation, but do not have official residence documents which shows that they are Indonesian citizens or citizens of another country, or otherwise there are ex-Indonesians who have lived abroad for decades without official documents so that they are not recognized as citizens of the country where they live and are also not recognized as Indonesian citizens.

Aldyan Faizal writes in *Jurist-Diction* Vol. 3 (4) 2020 that former Indonesian citizens and descendants of Indonesian citizens in the Philippines are stateless for Indonesia and also the Philippines, so that they do not have access to their basic rights from the state, including the right to obtain protection from the state. In the law in the Philippines there is no provision that allows them to get the right to citizenship. Meanwhile, Indonesia uses the provisions of Article 28D (4) of the 1945 Constitution of the Republic of Indonesia to prevent the status of apatride for them. Therefore, it is questioned what the urgency of citizenship is and why the government is responsible for handling the issue of stateless persons ex and descendants of Indonesian citizens in the Philippines. In fact, Aldyan Faizal has emphasized that the absence of documents will make them considered as illegal immigrants because they enter and are in the territory of Indonesia without having valid residency documents, travel documents, or immigration documents. According to UNHCR, currently in Indonesia there are around 13,000 refugees with or without citizenship from 45 different countries of origin. The majority of the refugees are in the Greater Jakarta area and 50 percent of the refugees are came from Afghanistan, followed by Somalia and Iraq. Danko Nizar Zlavic, is a stateless person who is treated as an illegal immigrant by the Indonesian Immigration. He was sentenced to a detention not less than fifteen years for not being able to show travel documents and a valid and valid Stay Permit in Indonesia because his nationality was not recognized by his country's representative in Indonesia. This was stated by Mochammad Ryanindityo and Agung Sulisty Purnomo in the *Scientific Journal of Immigration Studies* Vol. 2 No. 1 of 2019. Because of that, they questioned what caused the Zlavic country representative to not recognize his citizenship and how the Zlavic problem was from a human rights perspective.

The substance of the writings is indeed related to the article being written, but the problem is different. Precisely because of that, the problems in this article are very urgent and relevant to be discussed. Because the status as stateless persons will have an impact on the country/government where they live as well as for those concerned. The problem is not only related to economic problems, but also concerns other problems such as the environment, socio-economics, security, cultural clashes, administration and etcetera. On this basis, efforts are needed to provide protection to those who are stateless persons, both preventive and repressive. Therefore, it is interesting to examine: first, what are the legal consequences for those who are stateless persons? Second, how is the legal protection provided by the government against stateless person in Indonesia?

2. Research Method

The research used normative legal research, with the statutory approach, and an analytical or conceptual approach to primary, secondary, and tertiary legal materials. The technique of tracing legal materials was use document study techniques and for study analysis used qualitative analysis.

3. Results and Discussion

3.1. Definitions and Consequences of the Law of Stateless

Stateless is a term in English, is a legal term regarding the loss of citizenship. According to the Cambridge Dictionary, the meaning of the word stateless is a person who has no country that they officially belong to.⁷ Hence, the term indicates a person's position in relation to the state, which indicates that a person "has no state" or "stateless" or "statelessness" of any country.

People who do not have a state/citizenship are referred to a stateless person. Juridically the meaning of stateless person can be found in article 1 section 1 of the Convention relating to the Status of Stateless Persons, which states that: establishes the legal definition for stateless persons as individuals who are not considered citizens or nationals under the operation of the laws of any country. Therefore, a stateless person is a person who is stateless under the laws of any country.

In international law, apart from the term stateless/stateless person, the terms refugees and asylum seekers are also known which are related to the stateless person. Stateless people are sometimes refugees too. However, not all refugees are stateless, and many stateless people never cross international borders. Article 1 of the UN Convention on the Status of Refugees in 1951 mention that refugees applies to many people who have fled the country of his nationality to avoid persecution or the threat of persecution'. Meanwhile, asylum seekers are people who have been expelled from their country and seek asylum in another country and have not yet received a decision on refugee status. The difference with refugees is that those who have not submitted an application or are waiting for a decision regarding their refugee status from a country are called asylum seekers.

According to UNHCR, status as refugees or statelessness has different legal characteristics/consequences. People with the status of refugees can get international protection, as regulated in the 1951 Refugee Convention which has been ratified by many countries. However, Indonesia has not ratified the convention for several reasons related to Indonesia's obligations that must be carried out if it ratifies the convention, including the provisions in Article 17 namely the right to do work that generates wages for refugees and Article 21 the right to housing.

This is considered hard and difficult to implement by the Indonesian government considering the condition of Indonesia as a developing country that has a fairly high rate of poverty and unemployment, and per capita income of the Indonesian population is considered inadequate, besides that there are still many underdeveloped areas in Indonesia that still need proper infrastructure from the central government.⁸ Another reason for delaying ratification is the existence of a legal vacuum because there are no comprehensive rules governing refugees and asylum seekers in positive law in Indonesia.⁹ While those who are stateless persons, they are not recognized as full members of the society in which they

⁷ "STATELESS | Meaning in the Cambridge English Dictionary," accessed May 2, 2022, <https://dictionary.cambridge.org/dictionary/english/stateless>.

⁸ Yahya Sul-toni, Setyo Widagdo, and Herman Suryokumoro, "The Reason of Indonesia Not Ratified Refugee Convention 1951 and Legal Protection for Refugees in Indonesia," *Dalam Jurnal Hukum*, no. 6 (2014).

⁹ Yusnarida Eka Nizmi, "Kepentingan Indonesia Belum Meratifikasi Konvensi 1951 Dan Protokol 1967 Mengenai Pengungsi Internasional Dan Pencari Suaka," *Transnasional* 5, no. 2 (2014): 1093-1107.

live. By getting the status as refugees, they will get legal protection, where a country cannot deport them, because the country where the refugees arrive must be subject to the principle of non-refoulement. The principle of non-refoulement has been considered as customary international law, which means that all States, whether they have become States parties or not, to refugee and/or human rights conventions that prohibit expulsion, are obliged not to return or extradite a person to the country where that person's life or safety is seriously in danger.¹⁰ Thus, the main meaning of the non-refoulement principle is that no country may return or send refugees and/or asylum seekers to an area where the lives and safety of the refugees or asylum seekers will be threatened; unless the presence of such refugees or asylum seekers really causes problems of order and security for the country concerned.¹¹

By historically, Stateless can be divided into two categories: those without legal citizenship (de jure citizenship), and those without effective citizenship (de facto citizenship). The two categories are called de jure stateless and de facto stateless. De Jure statelessness is a condition where a person does not have any legal citizenship identity and therefore also does not get his rights as a citizen based on the national law of the country.¹² De facto stateless is people who are outside the country and do not get citizenship or, for valid reasons, do not get protection from that country.¹³

Not having citizenship status will result in legal uncertainty regarding their status in a country (including Indonesia). They are not citizens who have the right to live in the country and enjoy certain rights as citizens as stipulated in the 1945 Constitution, such as: The right to work and a decent living; right to live; The right to self-development; the right to recognition, guarantee, protection, and fair legal certainty; equality in law and government; right of association and assembly; the right to education, the right to vote/elect, etcetera. In more detail, these rights are regulated in Law No.39/1999 on Human Rights. Statelessness will also result in other risks faced such as the possibility of exploitation, discrimination, human trafficking, arbitrary arrest and detention, etc. This is as a result of their difficulties to prove who they are or where they are come from. Regarding this matter, David C. Baluartet stated: "A common characteristic of these stateless populations is the marginalization they suffer, often intentionally engineered by the state that they inhabit, and the vulnerability that accompanies an existence without legal identity or protection."¹⁴

Therefore, being stateless will cause difficulties, and bring problems to those who concerned, because citizenship is a practical requirement for a person in the political, judicial process and also to obtain economic, social and cultural rights.¹⁵ In addition, the existence of a stateless person can also have an impact on the state/government such as social problems, health, environment, economy, culture, the burden of state finances and etcetera.

¹⁰ K M Jastram and M M Achiron, "Refugee Protection: A Guide to International Refugee Law. UNHCR," 2001.

¹¹ Sigit Riyanto, "Prinsip Non-Refoulement Dan Relevansinya Dalam Sistem Hukum Internasional," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 22, no. 3 (2010): 434-49.

¹² Indira Goris, Julia Harrington, and Sebastian Köhn, "Statelessness: What It Is and Why It Matters," *Forced Migration Review*, no. 32 (2009): 4.

¹³ *Ibid.*

¹⁴ David C Baluarte, "The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality," *Yale Hum. Rts. & Dev. LJ* 19 (2017): 47.

¹⁵ David Weissbrodt, *The Human Rights of Non-Citizens* (OUP Oxford, 2008).

3.2. Legal Protection Against Stateless Person in Indonesia

It is the right of everyone to get guaranteed protection and legal certainty. Therefore, laws relating to citizenship status and the relationship between the state and citizens, in various legal instruments can be used as the basis for implementing the protection and fulfillment of human rights.¹⁶ Guarantees of legal protection in Indonesia are regulated in Article 28D paragraph (1) and Article 28I paragraph (4) of the 1945 Constitution. In Article 28I paragraph (4) it is emphasized that the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the State, especially the government. The responsibility of the state in the context of citizenship status can be interpreted as the obligation of the state in fulfilling the right to citizenship status as well as in providing protection for those with stateless status.

The meaning of legal protection according to Philipus M. Hadjon¹⁷ is the protection of the dignity and worth, as well as the acknowledgment of the consequences of human rights possessed by legal subjects based on legal provisions. Legal protection is divided into two; first is Preventive legal protection which means protection provided by the government with the aim of preventing a violation before the occurrence of a violation, and second is repressive legal protection which means legal protection as the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or an action of violation has been taken.¹⁸ One form of preventive legal protection is through regulation in laws. The guarantee and protection of everyone's right 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 of a country will get certain rights as well as legal protection as stipulated in the constitution and other regulations. The other problem is what about those who are stateless persons, does the state/government provide protection to them?

The legal status of a person's citizenship can describe how a person's relationship with the state is. However, if someone does not have citizenship status, according to Widodo Ekatjahjana,¹⁹ the legal relationship is not regulated by the national law of the country concerned, but it is subject to the provisions of international law. There have been various efforts made to provide protection for stateless persons both by the international community and the Indonesian government itself. Both through the formation of legislation and other concrete steps.

To provide protection to stateless persons, the United Nations has issued The Convention relating to the Status of Stateless Persons in 1954 and The Convention on the Reduction of Statelessness in 1961, only that Indonesia has not ratified the two conventions so that Indonesia is not subject to the provisions of the convention. The 1954 Convention stipulates basic principles including that no stateless person may be treated worse than any foreigner with a nationality. In addition, this convention also requires States parties to facilitate the

¹⁶ 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): 118-47.

¹⁷ M Husein Maruapey, "Penegakan Hukum Dan Perlindungan Negara (Analisis Kritis Terhadap Kasus Penistaan Agama Oleh Patahana Gubernur DKI Jakarta)," *Jurnal Ilmu Politik Dan Komunikasi*, 2017.

¹⁸ *Ibid.*

¹⁹ Widodo Ekatjahjana, "Masalah Kewarganegaraan Dan Tidak Berkewarganegaraan," *INOVATIF | Jurnal Ilmu Hukum* 2, no. 3 (2010).

integration and naturalization of stateless persons as many as possible. Thus the State where the Stateless Person is located must provide human rights protection as granted to its citizens or foreign nationals who are legally in the territory of the country's sovereignty.²⁰ Meanwhile, the 1961 Convention stipulates that a state party grants citizenship to someone born in its territory, if it results in that person becoming stateless. In addition, it also regulates the possibility of stateless persons to obtain citizenship under certain conditions.

Even though Indonesia has not ratified the two conventions, it has taken various proactive steps to reduce and prevent the stateless situation, through the laws / regulations that have been formed and policies that have been issued. Guarantees for the protection of citizenship status are stated in; Article 26 paragraph (1), Article 27 paragraph (1), Article 28 D paragraph (4), and Article 28E paragraph (1) of the 1945 Constitution; Law no. 39 of 1999 concerning Human Rights, and Law no. 12 of 2006 concerning Citizenship. In particular, legal protection for stateless persons is carried out by adopting several provisions contained in The Convention relating to the Status of Stateless Persons of 1954 and The Convention on the Reduction of Statelessness of 1961, into Law No. 12 of 2006 concerning Citizenship.

In the General Elucidation of Law Number 12 of 2006 it is stated that one of the principles adopted in the law is "the principle of not recognizing/obeying statelessness". To realize the state of statelessness, there are two principles that are used from the aspect of birth, which is through the application of the principles of *ius sanguinis* (citizenship based on descent) and *ius soli* (citizenship based on the place where you were born). In Law No. 12 of 2006, the *ius sanguinis* principle is regulated in Article 4 letters b to k as well as letters l and m, which basically stipulates that a child is an Indonesian citizen if both or one of the parents are Indonesian citizens. Meanwhile, the application of the *ius soli* principle is regulated in Article 4 letters i, j and k of Law Number 12 of 2006 which stipulates that a child is an Indonesian citizen if the child is born in the territory of the Unitary State of the Republic of Indonesia, whose citizenship status is unclear at the time of birth; a newborn child found in the territory of the Unitary State of the Republic of Indonesia as long as the father and mother are unknown; and children born in the territory of the Unitary State of the Republic of Indonesia if the father and mother do not have citizenship or their whereabouts are unknown.

The two principles are used simultaneously, where the *ius sanguinis* principle is the main principle and the *ius soli* principle is the exception. This is intended as an effort to prevent children from being born without citizenship status. This is in line with the Convention on the Reduction of Statelessness in 1961. Child protection is also provided by providing the possibility of limited dual citizenship for children (Article 6 of Law No. 12 of 2006). The granting of limited dual citizenship is also intended to prevent statelessness.

Prevention of statelessness is also contained in Article 23 letter c of Law No. 12 of 2006 which states that the reasons for the loss of Indonesian citizenship are because: declared that his citizenship has been lost by the President at his own request, the person concerned is 18 (eighteen) years old or already married, resides abroad, and by being declared lost his Indonesian citizenship "does not become stateless". Furthermore, letter i states that the status as an Indonesian citizen will also be lost due to residing outside the territory of the Republic of Indonesia for 5 (five) continuous years, not in the context of state service, without valid reasons and intentionally not expressing his desire to remain as Indonesian citizen. Their Indonesian citizenship will be lost as long as the person concerned does not

²⁰ David Weissbrodt and Clay Collins, "The Human Rights of Stateless Persons," *Hum. Rts. Q.* 28 (2006): 245.

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.

However, in Government Regulation No. 2 of 2007 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 due to: a. obtaining another citizenship of their own accord; b. does not refuse or does not give up another nationality, while the person concerned has the opportunity to do so; c. enter the service of a foreign army without permission from the President; d. voluntarily enter the service of a foreign country, whose positions in such services in Indonesia in accordance with the provisions of laws and regulations can only be held by Indonesian citizens; e. voluntarily take an oath or pledge allegiance to a foreign country or part of that foreign country; f. not obliged to but participate in the election of something of a constitutional nature for a foreign country; g. have a passport or a letter that is a passport from a foreign country or a letter that can be interpreted as a valid citizenship sign from another country on his behalf. The word "by itself" according to the KBBI means "automatically" or works by itself.²¹ Therefore, with regard to citizenship, a person automatically loses Indonesian citizenship regardless of whether they by losing their Indonesian citizenship become stateless or have citizenship of another country. Thus, although Law No. 12 of 2006 as emphasized in the general explanation that Law No. 12 of 2006 "does not recognize statelessness" (apatride), not all existing norms anticipate statelessness.

Another article related to the loss of Indonesian citizenship is also regulated in Article 28 of Law No. 12 of 2006 which allows a person to become stateless, if they become an Indonesian citizen based on information which is later declared to be false or falsified, incorrect, or an error has occurred regarding the person by the competent authority. The provision for cancellation of citizenship in this way is made possible in the 1961 Convention, in articles 8 and 9 by giving the state the authority to remove a person's citizenship which leads to statelessness, for people who obtain citizenship by means of such fraud or falsification. From this explanation, the loss of Indonesian citizenship status can be caused by various causes/factors and can leads an Indonesian citizen becoming stateless.

Those who have lost their citizenship are given legal protection to become Indonesian citizens again through a written application to the Minister "without going through the procedures as referred to in Article 9 to Article 17". This is regulated in Article 32 paragraph (1) of Law No. 12 of 2006 they are those who loss due to the following reasons: those who loss because they live outside the territory of the Republic of Indonesia for more than 5 years without reporting (Article 23 l); father or mother who loses Indonesian citizenship due to obtaining citizenship from another country (Article 25); and Female or male Indonesian citizens who are married to foreigners and obtain citizenship from their partner's country (Article 26 paragraphs 1 and 2). The other problem is what about those who lost their citizenship due to other provisions of Article 23, this is not explicitly regulated regarding their possibility to become Indonesian citizens again. However, the possibility of getting their Indonesian citizenship back for others can be done based on the provisions in Articles 9-18 of Law No. 12 of 2006 which is through the citizenship process. This method can only be done if they have a valid citizenship status of another country.

The other problem is what about those who are already stateless, do they also get legal protection related to their citizenship status? Is Article 8-18 of Law No. 12 of 2006, related to

²¹ "Dengan Sendirinya | Arti Kata Dengan Sendirinya," accessed May 2, 2022, <https://www.kamusbesar.com/dengan-sendirinya>.

how to become an Indonesian citizen, an effort to provide protection for stateless persons in Indonesia? The provisions of Article 8 regulates how to obtain 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 being a citizen of a country.²² The formulation in the article stipulates that people who are not Indonesian citizens (foreigners) can obtain Indonesian citizenship through an application. Stateless person status is clearly as "Foreigner". The definition of a foreigner based on Article 7 of Law No. 12 of 2006 is "a person who is not a citizen of the Republic of Indonesia".

Therefore, to become an Indonesian citizen, one must meet the requirements in Article 9 of Law No. 12 of 2006 and Article 3 of Government Regulation No. 2 of 2007, which determines several substantive requirements that must be met by the applicant, such as: the application must contain; "original citizenship" (Article 3 paragraph 1 letter g), immigration certificate (Article 3 paragraph 2 letter c), photocopy of permanent residence permit card legalized by the Official (Article 3 paragraph 2 letter d); and a statement from the representative of the applicant's country that by obtaining the Citizenship of the Republic of Indonesia, he does not become a dual citizen (Article 3 paragraph 2 letter i).

These conditions will not be fulfilled by foreigners with stateless status because they will not be able to fulfill these requirements, considering that stateless persons will not have the documents as mentioned above, including immigration documents or official travel documents. Law no. 6 of 2011 concerning Immigration mention that a Travel Document is an official document issued by an authorized official from a country, the United Nations, or other international organizations to travel between countries containing the identity of the holder (Article 1 number 13). While Immigration Documents are Travel Documents of the Republic of Indonesia, and Stay Permits issued by Immigration Officers or foreign service officials (Article 1 number 14). Those who do not have these documents are considered illegal immigrants. Thus, the provisions in this article do not provide opportunities for those who are stateless to become Indonesian citizens. This is not in accordance with The Convention on the Reduction of Statelessness 1961, which determines the possibility of stateless persons obtaining citizenship under certain conditions. Therefore, those with stateless status will not be able to become Indonesian citizens through naturalization. Thus, the articles in Law No. 12 of 2006 and PP No. 2 of 2007 only regulate limited protection of Indonesian citizens so as not to become stateless persons, but do not regulate the protection of those who already have the status of stateless persons.

The absence of the rule of law creates uncertainty for those who are stateless persons. They are vulnerable to become victims of human rights violations. There are quite a lot of stateless persons from various countries in Indonesia and they are considered as illegal immigrants. Therefore, the regulations imposed on them are immigration regulations, such as through deportation or placement in state detention houses. Settlement through immigration laws often does not solve problems with their citizenship status but instead creates new problems. One example of a case in Indonesia is the case of Danko Nizar Zlavic as mentioned above who is a stateless person in Indonesia, and for 15 years (until he finally died), he remained in the state detention house.²³ This happened because no country wanted to accept him as a citizen and was rejected by the country from which he came from. This

²² M Alvi Syahrin, "Naturalisasi Dalam Hukum Kewarganegaraan: Memahami Konsep, Sejarah, Dan Isu Hukumnya," *Jurnal Thengkyang* 1, no.1 (2019):36-53.

²³ M. Ryanindityo, "Pandangan Hak Asasi Manusia Terhadap Pembinaan Orang Dengan Status 'Stateless' Di Indonesia (Studi Kasus: Danko Nizar Zlavic)," *Jurnal Ilmiah Keimigrasian* 2, no. 1 (2019): 97-99.

means that for 15 years he has been unable to have citizenship, and his problems have not been resolved, which should have been obtained through efforts, especially by UNHCR and the Indonesian government by making policies/legal rules that accommodate the possibility of granting citizenship through naturalization with various considerations and certain conditions. Naturalization of a stateless person must have positive and negative impacts in various ways related to citizenship. Therefore, naturalization requires very strict filtering so that not just anyone can become an Indonesian citizen.²⁴

Cases without citizenship do not only affect foreigners who “run to Indonesia” but also people who were born, lived for generations in Indonesia but do not have a residence document so they are considered stateless persons. It is estimated that there are around 1.6 million indigenous tribes in the rural of Indonesia whose citizenship status is unclear, therefore they cannot exercise their right, for example the right to vote, because they do not have an ID card (residence document)²⁵ and also because of administrative/bureaucratic barriers. Administrative barriers, as one of the most common cases in Indonesia, can be seen from the presence of people who have lived in Indonesia for decades from generation to generation, but do not have official residence documents which shows that they are Indonesian citizens or citizens of another country, or otherwise there are ex-Indonesians who have lived abroad for decades without official documents so that they are not recognized as citizens of the country where they live and are also not recognized as Indonesian citizens.

Likewise, Indonesian people who for generations have lived abroad and also without residence/immigration documents, so that they are not recognized by the country where they are or the State of Indonesia because there are no legal documents showing that they are Indonesian citizens, or conversely, people from foreign countries who live for generations in Indonesia without documents. An example is the descendants of Indonesians or Persons of Indonesian Descent (PIDs) who live in Davao City, Philippines, or conversely, Filipinos who live in Bitung, North Sulawesi. They are all residents without documents.

The steps of the Indonesian government to reduce and resolve this problem are to have an agreement and cooperate with the governments of the Republic of Indonesia and the Philippines, UNHCR Manila, so that in the end it gets a document from the United Nations High Commissioner for Refugees (UNHCR).²⁶ Finally, in 2017 the Government of Indonesia through the Minister of Law and Human Rights Yasonna H Laoly granted Indonesian citizenship status to nearly 2500 (two thousand five hundred) citizens of Indonesian descent with stateless status. The basis for granting citizenship is that the 1945 Constitution adheres to the principle of providing maximum protection for all nations, including through Article 28 E paragraph 4 of the 1945 Constitution where everyone has the right to citizenship status. Granted citizenship to PIDs/ residents without documents is basically a discretionary decision from the government. The essence of discretion is making a quick, precise, and useful decision on something that has not been regulated by law, or unclear rules (the norm

²⁴ M Alvi Syahrin, “The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia,” *Sriwijaya Law Review* 1, no. 2 (2017): 168–78.

²⁵ “Media Internasional Soroti Pemilu RI,” accessed May 2, 2022, <https://www.cnnindonesia.com/internasional/20190417071640-106-387034/media-internasional-soroti-pemilu-ri>.

²⁶ “KJRI Davao Lakukan Pencatatan Keturunan Indonesia Di Filipina - ANTARA News,” accessed May 2, 2022, <https://www.antaraneews.com/berita/828600/kjri-davao-lakukan-pencatatan-keturunan-indonesia-di-filipina>.

is fuzzy).²⁷ In Law Number 30 of 2014 concerning Government Administration defines discretion as decisions and/actions taken by government officials to face concrete problems in the administration of government, in terms of laws and regulations that provide choices, not regulate, incomplete or unclear, or government stagnation. It is said to be discretionary because there is no basis in giving citizenship to a stateless person in Indonesia. Thus granting citizenship status to those who are stateless is a necessity. It's just that it needs to be regulated in law.

As a state based on law, all forms of government action in carrying out its state functions must be based on law or must always be in a legal framework, whether it is legal policy in the economic, social, cultural, or law itself.²⁸ Especially in international law traffic, citizenship status can be a bridge for every citizen to enjoy the benefits of international law.²⁹

4. Conclusion

Status as stateless person will bring legal consequences for them, such as not having the self-identity where their state come from and also not having the rights and obligations as regulated in the Constitution and other regulations. Besides that, it can also lead to exploitation, discrimination, human trafficking, arbitrary arrest, detention, economic, social, environmental problems and etc. Indonesian law has provided protection so that there is no stateless person by applying the *ius sanguinis* and *ius soli* principles simultaneously but it was still not optimized. This can be seen from formulations of norm in the existing rules that can actually cause a person to become stateless, and also the vacuum of rules that allow stateless persons to become Indonesian citizens. Therefore, in order to prevent/reduce stateless people, it is necessary to regulate more clearly and firmly in Indonesian laws and regulations, issue policies that can minimize stateless people and by entering into agreements with other countries where there are Indonesians/descendants living without documents, ratify international conventions related to the stateless person. This is to better guarantee and provide legal certainty.

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²⁷ M Beni Kumiawan, "Penggunaan Diskresi Dalam Pemberian Status Kewarganegaraan Indonesia Terhadap Archandra Thahar Ditinjau Dari Asas Pemerintahan Yang Baik," *Jurnal Penelitian Hukum P-ISSN* 1410 (2018): 5632.

²⁸ Rajab, A. (2017). Peran Perubahan Undang-Undang Kewarganegaraan dalam Mengakomodir Diaspora untuk Peningkatan Kesejahteraan Masyarakat. *Jurnal Konstitusi*, 14 (3), p. 535.

²⁹ Novianti Novianti, "STATUS KEWARGANEGARAAN GANDA BAGI DIASPORA INDONESIA DALAM PERSPEKTIF HUKUM INTERNASIONAL," *Kajian* 19, no. 4 (2016): 311-25.

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Laws and Regulations

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Law Number 39 of 1999 concerning Human Rights
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the Universal Declaration of Human Rights