

THE LEGAL POLICY OF CITIZENSHIP IN FULFILLING THE RIGHTS OF STATELESS PERSONS AS AN EFFORT TO FULFILL HUMAN RIGHTS IN INDONESIA

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Abstract

The issue of citizenship is one of the basic human needs, therefore citizenship status is a right for every citizen that is protected by law. The purpose of this study is to find out how the legal politics of Indonesia in the context of stateless person citizenship rights. This research is normative juridical research that uses a statute approach and a conceptual approach. Based on the results of the study, it was found that legal politics in the form of regulations regarding citizenship in Indonesia from time to time was sufficient to guarantee the rights of Indonesian citizens. However, the Indonesian Citizenship Law does not specifically regulate the stateless person. In addition, there is no policy regarding the granting of citizenship status to stateless persons, so many cases of stateless persons in Indonesia are detained by immigration authorities. Thus, the Indonesian government should emphasize its legal policy in order to optimize legal protection for stateless persons in Indonesia.

Keywords: *Legal Policy; Citizenship; Rights of Stateless Persons; Human Rights*

I. Introduction

The existence of the state as the most complex form of organization in human life, is also commonly constructed as one separate legal entity which consists of and is composed of a collection of citizens, each of which is a separate legal subject. Thus, the state can be said to be a set of legal subjects, as a legal entity between legal subjects in the form of citizens. Therefore, Aristotle refers to the state as "... a body of citizens" (politai), so to be able to understand more regarding the state (police), we must first understand citizens (polites) based on the existing constitution (politeia).

Logemann mentions that among the organizations that exist in people's lives, the state becomes a position organization (ambten-organisatie) which has the most complex structure and function. Even Logemann also described and gave designations for the "bearers" of those positions such as "officer/'official" who holds "office", "ambts" with "ambtsdragger", "functie" with "functionaire." The status of members in an organization is sometimes distinguished from its management in the sense that there are administrators who do not have the status of members,

there are also administrators who also double as members, and some have the status of only members, and not administrators.¹ However, in an organization in the form of a state, all members and administrators are equally referred to as citizens (the citizens) who in their capacity as fellow citizens have the same position, rights, and obligations with one another.

The state as a subject of international law has the rights and obligations under international law.² The state is the only legal subject that has all the characteristics or characteristics needed to become a subject of international law, although currently it is not limited to states but also includes other international law subjects.³ The status of the state as a subject of international law fulfils the elements stated in Article 1 of the 1949 Montevideo Convention, namely the existence of a permanent resident, certain territory, government, and sovereignty.⁴

The state and the citizen are closely related subjects. In the constitutional concept, the relationship between individuals who are citizens of a country will give rise to rights and obligations between the state and its citizens. In the concept of popular sovereignty, there is a Social Contract Theory proposed by J.J. Rosseau, who stated that the formation of a state is because the community makes a social contract to delegate the authority possessed by each individual to be regulated by the state.⁵

Citizenship status for individuals is very important. This citizenship status shows the concept of the legal relationship between the individual and the state, as well as the recognition and protection of the rights and obligations inherent juridically.⁶ The importance of granting citizenship status, including as an effort to fulfil human rights, is recognized by the Universal Declaration of Human Rights which affirms that "everyone has the right to a citizenship".⁷ Jimly stated that every citizen has rights that must be recognized by the state and must be respected, protected, facilitated and fulfilled by the state.⁸ Furthermore, the issue of the rights and protection

¹ Jimly Asshiddiqie, "Kewarganegaraan: Konstruksi Hukum Indonesia" (Lembaga Ilmu Pengetahuan Indonesia, 2011).

² H. Adolf, *Aspek-Aspek Negara Dalam Hukum Internasional* (Jakarta: Rajawali Pers, 1991).

³ K. Haryomataram, *Pengantar Hukum Humaniter* (Jakarta: RajaGrafindo Persada, 2005).

⁴ M. R. C. Wila, *Konsepsi Hukum Dalam Pengaturan Dan Pengelolaan Wilayah Perbatasan Antar Negara* (Bandung: Alumni, 2006).

⁵ I. Ruslan, "Pemikiran 'Kontrak Sosial' Jean Jacques Rousseau Dan Masa Depan Umat Beragama," *Al-Adyan* 8, no. 2 (2013): 17–36, ejournal.radenintan.ac.id/index.php/alAdyan/article/view/583.

⁶ W. Ekatjahjana, "Masalah Kewarganegaraan Dan Tidak Berkewarganegaraan," *Jurnal Ilmu Hukum Inovatif* 2, no. 3 (2010), <https://online-journal.unja.ac.id/jimih/article/view/205>.

⁷ A. Guterres, "Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan Konvensi 1954 Tentang Status Orang-Orang Tanpa Kewarganegaraan," last modified 2017, accessed December 13, 2021, <https://www.unhcr.org/id/wp-content/uploads/sites/42/2017/05/Melindungi-Hak-Hak-Orang-Orang-tanpa-Kewarganegaraan-BAHASA-FINAL.pdf>.

⁸ J. Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Vol. II* (Jakarta: Sekretaris Jenderal dan Kepaniteraan

of these citizens must be positioned appropriately within the framework of protecting human rights without disturbing the sovereignty of the Unitary State of the Republic of Indonesia.⁹ It is clear that the issue of citizenship is a matter of principle in the life of the state.

Indonesia is a state that upholds human rights as mandated by the constitution. Human rights are guaranteed by the constitution and the state is obliged to fulfil, respect and protect them. In addition to human rights and obligations, there are individual rights and obligations as citizens. With regard to the status of citizens, Indonesia has regulated it in the 1945 Constitution and various other regulations which are derivations of the general rights mandated in the 1945 Constitution. "are people of the original Indonesian nation and people of other nations ratified by law as citizens." In addition, the rights and obligations of citizens have been regulated in several articles on human rights.

Then, if it is related to Article 27 of the 1945 Constitution after the amendment, then all citizens have the same position in law and government. From this statement, it can be said that the current legal policy of citizenship of the Republic of Indonesia is directed at providing equal treatment to all Indonesian citizens to achieve the goals of the Unitary State of the Republic of Indonesia as stated in Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia.¹⁰

One of the problems in terms of citizenship is the existence of people who do not have citizenship, or what is called a stateless person. Many Indonesian migrant workers are stateless person, for example Indonesian migrant workers to the Tawau area, Malaysia. The Indonesian migrant workers entered the territory of Malaysia, either through official or unofficial way. Migrant workers who enter the territory of Malaysia through official way using a passport and are not extended five years from the validity limit will be declared to have lost their citizenship under the Citizenship Law. Then, there are also many Indonesian migrant workers who go through unofficial way and stay in Malaysian territory for five years so that they lose their citizenship.¹¹ The situation of the emergence of stateless persons can also occur due to the habit of intermarrying (customary/cross marriage), visits due to kinship relations, as well as for economic reasons, for

Mahkamah Konstitusi, 2006).

⁹ Moh. Mahfud MD, *Konstitusi Dan Hukum Dalam Kontroversi* (Jakarta: Rajawali Pers, 2010).

¹⁰ T. H. Sitabuana, "Penyelesaian Masalah Diskriminasi Etnis Cina, Studi Tentang Perkembangan Politik Hukum Di Bidang Kewarganegaraan Republik Indonesia" (Semarang, 2011).

¹¹ Tim Peneliti Fakultas Hukum, "Konsep Hukum Perlindungan Dan Pemenuhan Hak Stateless Persons Sebagai Upaya Penegakan Hak Asasi Manusia Di Indonesia" (Semarang, 2021).

example to seek a better life in Indonesia. This happened in the NTT area by ex-refugees of East Timor¹², and many more are happening in Indonesia.

The citizenship status of a person or individual is crucial. The status of a person who does not have citizenship determines the implementation of human rights and the fulfilment of an individual's right to life. Citizenship status is not only a form of relationship between the state and the government. Citizenship status determines legal relations and has an impact on access and facilities that can be used by a person to meet his needs. Not being recognized as a citizen means that the access is closed so that it is vulnerable to discrimination and violations of human rights. This very important point is the background of this study.

Research on the stateless person has been carried out by several previous authors, such as Khalid Fadri Siddiq and Budi Ardianto in 2020.¹³ This study focused on regulating stateless persons based on international legal instruments and national laws in Indonesia. Research conducted by Emmy Wulandari in 2014¹⁴, focused on the analysis of legal rules that can be applied to the case of someone who does not have citizenship status so that it can be seen whether the existing laws and regulations provide sufficient human rights protection for his Indonesian citizenship status so that a person can regain his citizenship status. Research conducted by Adhitia Pradana in 2018¹⁵, focused on the analysis of the concept of citizenship that applies in the constitutional system of the Republic of Indonesia and also the analysis of loss of citizenship based on Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

Based on previous studies, there are differences in the focus of the research that will be carried out by the author with existing research. Even though they both take on the theme of stateless persons, the authors emphasize more on the issue of the legal policy of citizenship in fulfilling the rights of stateless persons as an effort to fulfil human rights in Indonesia.

2. Method

This normative juridical research used a statute approach and conceptual approach. The statute approach is used to research, explore, and analyze various international and national legal

¹² Ibid.

¹³ F. Khalid and B. Ardianto, "Stateless Person Dalam Tinjauan Hukum Nasional Dan Hukum Internasional Di Indonesia," *Uti Possidetis: Journal of International Law* 1, no. 3 (2021).

¹⁴ E. Wulandari, "Perolehan Kembali Status Kewarganegaraan Yang Hilang Berdasarkan Undang-Undang Kewarganegaraan," *Yuridika* 29, no. 3 (2014).

¹⁵ A. Pradana, "Kehilangan Kewarganegaraan Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia (Tinjauan Yuridis Terhadap Peristiwa Kewarganegaraan Arcandra Tahar Dan Gloria Natapradja Hamel)," *Jurnal Idea Hukum* 4, no. 1 (2018).

instruments governing the fulfillment of the rights of stateless persons in Indonesia. Furthermore, a conceptual approach is used to better understand the concepts of the doctrines and teachings that develop in the legal regime of the fulfillment of the rights of stateless persons in Indonesia so that they can become a foothold in resolving the legal issues at hand. These doctrines and teachings will clarify and provide legal understandings, legal concepts, and legal principles relevant to the problem being discussed. A conceptual approach was used in this research to be able to understand various legal doctrines and concepts that developed in the IPR protection legal regime, both in the realm of international law and national law¹⁶.

Data studied in this research is secondary data consisting of primary and secondary legal material. Primary legal material consists of various legal instruments, both internationally and nationally, concerning human rights and statelessness research. And the secondary legal material consists of books, documents, research results, and journal articles concerning the research topic. The data is compiled through library research, in order to select secondary data, which is then arranged systematically and logically so that the legal material linkages appear to provide a general picture of the research results¹⁷.

3. Results and Discussion

3.1. Indonesian Citizenship Legal Policy

Regarding the definition of legal policy, until now there is no unity of opinion regarding what is meant by the legal policy¹⁸. However, the definition of legal policy by Moh. Mahfud. MD can be used as a reference in discussing the legal policy of citizenship in the context of the rights of this stateless person. According to Moh. Mahfud MD, the legal policy is the official line (policy) of the law that will be enacted either by making new laws or by replacing old laws, in order to achieve the goals of the state. Thus, the legal policy is a choice of law to be enacted as well as a choice of law to be revoked or not enforced, all of which are intended to achieve state goals as stated in the Preamble to the 1945 Constitution.¹⁹

¹⁶ J. Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

¹⁷ Mukti Fajar ND and Y. Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

¹⁸ A. Diamantina, "Politik Hukum Kewarganegaraan Indonesia Dalam Menjamin Hak Kewarganegaraan Perempuan," *Masalah-Masalah Hukum* 43, no. 1 (2014): 17–22.

¹⁹ Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Pers, 2009).

As stated by JHP Bellefroid that legal policy aims to examine the changes in the applicable law that must be made to meet the new demands of the community's needs.²⁰ This is in line with Soedarto's opinion that legal policy is a state policy by forming regulations desired by the regulators, which will be used to meet the needs of the community and achieve the aspired goals, as well as an effort to realize good regulations in accordance with the circumstances and situation at a time²¹, as well as an effort to realize good regulations according to the circumstances and situations at a time.²² The definition of legal policy according to Soedarto is closer to the *ius constituendum* aspect, namely the aspired law in the future which is formed by state administrators for the existence and sustainability of the law.

In connection with the above, what is meant by the legal policy of citizenship in this paper is a legal policy on citizenship that is intended and has been implemented, which includes state policy on legal development (which includes law-making and law reform), implementation and enforcement of the law to build a NKRI that is free from discrimination, through state institutions authorized to make it, and in accordance with the values and aspirations of the community. In this paper, the legal policy is seen from changes in the law from time to time in Indonesia's constitutional changes, starting from the early days of the independence period, the RIS constitution period, the 1950 UUDS, and the reformation period until now.

3.2. Statelessness

Statelessness is a condition in which a person becomes stateless for some reason. This condition occurs in almost all regions around the world, but until now it is still a "hidden problem" without any recognition from the government.²³

According to the *Bureau of Population, Refugees and Migration, U.S. Department of State*, there are several common causes of statelessness, as follows:²⁴ 1) *Lack of birth registration and birth certificates*; 2) *Birth to stateless parents*; 3) *Political change and transfer of territory, which may alter the nationality status of citizens of the former state(s)*; 4) *Administrative oversights, procedural problems, conflicts of law between two countries, or destruction of official records*; 5)

²⁰ A. Latif and H. Ali, *Politik Hukum* (Jakarta: Sinar Grafika, 2010).

²¹ S. A. G. Pinilih, "Politik Hukum Kedudukan KPK Sebagai Lembaga Pemberantasan Korupsi Di Indonesia," *Jurnal Hukum Progresif* 8, no. 1 (2020): 15–27.

²² S. Soedarto, *Hukum Dan Hukum Pidana* (Bandung: Alumni, 1981).

²³ U.S. Department of State, "Statelessness, Bureau of Population, Refugees, and Migration," accessed November 20, 2021, <https://www.state.gov/other-policy-issues/statelessness/>.

²⁴ *Ibid.*

Alteration of nationality during the marriage or the dissolution of the marriage between couples from different countries; 6) Targeted discrimination against minorities; 7) Laws restricting the acquisition of citizenship; 8) Laws restricting the rights of women to pass on their nationality to their children; 9) Laws relating to children born out of wedlock and during transit; and 10) Loss or relinquishment of nationality without first acquiring another.

Meanwhile, according to Widodo Ekatjahjana, in general, statelessness is caused, among others, by:²⁵

1. Conflict of law

This conflict is related to the cancellation of citizenship. There are states that allow their citizens to relinquish citizenship even before the citizen gets the citizenship of the state he is applying for. This is also due to the conflict that one of the states does not allow the cancellation of citizenship before obtaining another citizenship, but on the one hand, the destination state does not grant citizenship to individuals who still hold their original citizenship status.

2. Change of state territory

When a state experiences a change in sovereignty, its citizenship law can change followed by its implementation. In this situation, a person becomes stateless if they do not apply for citizenship in accordance with applicable laws or regulations.

3. Marriage Law

There are conditions where some states change the citizenship status of their citizens, for example, a woman when marries a citizen of another country, then she must immediately obtain the citizenship of her husband and if not, then she does not have citizenship. This can also apply to if a woman is divorced, then she can lose the citizenship she got when she got married.

4. Administrative Procedure

In applying for citizenship there are many procedures that must be carried out by a person so that his application can be granted, but this can be an obstacle due to the inability of a person so that he cannot apply for citizenship.

5. Discrimination

²⁵ Ekatjahjana, "Masalah Kewarganegaraan Dan Tidak Berkewarganegaraan"; M. Achiron, *Nationality and Statelessness: Handbook for Parliamentarians* (UN High Commissioner for Refugees (UNHCR), 2014).

Discrimination can occur based on ethnicity, race, religion, and skin colour. Political opinions and other factors also become discrimination if they contain words that are prejudiced or if the implementation of the law results in discriminatory treatment. This is one of the reasons why a person does not get his citizenship from a state, for example against the Rohingya ethnicity in Myanmar.

6. Do not have a birth certificate

The International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child state that every child, wherever born, must be registered immediately after birth. Without this proof of birth, or without a recognized birth registration, it is difficult for the child to assert identity and acquire citizenship.

7. Cancellation of citizenship by the state

The loss of one's citizenship occurs when the state cancels one's citizenship because the state is carrying out discriminatory procedures. This action is usually followed by the expulsion of the person.

3.3. Indonesian Citizenship Legal Policy in the context of Stateless Person Citizenship Rights

UNHCR has made efforts to identify, reduce, prevent and ensure protection for stateless persons such as establishing international conventions, one of which is the 1954 Convention on the Status of Stateless Persons. The 1954 Convention on the Status of Stateless Persons serves as a guide for states to treat stateless persons according to the standards applied to guarantee human rights. However, the convention does not regulate the ownership of nationality and the granting of citizenship status to stateless persons so the status gap resulting in the non-recognition of the legal relationship between the state and citizens experienced by stateless individuals has not ended.²⁶ Internationally, the issue of stateless or stateless persons is an issue that really needs to be considered. States realize the importance to protect stateless persons and the need for citizenship status. Therefore, the 1961 Convention on the Reduction of Statelessness was present as a form of commitment by states to reduce the number of stateless persons.

Since the Proclamation of Independence of the Republic of Indonesia, the matters of citizenship have been regulated in Law Number 3 of 1946 concerning Citizens and Residents of

²⁶ Guterres, "Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan Konvensi 1954 Tentang Status Orang-Orang Tanpa Kewarganegaraan."

the State. This law uses two principles, namely the *ius soli* principle and the *ius sanguinis* principle, but *ius soli* is preferred to be used. In the case of marriage, this law stipulates that the citizenship of the wife follows the citizenship of the husband, so that the minor child follows the citizenship of the father. If viewed from the arrangement, then this law adheres to the principle of following or the principle of legal unity in terms of marriage.

The Law was then amended by Law Number 6 of 1947 concerning Amendments to Law Number 3 of 1946 and amended again by Law Number 8 of 1947 concerning Extending Time to File Statements regarding Indonesian Citizenship and Law Number 11 of 1948 concerning Extending the Time Again to File a Statement regarding Indonesian Citizenship. The amendments to the two laws are aimed at providing opportunities for citizens who wish to apply for their right of repudiation until April 10, 1948 and extended again until August 17, 1948 by Law Number 11 of 1948.²⁷

With the replacement of the Indonesian constitution with the 1949 RIS Constitution, the regulations regarding citizenship have also changed. The 1949 RIS Constitution stipulates that while waiting for citizenship under the law contained in Article 5 paragraph (1) of this constitution, those who are already citizens of the RIS are those who have that citizenship according to the agreement regarding the determination of citizenship which is attached to the Charter of the Restoration of Sovereignty. Based on the 1949 RIS Constitution, citizenship status is determined using the *ius soli* principle.

The 1949 RIS Constitution did not last long, which was later replaced with the 1950 Constitution. The 1950 Constitution stipulates that pending the law governing Indonesian citizenship, those who become Indonesian citizens are: 1) Those who have Indonesian citizenship under PPPWN; and 2) Those whose nationality is not determined by PPPWN, who on December 27, 1949 have become Indonesian citizens according to the Indonesian laws and regulations in force at that time.²⁸

Implicitly, the Legal Policy of Citizenship of the Republic of Indonesia according to the 1950 Constitution is directed at providing equal treatment to all Indonesian citizens or the Equality Legal Policy. Citizenship is regulated in Article 5 paragraph (1) which states that regarding citizens will be further regulated in law. Based on the 1950 Constitution, matters of citizenship are further regulated by Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia.

²⁷ K. Soetoprawiro, *Hukum Kewarganegaraan Dan Keimigrasian Indonesia* (Jakarta: Gramedia, 1994).

²⁸ I. N. Suantra, *Buku Ajar Hukum Kewarganegaraan Dan Kependudukan* (Denpasar: Fakultas Hukum Universitas Udayana, 2016).

This law was formed on the basis of Article 5 paragraph (1) of the 1950 Constitution. It was established as a positive law that regulates issues regarding citizenship which were still valid during the period when the 1945 Constitution came into force before the amendment based on Article II of the Transitional Rules of the 1945 Constitution before the amendment. Citizenship status under this law is determined by birth (the *ius sanguinis* principle) and the *ius soli* principle as an exception. This is to prevent apartheid. In terms of marriage, it has used the principle of equality between the wife and husband to prevent the apartheid status of a female Indonesian citizen who marries a male foreigner so that the female Indonesian citizen can still have Indonesian citizenship status except for relinquishing her own citizenship, in addition to legal unity for the following circumstances as stipulated in Article 5, Article 9 and Article 10 of Law Number 62 of 1958.

Law Number 62 of 1958 philosophically still contains provisions that are not in line with the Pancasila philosophy, among others, because it is discriminatory, does not guarantee the fulfilment of human rights and equality between citizens, and does not provide protection for women and children. This law can make children from mixed marriages become foreign nationals following their father's citizenship (principle of legal unity) because this law still adheres to the *ius sanguinis* principle from the father's line so it is very difficult for female Indonesian citizens from mixed marriages, especially in the event of a divorce. The principles in Law Number 62 of 1958 are not much different from Law Number 12 of 2006. If Law Number 12 of 2006 gives rights to foreign men or women who are married to Indonesian citizens to obtain Indonesian citizenship, it is different from Law Number 62 of 1958 which only gives this right to foreign women. This is what is seen by the community as discriminatory.

During the reformation period until 2004, the legal policy of Indonesian citizenship still referred to the legal policy mandated in the 1945 Constitution before the amendment, with Law Number 62 of 1958 as the implementing law. However, with the change in the Indonesian Constitution, the policy of citizenship law can be seen in the provisions of Article 26 paragraph (1) which directs to provide equal treatment to all Indonesian citizens regardless of gender in order to achieve state goals as stated in Paragraph IV of the Preamble to the 1945 Constitution.²⁹

In the amendment of the Constitution of the Republic of Indonesia, matters of citizenship have been regulated in Article 26 paragraph (1), and matters of the right of citizenship have been guaranteed in Article 28D paragraph (4) which states that everyone has the right to citizenship

²⁹ Diamantina, "Politik Hukum Kewarganegaraan Indonesia Dalam Menjamin Hak Kewarganegaraan Perempuan."

status. However, because of the characteristic of the 1945 Constitution of the Republic of Indonesia as a grand wet or basic law, the right to citizenship status itself is not regulated in detail in the constitution, so the right to citizenship status is further regulated in the legislation below. The 1945 Constitution of the Republic of Indonesia also provides space limitations on the human right to citizenship, as regulated in Article 28 J paragraph (2) which states: "In exercising their rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law." The norm indirectly interprets that the right to obtain citizenship status is a right that is owned by every citizen, but there are restrictions on its arrangement.³⁰ Certain conditions also apply to the requirements for the release of the status of an Indonesian citizen.

With the change in the Indonesian Constitution, the regulation regarding citizenship has also changed with the issuance of a new law as the implementation of Article 26 paragraph (1) of the 1945 Constitution after the amendment, namely Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Article 1 of the law defines "Citizenship as all matters relating to citizens". From the perspective of legal policy, the basis for consideration is the establishment of a new citizenship law as the implementation of Article 26 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which mandates that matters concerning citizens and residents be regulated by law. In addition, to meet the demands of the community and carry out the mandate of the Basic Law as mentioned above, this Law takes into account the principles of general or universal citizenship, namely the *ius sanguinis*, *ius soli*, and mixed principles.

Unlike the previous law, this law basically adheres to the principle of birth based on the country of birth (*ius soli*), which means that the *ius soli* principle is only limited to children. This can be noted in the explanation of Indonesian citizens in Article 4 letter (I) "Children born in the territory of the Republic of Indonesia whose citizenship status is unclear", Article 4 letter (J) "A newborn child is found in the territory of the Republic of Indonesia. the Republic of Indonesia as long as the father and mother are unknown", and Article 4 letter (K) "Children born in the territory of the Republic of Indonesia if the father and mother do not have citizenship or their whereabouts are not known", which explains the meaning of a citizen. The *solus* only applies to a child born in the territory of the Republic of Indonesia as long as the nationality of their parents is unknown. So it does not apply if the existence has already occurred if what is found is an adult child.

³⁰ S. A. Arief and I. Kustiwa, "Pemberatan Syarat Dan Prosedur Terhadap Warga Negara Dalam Mendapatkan Kembali Kewarganegaraan Indonesia," *Jurnal Rechtsvinding* 9, no. 3 (2020).

Law Number 12 of 2006 expressly rejects the existence of bipatriate and apatriate. This is confirmed in the Elucidation of Law Number 12 of 2006 as follows:

“This law basically does not recognize dual citizenship (bipatriate) or statelessness (apatriate).

Dual citizenship granted to children in this law is an exception.”

The principle of anti-apatriate is reflected in Article 2 letters i, j and k as follows:

- i. a child born in the territory of the Republic of Indonesia who at the time of birth the citizenship status of the father and mother was not clear;
- j. a newborn child found in the territory of the Republic of Indonesia as long as the father and mother are unknown;
- k. a child born in the territory of the Republic of Indonesia if the father and mother do not have citizenship or their whereabouts are unknown.

The above provisions are a limited application of the *ius soli* principle. With this provision, it is hoped that children born from mixed marriages with the nationality of the father and mother, whose nationalities are unknown or whose whereabouts are unknown, will be spared from apatriate status. Thus, it is very clear that the direction of state legal policy related to citizenship is the protection of every Indonesian citizen to protect their dignity and nothing is expected of Indonesian residents who lose or even become stateless, even though in Law Number 12 of 2006 there is no specific settings regarding a stateless person.

Even though Indonesia has recognized and guaranteed that everyone has the right to citizenship status in its constitution and has legal instruments that regulate citizenship, in reality, the law on citizenship in Indonesia does not open the door to citizenship for stateless persons. A stateless person can't apply for citizenship in Indonesia, because they do not have citizenship status of origin in which country and also do not have documents or immigration papers which proves their membership in a country. This is based on Article 3 letter g of Government Regulation Number 2 of 2007 concerning Procedures for Acquiring, Losing, Canceling, and Regaining Indonesian Citizenship. The existence of a law that closes the door to citizenship for a stateless person, of course not in tune with what has been mandated in the 1945 Constitution of the Republic of Indonesia which in 28D paragraph (4) has guarantees that everyone has the right to citizenship status. However, a stateless person cannot submit a constitutional review to the Constitutional Court.³¹

Because in Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court it is explained that the party who owns the legal standing in the petition for

³¹ A. Faizal, “Perlindungan Dan Pemenuhan Hak Stateless Person Eks Dan Keturunan Warga Negara Indonesia Atas Status Kewarganegaraan,” *Jurist-Diction* 3, no. 4 (2020).

constitutional review is the party who considers their constitutional rights to be impaired by the enactment of the law, namely individual Indonesian citizens, customary community units, and/or public or private legal entities. So stateless person a person who is harmed by the enactment of the Indonesian Citizenship Law, does not have legal standing because he does not status of an Indonesian citizen. However, in practice, the government has discretion by issuing citizenship documents for nearly 2500 (two thousand five hundred) citizens of Indonesian descent or also called Persons of Indonesian Descent (PID) whose status is stateless in the Philippines in 2017.³²

In addition, in its implementation and in the rules of national law below it cannot be fully realized, as can be seen from the absence of policies related to granting citizenship status to people without citizens. This makes the case of stateless persons in Indonesia, the legal consequences that arise are that they will be detained by the immigration authorities.

Another problem is that Indonesia has not ratified the *Convention Relating to the Status of Stateless Persons 1954* dan the *Convention on the Reduction of Statelessness 1961*. Even if a state does not ratify the relevant convention, states must provide protection for stateless persons including accepting their existence. This is because in international law there is a non-refoulement principle, namely a prohibition not to return individual stateless persons to an area where there is a risk of inherent human rights violations, including torture and deprivation of the right to life.³³

Stateless persons, including refugees, need protection. There are differences between refugees and stateless persons, but both have the same rights and need protection from either the state or international protection. The difference between refugees and stateless people is that stateless people never leave their place of origin or place of birth, but it is the state of being stateless that is often the cause of forced displacement or displacement.³⁴

The condition of Indonesia which has not ratified international legal instruments related to stateless persons does not mean that Indonesia does not implement and guarantee human rights. The phrase "everyone" is written in the constitution relating to articles on human rights so that the implementation of this is aimed at everyone. Therefore, indirectly Indonesia has carried out the mandate of the 1954 Convention regarding stateless persons as a form of Indonesia's moral attachment which is committed to guaranteeing Human Rights.

³² V. Maulana, "Indonesia Beri Kewarganegaraan Pada 2.500 Warga Keturunan Di Filipina," *Sindo News*, 2017, <https://international.sindonews.com/read/1267074/40/indonesia-beri-kewarganegaraan-pada-2500-warga-keturunan-di-filipina-1513678530>.

³³ Guterres, "Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan Konvensi 1954 Tentang Status Orang-Orang Tanpa Kewarganegaraan."

³⁴ Ibid.

However, Indonesia's form of acceptance of stateless persons does not guarantee the integrity and protection that should be a person's right either as an individual or as a citizen. In the 1954 Convention, there are rights that are only aimed at stateless persons who are lawfully located or lawfully living in the territorial area. Therefore, it is necessary to understand the situation of stateless people in Indonesia.

The granting of a clear citizenship status to a person is intertwined with issues of justice and democracy. The concept of democracy cannot be separated from the concept of the rule of law. And vice versa so that a state like this is called a "democratic rule of law".³⁵ Indonesian democracy contains the characteristics of wisdom that is brought to life through the power of rationality, consensual wisdom, and commitment to justice.³⁶ Thus, the main foundation in protecting human rights as a state obligation must pay attention to democracy and justice to protect the rights of citizens.

In addition, granting citizenship status to citizens is recognized by every country as a big capital to achieve state welfare. Therefore, granting citizenship status is an investment in human resources to achieve a prosperous society. Basically, every state wants a welfare system that is built to place its citizens in a position to enjoy this welfare. Therefore, granting citizenship status must be seen as an effort by the state to realize prosperity for all citizens. If the state has not fully realized the welfare of every citizen, then what can happen is the action of citizens who are trying to find welfare in other states.

The Preamble to the 1945 Constitution has reflected the concept of a welfare state. The ideals and goals of the nation in the phrases of advancing public welfare are a tangible form of Indonesia's written constitution supporting the realization of a welfare state. In its journey, these ideals and goals are implemented by giving someone the status of a citizen. This is intended as a way that the existence of citizenship status is an entry point for the birth of other rights for citizens. The birth of these rights will certainly have an impact on the livelihood of a citizen.

The state's efforts in realizing prosperity for every Indonesian citizen can be seen in the formulation of the fifth precepts of Pancasila in which it is emphasized that *social justice is for all people*. This implies that the aim of the state to bring prosperity to the community must be given as a whole to citizens regardless of their background and status. Real forms of social welfare will be realized if the state recognizes a person as a citizen. In contrast, if the state does not recognize

³⁵ B. Manan and K. Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia* (Bandung: Alumni, 1993).

³⁶ Y. Latif, *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas Pancasila* (Jakarta: Gramedia Pustaka Utama, 2011).

their citizenship status, then the goal of creating prosperity for each individual will not be fully implemented by the state.

Recognition of one's citizenship status must be seen as a tangible manifestation of the state in guaranteeing and realizing one's individual rights as stated in the constitution. Therefore, the granting of citizenship status is a right that must be granted by the state as a mandate from the Indonesian constitution, as well as a form of realizing prosperity for all Indonesian citizens.

4. Conclusion

Basically, legal policy in the form of regulations regarding citizenship in Indonesia is sufficient to guarantee the rights of Indonesian citizens starting from the 1945 Constitution of the Republic of Indonesia, the Constitution of the Republic of Indonesia, the 1950 Constitution and the 1945 Constitution of the Republic of Indonesia and its implementing regulations, namely Law Number 12 of 2006 concerning Citizenship. However, in Indonesia there is no specific provision regarding statelessness, because the Citizenship Law does not recognize the term stateless person. The protection provided in the Citizenship Law is the protection of basic rights, so specifically for stateless persons, the protection is not yet specific. In addition, there is no policy regarding the granting of citizenship status to people without citizens, so many cases of stateless people in Indonesia are detained by immigration authorities.

Therefore, the author recommends the government to affirm its legal politics in order to optimize legal protection for stateless persons in Indonesia. Regarding the consideration to ratify or not ratify it is not an obligation, but depends on the national interest of each state, and this is in accordance with the legal politics of the state concerned, in this case, Indonesia. However, the principle is that the state has an obligation to guarantee and respect human rights, and protect and enforce them as mandated by Article 15 of the Universal Declaration of Human Rights (UDHR) regarding stateless persons.

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References

- Achiron, M. *Nationality and Statelessness: Handbook for Parliamentarians*. UN High Commissioner for Refugees (UNHCR), 2014.
- Adolf, H. *Aspek-Aspek Negara Dalam Hukum Internasional*. Jakarta: Rajawali Pers, 1991.
- Arief, S. A., and I. Kustiwa. "Pemberatan Syarat Dan Prosedur Terhadap Warga Negara Dalam Mendapatkan Kembali Kewarganegaraan Indonesia." *Jurnal Rechtsvinding* 9, no. 3 (2020).
- Asshiddiqie, J. *Pengantar Ilmu Hukum Tata Negara Vol. II*. Jakarta: Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006.
- Asshiddiqie, Jimly. "Kewarganegaraan: Konstruksi Hukum Indonesia." Lembaga Ilmu Pengetahuan Indonesia, 2011.
- Diamantina, A. "Politik Hukum Kewarganegaraan Indonesia Dalam Menjamin Hak Kewarganegaraan Perempuan." *Masalah-Masalah Hukum* 43, no. 1 (2014): 17–22.
- Ekatjahjana, W. "Masalah Kewarganegaraan Dan Tidak Berkewarganegaraan." *Jurnal Ilmu Hukum Inovatif* 2, no. 3 (2010). <https://online-journal.unja.ac.id/jimih/article/view/205>.
- Faizal, A. "Perlindungan Dan Pemenuhan Hak Stateless Person Eks Dan Keturunan Warga Negara Indonesia Atas Status Kewarganegaraan." *Jurist-Diction* 3, no. 4 (2020).
- Guterres, A. "Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan Konvensi 1954 Tentang Status Orang-Orang Tanpa Kewarganegaraan." Last modified 2017. Accessed December 13, 2021. <https://www.unhcr.org/id/wp-content/uploads/sites/42/2017/05/Melindungi-Hak-Hak-Orang-Orang-tanpa-Kewarganegaraan-BAHASA-FINAL.pdf>.
- Haryomatarom, K. *Pengantar Hukum Humaniter*. Jakarta: RajaGrafindo Persada, 2005.
- Ibrahim, J. *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2006.
- Khalid, F., and B. Ardianto. "Stateless Person Dalam Tinjauan Hukum Nasional Dan Hukum Internasional Di Indonesia." *Uti Possidetis: Journal of International Law* 1, no. 3 (2021).
- Latif, A., and H. Ali. *Politik Hukum*. Jakarta: Sinar Grafika, 2010.
- Latif, Y. *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas Pancasila*. Jakarta: Gramedia Pustaka Utama, 2011.
- Manan, B., and K. Magnar. *Beberapa Masalah Hukum Tata Negara Indonesia*. Bandung: Alumni, 1993.
- Maulana, V. "Indonesia Beri Kewarganegaraan Pada 2.500 Warga Keturunan Di Filipina." *Sindo*

- News, 2017. <https://international.sindonews.com/read/1267074/40/indonesia-beri-kewarganegaraan-pada-2500-warga-keturunan-di-filipina-1513678530>.
- MD, Moh. Mahfud. *Konstitusi Dan Hukum Dalam Kontroversi*. Jakarta: Rajawali Pers, 2010.
- . *Politik Hukum Di Indonesia*. Jakarta: Rajawali Pers, 2009.
- ND, Mukti Fajar, and Y. Achmad. *Dualisme Penelitian Hukum Normatif Dan Empiris*. Yogyakarta: Pustaka Pelajar, 2010.
- Pinilih, S. A. G. “Politik Hukum Kedudukan KPK Sebagai Lembaga Pemberantasan Korupsi Di Indonesia.” *Jurnal Hukum Progresif* 8, no. 1 (2020): 15–27.
- Pradana, A. “Kehilangan Kewarganegaraan Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia (Tinjauan Yuridis Terhadap Peristiwa Kewarganegaraan Arcandra Tahar Dan Gloria Natapradja Hamel).” *Jurnal Idea Hukum* 4, no. 1 (2018).
- Ruslan, I. “Pemikiran ‘Kontrak Sosial’ Jean Jacques Rousseau Dan Masa Depan Umat Beragama.” *Al-Adyan* 8, no. 2 (2013): 17–36. ejournal.radenintan.ac.id/index.php/alAdyan/article/view/583.
- Sitabuana, T. H. “Penyelesaian Masalah Diskriminasi Etnis Cina, Studi Tentang Perkembangan Politik Hukum Di Bidang Kewarganegaraan Republik Indonesia.” Semarang, 2011.
- Soedarto, S. *Hukum Dan Hukum Pidana*. Bandung: Alumni, 1981.
- Soetoprawiro, K. *Hukum Kewarganegaraan Dan Keimigrasian Indonesia*. Jakarta: Gramedia, 1994.
- Suantra, I. N. *Buku Ajar Hukum Kewarganegaraan Dan Kependudukan*. Denpasar: Fakultas Hukum Universitas Udayana, 2016.
- Tim Peneliti Fakultas Hukum. “Konsep Hukum Perlindungan Dan Pemenuhan Hak Stateless Persons Sebagai Upaya Penegakan Hak Asasi Manusia Di Indonesia.” Semarang, 2021.
- U.S. Department of State. “Statelessness, Bureau of Population, Refugees, and Migration.” Accessed November 20, 2021. <https://www.state.gov/other-policy-issues/statelessness/>.
- Wila, M. R. C. *Konsepsi Hukum Dalam Pengaturan Dan Pengelolaan Wilayah Perbatasan Antar Negara*. Bandung: Alumni, 2006.
- Wulandari, E. “Perolehan Kembali Status Kewarganegaraan Yang Hilang Berdasarkan Undang-Undang Kewarganegaraan.” *Yuridika* 29, no. 3 (2014).