

## Legal Protection of Stateless Person in Indonesia: Human Rights Dimensions

Muhammad Ibnu Abil<sup>1\*</sup>, Daffa Dzaky Adi Shaka<sup>2</sup>, Muhammad Aryaguna Penan<sup>3</sup>,  
Mehmet Enes Deligöz<sup>4</sup>

Article	Abstract
<p><b>Keywords:</b> Human Rights; Legal Protection; Stateless Person</p> <p><b>Article History</b> Received: Nov 13, 2022; Reviewed: Dec 14, 2022; Accepted: Dec 15, 2022; Published: Dec 15, 2022;</p>	<p>Stateless people become refugees to go to other countries and settle in that country. causing various problems, from domestic violence to the problem of protecting human rights. This paper aims to discuss legal protection for stateless persons in Indonesian law based on human rights dimensions. This study uses normative research methods with statutory and conceptual approaches. The findings of this study are that Indonesia has not ratified the 1954 Convention Relating to the Status of Stateless Persons, so there is no obligation to accept refugees. Because the Citizenship Law emphasizes that basically it does not recognize Stateless. However, Indonesia has ratified various international agreements, so it must protect and accommodate refugees according to these agreements. In addition, stateless people also have the right to acquire Indonesian citizenship but must meet the requirements set out in the Citizenship Law.</p>
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### Introduction

Human rights are one of the instruments to protect the rights of every human being. The implementation of human rights is not limited to space and time because human beings need protection wherever they exist. Thus, human rights became the fundamental right of every human being to fight for his life (Etzioni, 2010). Human rights are basic rights or basic rights that are brought by humans from birth which are inherent in every human being and cannot be contested because they are gifts from God Almighty, or it can be said that human rights are respect for the degree and dignity of human beings which are recognition the real thing is that humans are humans (Soeryabrata, 2017).

Through the Universal Declaration of Human Rights (UDHR) which was held in 1948, it has shown the intention of the nations to fight for every right and position of

<sup>1,2,3</sup> D4 Immigration Law, Immigration Polytechnic, Indonesia

<sup>4</sup> Faculty of International Relations, Orta Doğu Teknik Üniversitesi, Turkey

\* **Correspondence:** Muhammad Ibnu Abil, D4 Immigration Law, Immigration Polytechnic, Jalan Raya Gandul Cinere No. 4, City of Depok, 16514, Indonesia. E-mail: [muhibnuabil@gmail.com](mailto:muhibnuabil@gmail.com)

every human being to get their respective rights (Şener, 2021). Through Article 2 of the UDHR which states that everyone is entitled to all rights and freedoms without any exceptions, including exceptions to national or social origins. This of course protects people from other nationalities, such as refugees and people who do not have citizenship while in another country for the purpose of seeking asylum or other interests that do not interfere with the national interest of a nation. In this case, it is the state that protects the rights of citizens because of the unequal position between citizens and the state (Hamidi, Christian 2015).

Protection with human rights instruments is not only limited to people who are citizens of a country but to all people, whether they have citizenship status or not (Nurmawati, 2022). In international conventions, several conventions have been held to protect the issue of rights that must be granted to people with stateless status, including the 1961 Convention on Relating of Statelessness and the Convention on the Reduction of Statelessness (Foster, Lambert, 2016).

In addition, the protection of human rights for people without citizens has also been regulated, for example, through other international conventions such as the 1966 Convention on Civil and Political Rights and others (Coomans, 2011). The making of international legal instruments is certainly not only a necessity for one nation but for all nations, including Indonesia, to be enforced together. The enforcement of these rights is carried out to maintain integrity, freedom, and equality, which can only be done if there is respect for human dignity (McCrudden, 2008).

People who are also referred to as "stateless persons" in international legal literature are indeed not entitled to state protection from a country due to legal relations that arise between citizens and the state (Gunawan, et.al., 2022). This group is not able to enjoy rights like other citizens because of the disparity in the relationship between citizens and the state, with stateless people and the state. These stateless people certainly cannot enter a country because they do not have a passport or a residence permit. As a result, they must be detained (Syahrin, 2017). This occurrence is even more common in many European countries, where people are not only detained but also expelled to return to their home country. Ironically, because the legal framework governing immigrants is outside the jurisdiction of the judiciary, many European countries do not provide access to legal aid and other rights. Meanwhile, from the perspective of international law, things like this are considered contrary to human rights and can even be categorized as arbitrary actions (Bianchini, 2020).

According to data from United Nations High Commissioner for Refugees (UNHCR) in 2019, there were around 4.2 million people who were stateless while it was estimated that there were more than 10 million people who were not registered as stateless (United Nations, 2021). It is through human rights instruments that the rights of stateless persons are protected. So, every country that recognizes human rights is obliged to protect the rights of stateless people even if it has not ratified international conventions related to this matter. Likewise, Indonesia is a legal state that recognizes human rights in its constitution so it is fully mandated to uphold human rights values (Kharli, 2014).

With Indonesia's strategic situation (flanked by two continents) and friendly population culture, it is not surprising that around 85% of asylum seekers in 1999 entered Indonesia (Anggrainy, 2014). To detect whether the asylum seekers are still citizens of course is a difficult thing to prove because there is no official statement or letter from the country that proves that they no longer have citizenship. In Indonesia,

there are several groups with stateless status, including ethnic Indonesian-Chinese who do not have citizenship documents recorded incorrectly in the civil registration document and are not recognized as Chinese or Indonesian citizens, then ethnic Arabs and Indians who do not have citizenship documents, Indonesian migrant workers who do not have citizenship documents (Fadjri Khalid, 2020). loss of citizenship under the 1958 Law concerning the provision of extended stay abroad and being unable to obtain citizenship under the 2006 Law, Indonesians who were exiled outside Indonesia due to the 1965 conflict, and other persons who became stateless because they were classified as undocumented migrants from China who had lived in Indonesia for a long time (Agus Salim, Anggriawan, 2022). Then the question arises regarding the legal position and what rights the stateless person can have.

Based on these problems, this article aims to identify the legal status of stateless people and analyze the rights that can be enjoyed by stateless people, especially in Indonesia. The results of this research are expected to be useful for the development of arrangements for the protection of human rights for stateless persons. The difference between this article and existing articles discussing stateless people lies in the focus of the study. If generally other articles examine it in a caseistic manner, this paper uses a special approach in the human rights dimension.

## Method

The research method used in this study is normative juridical by analyzing various regulations regarding legal protection for stateless people in Indonesia. The regulations used are at the international and national levels, either in the form of international conventions or national laws. These regulations become primary legal material. The approach used in this study is a statutory and conceptual approach.

## Result and Discussion

### 1. The Dynamics of Legal Protection for Stateless Persons: Regulations and Reality

The legal position of a stateless person is based on the 1954 Convention Relating to the Status of Stateless Persons, which adheres to the principle that every human being deserves to enjoy fundamental rights and freedoms as well as the principle of non-discrimination, so that in any situation, a stateless person remains entitled to the same treatment as stated, whether accepted by foreigners residing in the country or citizens of the country itself (Novia Sigit, Novianti, 2020). Although Indonesia did not ratify the 1954 Convention on the Status of Stateless Persons, it has ratified several international human rights instruments that regulate the right to citizenship.

The 1954 Convention is based on one main point: no stateless person may be treated worse than any citizen foreigner. In addition, the Convention also recognizes that stateless persons are more vulnerable than other foreigners (Faizal, 2020). Therefore, the Convention provides for a specific set of measures for stateless persons. The 1954 Convention guarantees stateless persons the right to administrative assistance (Article 25), a right to identity and travel documents (Articles 27 and 28) and exempts them from conditions of reciprocity (Article 7). These harmonized provisions are designed to address the particular difficulties stateless persons face because they do not have any nationality, for example by providing them with a recognized travel

document for stateless persons which serves as a substitute for a passport (Ryanindityo, 2019). These matters are not regulated anywhere in international law but are among the principal legal benefits for stateless persons in the 1954 Convention.

The 1954 Convention does not cover so-called stateless persons without *de facto* status and no generally accepted definition exists in international law. However, persons without *de facto* status are entitled to protection under international human rights law. Stateless refugees are covered by the 1951 convention relating to refugee status and must be treated in accordance with international law. These include the 1951 Convention on the Status of Refugees, the 1954 Convention on the Status of Stateless Persons, 1961 Geneva Convention Concerning the Reduction of Statelessness, the 1989 Convention on the Rights of the Child, the 1957 Convention on the Nationality of Married Women, and the Convention on the elimination of all forms of discrimination against women, and others.

1961 Geneva Convention Concerning the Reduction of Statelessness or the 1961 Convention stipulates rules for granting citizenship or other matters beyond revocation of citizenship only when the person concerned is threatened with losing his citizenship (Darnela, Nugroho, 2017). In other words, the provisions of the 1961 convention offer detailed protection rules against threats of statelessness that must be applied in a country's nationality law without further detailing the parameters of the law. Countries are free to determine the content of their citizenship laws.

A stateless person, as defined by the International Covenant on Civil and Political Rights (ICCPR), adheres to the principle of non-discrimination and without distinction, resulting in the legal position of a citizen and a non-citizen being the same, and the rights they have being the same and guaranteed. The ICCPR has provided legal protection for everyone without discriminating against citizenship status, religion, race, or ethnicity (McCrudden, 2008). Therefore, even if a person is not recognized for his citizenship, he is still entitled to enjoy these rights, and these rights are guaranteed in the ICCPR as well as for children who do not have citizenship to get protection from the state.

Talking about children, there are also international instruments that specifically discuss children, which are regulated in the Convention on the Rights of the Child. Protection of citizenship begins at the birth of a child. The provisions contained in articles 7 and 8 of the 1989 Convention on the Rights of the Child also have the same purpose as the provisions in the International Covenant.

The Convention on the Rights of the Child is perhaps the most important auxiliary instrument of all additional instruments in the 1989 Convention on the Rights of the Child. Because they are inherently vulnerable for physiological reasons, children depend on others to save their lives in a way that is incomparable to other groups that have been afforded careful protection (refugees, women, migrant workers, etc.). Children can also suffer "secondary violations of human rights" when their primary caregivers' rights are violated. So, ensuring respect for universal rights must remain a priority because the rights of children and the rights of those who care for them are often linked at levels that cannot be separated, especially during the years of growth and development of the child.

On ICCPR, that the state must guarantee these rights, especially if the child allows it to be stateless. There are special conventions for children, but there are also special conventions for women's rights, such as the provisions of Article 9 of the

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which state that a child can avoid being stateless because the woman who gave birth to him or conceived him (the child's mother) has the right to give citizenship to the child he or she is born with (Handayani, 2016). CEDAW is a step forward to not only passively present the articles. But also, actively improve the legal language that explicitly favors women's human rights. This language improvement is important to demonstrate and strengthen the role of the women's movement in every step of CEDAW implementation. CEDAW is the most comprehensive international treaty on women's rights that stipulates binding obligations on participating countries to legally end discrimination against women, declares equal civil, political, economic, and socio-cultural rights between men and women, and stipulates that discrimination against women must be eliminated through general measures, programs, and policies.

The same is the case with the stateless person set forth in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). According to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, the state is obliged to guarantee the rights of every person, without distinction of race, color, or national or ethnic origin, to equality before the law and to enjoy existing rights, one of which is the right to citizenship. The right to citizenship is one of the civil rights guaranteed in the International Convention on the Elimination of All Forms of Racial Discrimination, and in the exercise of that right, there should be no discrimination for any reason or condition. People can become stateless as one of the effects of bad bureaucratic implementation, especially those who experience racial discrimination and government officials or convoluted bureaucratic constraints.

## 2. Legal Protection for Stateless Persons in Indonesian Law

Like any other human being, a stateless person also has the same rights as a natural person (McCrudden, 2008). As a legal subject, what is stated in Article 1 of the UDHR also applies, which states that all people have the same dignity and rights. Of course, all "people" refer not only to citizens but to everyone who is a *naturljch person* (Qurbani, Rafiqi, 2022).

In international law, the rights of a stateless person can be seen through several conventions governing stateless status person. However, the state must first review the origin of the stateless person by proving the previous citizenship of the stateless person to prevent things that interfere with state sovereignty (Sutarno, Adriano, 2022). So, the state must persuasively dig up information and ask for facts from stateless persons. Indonesia must also ask the country of origin to ask questions related to the existence of its former citizens in Indonesia. Authentic evidence to state that a person is a stateless person when there are legal documents from the country concerned regarding the citizenship status of the former citizens. However, in practice, many countries do not feel responsible for issuing these legal documents, but it can be assumed that the refusal to issue legal documents can be evidence of the citizenship status of a stateless person. The role of the United Nations High Commissioner for Refugees (UNHCR) in this regard is to be able to facilitate consultations between the recipient country and the country of origin of the stateless person and provide opinions on the appropriate law to deal with the problem of the stateless person.

Identification is carried out to determine the rights and obligations that can be given to a stateless person considering that a stateless person with a citizen who comes



to Indonesia using a visa permit are two different things. Within the framework of national law, there are no stateless persons. The Citizenship Law only accommodates children born in the territory of Indonesia to become Indonesian citizens if the father and mother are not citizens as stated in Article 4 letter k of the Citizenship Law. This is related to the citizenship principle adopted by Indonesia, namely the *ius soli* principle, which means that everyone born in the territory of Indonesia becomes an Indonesian citizen. Article 1 of the Convention on The Reduction of Statelessness (Convention 1961) also explained the granting of citizenship for stateless persons born in the territory of a country to become citizens of the state where the stateless person is located. The arrangement aims to reduce the stateless person status in the current World.

Stateless people residing in Indonesia should not be left stateless continuously. This omission will have an impact on unclear citizenship status and will result in unclear legal protection for a stateless person. Even though it has been protected by international law, it needs to be reaffirmed its status as a citizen. Of course, it is common that the administration of the state cannot be separated from the political aspect so that matters relating to political tendencies toward the origin of stateless persons can even pose a threat to these people.

When referring to the Convention Relating to the Status of a Stateless Person (Convention 1954) many rights are entitled to be obtained by a stateless person. Article 3 explains that countries that are bound to this convention may not apply provisions based on discrimination based on race, religion, or country of origin. State parties are also ordered to give the same treatment as their citizens to stateless persons to respect their freedom to practice their religion and freedom to educate the children of stateless persons.

In the Convention on stateless people, there are many things to accommodate the fulfillment of stateless rights person residing in a country including those related to personal status, Movable and Immovable property, Artistic Rights and Industrial Property, Right of Association, Access to Courts, Wage-earning employment, self employment, Liberal Professions, Rationing, Housing, Public Education, Public Relief, Labor legislation, and social security. Even though this Convention, stateless persons have the right to obtain travel documents as regulated by article 28.

The provisions as contained in the 1954 Convention are indeed sufficient to accommodate legal protection for stateless persons. However, for Indonesia does not ratify this matter, further follow-up from the government is needed to protect the legal interests of the stateless person in Indonesia for the sake of civilized humanity. Although Indonesia has not ratified it, of course, there is a moral obligation to help stateless persons to uphold human values. In addition, within the framework of national law, Indonesia highly upholds human rights values. Indonesia is bound by other international conventions in the enforcement of human rights, so although there is no obligation for Indonesia to comply with the 1954 Convention, Indonesia must comply with other ratified Conventions.

To review the legal protection of stateless persons in Indonesia, several conventions can be used as approaches to legal protection ratified by Indonesia, including the Convention on the Elimination of All Forms of Discrimination Against Women (1979 (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). All three are conventions that Indonesia has ratified with varying levels of protection. The CEDAW

for the protection of women, which was ratified through Law Number 7 of 1984 concerning Ratification of the Convention Regarding the Elimination of All Forms of Discrimination Against Women, the ICCPR for civil and political rights, which was ratified through Law No. 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights, and the CRC to protect children's rights, which were ratified through Presidential Decree No. 36 of 1990 concerning Ratification of the Convention, on the Rights of the Child.

In CEDAW, women's rights are strictly protected to obtain citizenship, as contained in Article 9 of CEDAW which provides equal rights between women and men to acquire, change, or maintain their citizenship. A patriarchal cultural environment with the practice of subordination to women, which is common in Indonesian society, will undoubtedly provide more protection for stateless women.

In a broader aspect, protections related to stateless persons have been regulated in the ICCPR. The ICCPR states that states parties to the ICCPR must respect and guarantee the rights of all people within their territory without any distinction, including national or social origin. This Covenant also provides an affirmation of the absence of restrictions or reductions in fundamental human rights by state parties. Stateless persons cannot be subjected to torture and inhumane treatment by the state party above because of their national origin. A child of a stateless person who is born in the territory of a state party also has the right to obtain his or her citizenship, regardless of the status of origin.

Furthermore, the protection of the stateless person that is binding on Indonesia can be seen through the Convention on the Rights of the Child which binds Indonesia to recognize children's rights. In the Convention it is emphasized that the state party must fully guarantee the continuity and development of the child regardless of the child's national origin. This Convention also accommodates the right of children to receive special assistance from the state for children who have lost their families temporarily or permanently. Then it is explained in Article 22 paragraph (1) of the Convention on the Rights of the Child that children who are seeking refugee status without being accompanied by their parents have the right to receive proper protection or humanitarian assistance. Children of stateless persons also have the right to obtain the right to education to develop themselves and may not become objects of torture or economic exploitation.

Even though a stateless person has the right to be legally protected, there are still certain rights that distinguish him from legal citizens. According to Sudargo Gautama, one of the rights that foreigners (in this case) cannot have is the right to interfere in the political life of the country (Gautama, 1997).

Viewed from the perspective of the Constitution, Indonesia also should maintain world peace and order as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. Thus, one of the efforts to seek peace is to temporarily accommodate stateless persons (Kharli, 2014). This is because stateless persons can be a serious threat to a country or region if left alone in a region. The existence of a stateless person can be a threat that is a non-military security threat which includes a non-military defense threat or a structured asymmetric. In the study of national security, the non-military threat also means security issues that arise as part of issues related to human fate as a collectivity.

Related to the actual fulfillment of the rights of stateless persons Indonesia has legal instruments to temporarily accommodate stateless persons in Indonesia. Through the Regulation of the Minister of Law and Human Rights Number M.HH-11.OT.01.01 of 2009 concerning Immigration Detention Centers (Rudenim), the government provides temporary shelter for foreigners which in Article 1 of the Regulation of the Minister of Law and Human Rights is intended for foreigners who violate the laws and regulations. Of course, this also includes stateless persons who come to Indonesia without having official documents from their country.

Meanwhile, based on positive Indonesian law, the legal position of a stateless person is different from someone else who has citizenship. This can be seen based on the explanation of Law Number 12 of 2006 concerning Citizenship, which states that this law does not recognize stateless persons. Indonesia has also ratified the ICCPR through Law No. 12 of 2005 concerning the Ratification of the Covenant on Civil and Political Rights. As a result, Indonesia is required to implement a variety of policies and procedures in order to fulfill its obligations to respect, protect, and fulfill all fundamental human rights.

In Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, there is no regulation regarding guarantees of human rights for stateless persons. Basically, the law does not recognize statelessness. As a result, the lack of proper legal protection for the stateless and the fulfillment of basic rights as citizens, such as the right to obtain an ID card, a civil registration certificate, obtain public services, or work for government agencies, will result. Regulations regarding stateless persons in Indonesia have not been specifically regulated. The handling of stateless persons residing in Indonesia is carried out by the Indonesian Immigration Office in the same way as detainees in general, namely in detention in the immigration detention room or immigration detention center (Rudenim), where the stateless person is rehabilitated and guaranteed the rights of stateless detainees while in detention by the immigration authorities.

Regarding the right to acquire citizenship for legal protection, stateless persons can apply for citizenship in Indonesia following the conditions specified in Article 9 of the Citizenship Law. Even so, the granting of Citizenship can also be done by granting Citizenship to the President to people who are considered to have served the country. But of course, this is only intended for a limited group and cannot be given to stateless persons who do not have services in Indonesia. Regarding the procedures for obtaining Citizenship, it can be seen through PP No. 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship.

## Conclusion

Measured and systematic humanitarian action to accommodate stateless persons is needed to prevent things that are harmful to state sovereignty. Detection needs to be carried out by Indonesia to determine the status of stateless persons entering Indonesian territory by coordinating through the country of origin and also being assisted by UNHCR. Although supervision must be carried out strictly, some rights include legal protection that must be enforced by Indonesia. Normatively, Indonesia is not a signatory to the Conventions on the Status of Stateless Persons of 1954 and 1961. However, Indonesia has ratified various conventions that discuss and mention the substance of the protection of stateless persons. Among them are the ICCPR, CEDAW,



and CRC, which can be the legal basis for the protection of stateless persons in Indonesia. The convention, one of which states that stateless persons cannot be tortured or subjected to any actions that degrade human dignity. In addition, the ICCPR also emphasized that stateless persons should not receive discriminatory treatment and their basic rights should not be reduced by the state. Likewise with CEDAW, which emphasizes that there should be no discrimination in the treatment of women and their rights. The CRC then provides legal protection for children, ensuring that they are always protected and are not exploited by the state.

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