

STATELESSNESS: INTERNATIONAL LAW PERSPECTIVE*

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Abstract

Citizenship acts as an identity for an individual to be recognized in the global world. Being Stateless is a different case of 'identity'. This article reviews the phenomenon of Statelessness in international law perspective. Writer will examine how Stateless persons are treated in various example states and to what extent their existence is regulated under international law. Writer will first define the grounding definitions revolving around the concept of citizenship, then will specify to definition and cases of Statelessness. States' sovereignty in the eyes of the international law also have an impact over how Statelessness should be treated in the international community. Human rights in international law also should be examined to understand how approach cases dealing with Stateless individuals.

Intisari

Kewarganegaraan berperan sebagai identitas bagi seseorang untuk diakui di dunia global. Artikel ini mengulas tentang fenomena tidak mempunyai kewarganegaraan dalam perspektif hukum internasional. Penulis akan melihat bagaimana orang yang tidak mempunyai kewarganegaraan diperlakukan di beberapa negara dan sampai sejauh mana eksistensi mereka diatur dalam hukum internasional. Penulis pertama-pertama akan mendefinisikan istilah-istilah seputar kewarganegaraan, dan kemudian akan menspesifikasikan ke definisi dan kasus dimana seseorang tidak mempunyai kewarganegaraan. Kedaulatan negara dalam hukum internasional juga mempunyai pengaruh terhadap bagaimana orang yang tidak ada kewarganegaraan seharusnya diperlakukan di komunitas internasional. Hak asasi manusia dalam hukum internasional juga perlu dibahas untuk mengetahui cara menghadapi kasus-kasus dimana seseorang tidak mempunyai kewarganegaraan.

Keywords: Statelessness, international law, citizenship, sovereignty, human rights.

Kata Kunci: tanpa kewarganegaraan, hukum internasional, kewarganegaraan, kedaulatan, hak asasi manusia

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A. The Concept of Citizenship

There are various definitions of "citizenship". To begin, by looking at the 2017 Merriam-Webster Dictionary, citizenship is simply defined as the status of being a citizen in a State. Similarly, the Duhaime's Law Dictionary defines citizenship as the status of an individual as owing allegiance to, enjoying the benefits of a designated State, and having the right to participate in and to be represented in politics. In other words, citizenship is a collection of rights and obligations that give individuals a formal juridical identity or a status that is bestowed on those who is a member of a community. Anyone who possesses the status of citizenship are equal with respect to the rights and duties with which the status is endowed (T.H. Marshall). As such, citizenship is the result of the legal bond between a State and the person.

The bond or relationship becomes a "political contract", in which a country has constitutional law and sovereignty recognized by the world community (Ko Swan Sik, 2016). In international law, citizenship is seen as a basic human right that an individual in the international community must hold.

As stated by the United Nations, human rights refer to:

"...rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination."

In particular, Article 15 of United Nations' Universal Declaration of Human Rights (UDHR) 1948, it states that:

"(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

Generally, there are three fundamental principles of citizenship in known legal literatures and in practice, i.e. *ius soli* principle, *ius sanguinis* principle, and mixed principle (Asshidique, 2016). From the three principles, the most commonly used principles are *ius soli* and *ius sanguinis*.

Ius soli principle means that a person's citizenship is determined based on his/her place of birth (Hau, 2014). Simply put, under this principle, citizenship of a person is determined by the place where a person was born. Subsequently, when a person is considered to be a citizen of a State when he/she is born within such State's territory.

Meanwhile, the *ius sanguinis* principle – or also called as the heredity principle or the bloodline principle – provides that a person's citizenship is determined by his/her lineage, wherein it is inherited from the citizenship of his/her parents (Hau, 2014). As such, a person is considered to be a citizen of a particular State where his/her parents are citizens of such State.

There are numerous causes as to why a person is Stateless. The causes are not only limited to legal causes, but also social and political causes. They include: gaps in nationality laws, State successions, discrimination against certain ethnic and religious groups, and the legacy of colonization. Being Stateless is linked to a person not having their rights fulfilled by the State he/she lives or any State for that matter. Such basic human rights such as going to school, see a doctor, get a job, open a bank account, buy a house or even get married, are not allowed to be acquired because they are not entitled to

those rights by the law. Relating to the aforementioned of the definitions of the citizenship, being a citizen is important for a person to fulfill their human rights designed by any State laws.

B. The Regulation of Statelessness in International Law

UNHR's Refugee Agency describes that a Stateless person is a person that is not a citizen of any state, thus cannot enjoy any states' protection and the rights of which the individual must have gotten. Under UNHCR, a Stateless person is described as "a person who is not considered as a national by any State under the operation of its law". Thus, Stateless people are supposedly recognized in the international community, assumingly contradictory of the normative idea that seemingly only those who hold citizenships are recognized.

The UN released two conventions in regards to fighting Statelessness; 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness. The 1954 Convention establishes the legal definition of a Stateless person, minimum standards of treatment for Stateless people in respect to a number of rights (including the right to education, employment, housing, and more), and a guarantee that Stateless people have a right to identity, travel documents and administrative assistance. By November 2014, the 1954 Convention is ratified by 83 States party. On the other hand, the 1961 Convention establishes an international framework to ensure the right of every person to a nationality, regulating states to establish safeguards in their nationality laws to prevent Statelessness at birth and later in life, establishes that children are to acquire the nationality of the country in which they are born if they do not acquire any other nationality,

establishes important safeguards to prevent Statelessness due to loss or renunciation of nationality and state succession, and setting out the very limited situations in which states can deprive a person of his or her nationality, even if this would leave them Stateless.

There were 61 states party to the 1961 Convention in November 2014. This shows that minority of the States in the world ratify to this Convention which imply there is less fundamental interest or need by many States in which their concern is the Statelessness of the world's population. However, it is important to mention that the Convention's foundation is the article 15 of the UDHR which recognizes that "everyone has the right to a nationality." and "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." It can be concluded that everyone in the international community shall have a nationality. This means that supposedly the States that adhere to the UDHR, and not necessarily the 1961 Convention, shall have the customary obligation of not discriminating Stateless people and grant people of nationalities when in their territory, by means of following their national laws.

In case of national laws that give strict regulations regarding acquiring nationality in certain circumstance, taking a look at Indonesian Law of Citizenship (12 Year 2006) which states that children shall register their nationalities to the Government maximum of 4 (four) years after the Law is enacted which give difficulties in case of people who are not aware of this Law, then Writer suggests that there shall be revision to the specific regulations in the Law.

According to the UNHCR, there are four main reasons that causes Statelessness:

1. Gaps in nationality laws, concerning the limbo of under what circumstances someone acquires nationality or can have it withdrawn if the law was made thoughtlessly;
2. People moving from countries where they were born, affected by discrimination of gender, races, and ethnicities;
3. Emergence of new states and changes in borders; difficulties for ethnic, racial, and religious minorities in proving their link to the new country's law; and
4. By loss or deprivation of nationality; cases of people living too long outside of their country and changes in law using discriminatory criteria such as ethnicity or race.

From the aforementioned 4 (four) reasons above, it can be seen that each State needs to pay more attention to accommodate population and also have a collaboration in executing the rights of the people of having nationalities.

Referring to the UN Charter, an individual being Stateless or Statelessness is contradictory to Article 15. In the world today, there are around 10 million people who are Stateless (UNHR The UN Refugee Agency). A research shows that at the end of 2013 there were 20 countries worldwide with a reported figure of over 10,000 Stateless persons, making the figure of 10,000 a benchmark of a Stateless people highly-populated State (Institute on Statelessness and Inclusion). The top ten countries of which it is highly populated with Stateless people are Myanmar (810,000), Côte d'Ivoire (506,197), Latvia (267,789), Dominican Republic (210,000), Russian Federation (178,000), Syrian Arab Republic (160,000), Iraq (120,000), Kuwait (93,000), and Estonia (91,281). Many of them are caused by several reasons.

It is worrisome for a great number of people as they will not get as many privileges as their counterparts of people of nationalities do. Writer will explain shortly in the cases of Myanmar and Côte d'Ivoire, who are the first and second top countries experiencing massive Statelessness populations, as example States. Both States also greatly explain the second reason of the four general reasons of Statelessness aforementioned.

In Myanmar, Statelessness is greatly experienced by the Rohingya, which is an ethnic, religious (Muslim) and linguistic minority who predominantly live in the norther Rakhine state. They are heavily discriminated under the regulation of the 1982 Citizenship Act where their specific group is excluded of the lists of the 135-recognised 'ethnic nationalities' of Myanmar. Not only the Rohingya who suffered this, a few of other ethnic groups have been excluded as well. In fact, other reports state that a total estimate of at least 1.33 million Rohingya in Myanmar (1.08 million of whom are in Rakhine state), almost all of whom are Stateless. This shows that even national laws, that are supposed to give care and protection to its citizens, are discriminating them and scraping them off of their basic human rights.

In Côte d'Ivoire, Statelessness of the aforementioned number of people is affected by restrictive national rules that harm the rights of 'descendants of immigrants' (400,000) and 'children abandoned at birth' (300,000), as the government have estimated. Côte d'Ivoire reached its independence in 1960 and in 1972, there was a nationality law that give rights to foreigners/migrants that allow them to be able to opt for Ivorian nationality within one year. However, it was not as effective to the population as there was widespread illiteracy and almost

nobody took the steps. The right to opt was removed in 1973 creating a new national law that favors pure descendants of the country's ancestors. Despite that, immigrants, integrated historical migrants and their descendants were still fully pledged of citizenship as one of the policy of President Félix Houphouët Boigny.

After he died in mid-1990s, Ivorian political leaders adopted a series of measures to deny identification documents to all those who were perceived to be of foreign origin and broke out rebellious acts in 2002. More or less similar to the condition of Stateless population in Myanmar, in Côte d'Ivoire certain ethnic groups are also discriminated into not having the right to citizenship. This again sheds light to how ethnic/race discrimination harms the rights of the immigrants coming to Côte d'Ivoire, as well as affected by unethical political situation, making it a more difficult situation for the people than how it was in the previous regime.

Looking at the cases of international violations above, there needs to be stricter implementation and promotion of the two Conventions to achieve reduced Statelessness in the international community. The ways of which will be discussed in the next chapter.

C. To What Extent Shall States Act to Reduce Statelessness?

Between 2011 and 2015, there were additional 49 accessions to the two Conventions on Statelessness. Still, looking at the few number of States party that ratified both the 1954 and 1961 Conventions is beyond alarming, as in reality there are total of 193 State parties to UN membership by 2011 (UN). In both of the Conventions, many conditions that people of Stateless can benefit from if to

be applied accordingly in all states of the world.

Using the previous State examples, Côte d'Ivoire was not a party of both Conventions until 2013 (UNHCR - States Parties to the 1954 Convention relating to the Status of Stateless Persons and State Parties to the 1961 Convention of the Reduction of Statelessness). This is an appreciative step done by Côte d'Ivoire as an additional State party to the Conventions and in hopes to encourage more States to do so. However, Myanmar has not yet ratified both of the Conventions as the State is nowhere to be seen in the list of State parties. Fortunately, the Conventions are both open to accessions hence it is hopeful that more State shall be parties in the Conventions and help reduce the number of Stateless people in the international community.

The two Conventions already provide a set of comprehensive ways in which States should participate in reducing Statelessness around the world, primarily concerning the ratification and adoption of the Conventions to their national laws. The basic principles of what should the Stateless people get are the basic human rights such as lawful juridical status of the people, getting gainful employment, having basic welfare, and receiving access on the State's administrative facilities as equal human beings to those who have citizenships, compiled in 6 chapters in the 1954 Convention.

The 1961 Convention further promotes now not only the recognition and the definition of Statelessness, but also the condition in which a person has to be given a citizenship when he or she is proven Stateless. Article I Paragraph I states that: "1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be Stateless. Such nationality shall be granted: (a) at birth,

by operation of law, or (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.”

In this Convention, it is underlined that there are both direct and later measures to which nationality can be acquired, but in essence an individual has to have a citizenship wherever he/she is domiciled all in all to provide those individuals with basic human rights to achieve international welfare. Looking at other human right Conventions, in resonance with Article 2 para. 1 in both International Covenant on Civil and Political Rights (ICCPR) which has 169 State Parties, and International Covenant on Economic, Social and Cultural Rights (ICESCR) which has 166 State Parties, which states are obliged to fulfil everyone’s human rights especially within their respective territories. In the ICCPR, every State Party has legal interest in the performance of every State Party’s obligations (not just their national governments, but also their populations), which emphasizes the importance of collaboration between States in fulfilling their obligation. In the ICESCR, the adoption of the obligations of the States into their respective national laws is the key of fulfilling their obligations (CESCR General Comment No. 3).

Both Conventions upheld the States’ freedom on how to implement their obligations according to their national laws, however in the ICESCR it needs reports and bases made by the States to be publicized so that their measures are not arbitrary. Both Conventions motivate States to utilize their available resources to fulfill their obligations. What Writer wants to stress here is that the articles of the

1961 Convention together with the articles in ICCPR and ICESCR regarding the fulfilment of human’s rights, citizenship included, is that there is no prominent difference in the application of the articles and States shall hand in hand fulfill their obligations as human rights provider.

The existence and application of the two Conventions, complementary with the two Covenants, do not disregard the fact that States, in the international community, are sovereign and have rights to determine their own national laws according to their interests. Such framework is established by exerting limitations for State parties in forming suitable and beneficial laws regarding Statelessness.

Article 9 of the 1954 Convention explains that a State does not have to grant a citizenship to a person that is not in line with national security. Article 2 para. iii (a), (b), and (c) of the same Convention also state that States shall not grant citizenships to people who commit serious, or non-political crimes, and also actions that are against the United Nations. In the 1961 Convention Article 2 (c) explains that citizenship shall be granted to those who do not commit crime against national security or being imprisoned for more than 5 (five) years, which in a *contrario* it means that citizenships shall not be granted to people who commit such actions.

The limitations stipulated by both Conventions already set the very appropriate extent to which State parties shall adhere to the Conventions. It is largely necessary that State parties shall take into account closely to each and every provision stated in both Conventions and apply them to their national laws judiciously and not arbitrarily disregard them.

D. Conclusion

With the stated data and facts, Statelessness is indeed an international problem that needs to be studied, analyzed, and reduced. Stateless individuals generally do not possess basic human rights that State(s) offer and provide for. Various reasons can cause the Statelessness condition of a person and the general four of them have been mentioned in the analysis. This ultimately brings severe disadvantages to them because in the international community, human rights are recognized as the rights that are non-degradable.

It is true that each and every one of States in the international community have sovereignty over their own laws and regulations, but they must not ignore the fact that they play great roles in bettering many of the world's population lives in general more importantly with collaboration.

One of the best ways to achieve such desired situation is to be State Party to the 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness. It is an important action to do so because both Conventions, provided by the UN, administer the steps in which countries should pay more attention to the phenomenon of Statelessness as well as the ways to scaling it down.

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