

AN EXAMINATION OF THE CITIZENSHIP STATUS OF STATELESS FOREIGNERS MARRIED TO INDONESIANS

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Abstract

The existence of Stateless in the territory of Indonesia is quite widely spread in various regions. Some of them are refugees and foreigners who do not have an identity and do not get recognition from the embassies of their home countries. Some of them, stateless live inside rudenim and outside rudenim as stipulated in the laws and regulations. Stateless who live a life outside rudenim not infrequently meets Indonesian citizens and they get married. Marriages performed by Indonesian citizens with people who do not have citizenship are questioned because of the unfulfillment of the conditions for the marriage. There are no specific regulations governing this so there is a legal vacuum related to this marriage. Therefore, this research was conducted with normative studies with primary legal material obtained from laws and regulations such as the 1945 Constitution, Law No. 1 of 1974 on Marriage, Law No. 12 of 2006 on Citizenship, and the Convention Act of 1951. The conclusion of this study is that the marriage conducted is invalid because it is not in accordance with the Marriage Act, the status of stateless person citizenship is not changed to Indonesian citizen, but the citizenship status of the child born can become an Indonesian citizen.

Keywords: Examination, the Citizenship Status, Stateless Foreigners Married

INTRODUCTION

Within the framework of International law, statelessness or statelessness, is a person who is not recognized as a citizen by any country under its laws. Statelessness for a person is a complex and prolonged problem. The United Nations High Commissioner for Refugees (UNHCR) estimates that there will still be 12 million stateless people as of 2018. Indonesia itself is not separated from the problem of statelessness. Although it is difficult to identify and there is no official number, unhc's submission at the 27th session of the Universal Periodic Review in 2017 stated that there are indications of a potentially large number of stateless people in Indonesia.

The state of statelessness of a person knows no age. A person can lose citizenship as an adult or even be born stateless. Children born to stateless parents will potentially receive stateless status as well, giving rise to an intergenerational cycle. Considering that children are a vulnerable group, it cannot be denied that children born stateless will bear a more severe impact.

If no country wants to accommodate them as citizens, then obviously they do not get protection and rights and obligations as citizens do not exist because of the status of stateless person attached to them. According to the Citizenship Law of the Republic of Indonesia has regulated the application for citizenship status for foreign nationals, as stated in article 9 of Law No. 12 of 2006 concerning citizenship of the Republic of Indonesia contains regarding the application of citizenship can be submitted by the applicant if it meets the following requirements have aged 18 (eighteen) years or married; at the time of applying already residing in the territory of the Republic of Indonesia Indonesia for at least 5 (five) consecutive years or at least 10 (ten) years not in a row, healthy physically and spiritually, can speak Indonesian and recognize the basis of Pancasila and the Constitution of the Republic of Indonesia year 1945, never be criminally convicted of committing a criminal offense that is threatened with imprisonment of 1 (one) year or more, and if by obtaining citizenship of the Republic of Indonesia, not to be a dual citizen, and have a job and/or a fixed income; and Pay citizenship money to the State Treasury. "Scienceet al., 2007)

The Citizenship Law of the Republic of Indonesia has explained about the procedures for applying for citizenship for foreigners. Implicitly everyone is entitled and can apply for citizenship status. But in the rules of implementation as stated in Government Regulation No. 2 of 2007 on Procedures for Obtaining, Losing, Canceling and Regaining Citizenship of the Republic of Indonesia (hereinafter referred to as PP Number 2 of 2007), it is not that easy. There are many mechanisms carried out by the applicant because the citizenship application is basically related to two countries.

Article 3 paragraph 1 pp Number 2 of 2007 requirements submitted by the applicant in writing in Indonesian on paper with sufficient stamped and at least contain the following, full name, place and date of birth, gender, marital status, address of residence, occupation; and nationality of origin.

Article 3 ayat 2 PP Number 2 of 2007 untuk application as referred to in paragraph (1) must be attached with a photo of coffee birth certificate, marriage certificate, immigration certificate, coffee photo residence permit card, physical health certificate of application, affidavit recognizing the basis of the state, certificate of policerecords, representative certificate the applicant's country, certificate of residence applicant's territory, proof of payment of state money, and fitting the applicant's photo 4 X 6.

The principle of restricted dual citizenship is the principle that determines dual citizenship for children in accordance with the provisions set forth in this Act. The number of foreign nationals domiciled in Indonesia without citizenship status, they have made every effort to request by applying for citizenship status to the Indonesian government but have not been assured. The legal protections are not yet clear against them because of their citizenship status.

RESEARCH METHOD

This research is a normative juridical research with a type of legal research with the aim to find the truth of coherence. In addition, this research uses a statutory approach, a conceptual approach and a comparative approach.

RESULTS AND DISCUSSION

A. Loss of Citizenship by Stateless

Generally there are several factors a person does not have citizenship, namely conflict of law. There are countries that allow their citizens to renounce citizenship even before the citizen obtains citizenship from the country he or she is applying for. This is also because the conflict of one country does not allow the cancellation of a nationality before getting another citizenship, but on the one hand the country is not intended. Grant citizenship to individuals who still hold the status of original citizenship. Another factor to the validity of citizenship is the change of wilayah negara. When a country undergoes a change in sovereignty, its citizenship law can change followed by its implementation. In these circumstances a person becomes stateless if they do not apply for citizenship in accordance with applicable laws or regulations. Another factor of loss of citizenship is discrimination; Discrimination can occur based on ethnicity, age, religion, skin color. Political opinions and other factors also become discrimination if they contain words of a prejudiced nature or if the implementation of the law results in discriminatory treatment. This is one of the reasons a person does not get citizenship from a country, for example against his Rohingya ethnicity in Myanmar. (Siddiq & Ardianto, 2020)

In addition, the International Convention on Civil and Political Rights and the Convention on the Rights of the Child states 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 a child to assert self-identity as well as obtain citizenship. The cancellation of citizenship can also be a factor in the loss of a person's citizenship. Loss of one's citizenship occurs when a state cancels one's citizenship because the state is carrying out discriminatory procedures. This action is usually followed by the expulsion of the person. (Ekatjahjana, n.d.)

The stateless status experienced by certain people can endanger and even destroy their lives. And please note, there are groups of people without citizen status who fall into the category of refugees or whistles and there are also those who do not. Against groups of people who are stateless and include refugees, they are entitled to protection under the Convention Relating to The Status Of Refugees 1951.

Answering the issue of the protection of stateless people can be seen in the Convention Relating To The Status Of Stateless Persons 1954.3 Indonesia already has legal instruments against foreigners, namely through Law No. 6. 2011 on Immigration. In Article 1 number 1 of this Law, immigration is a matter of traffic of people entering or exiting The Territory of Indonesia and its supervision in order to maintain the establishment of sovereignty of the state. The term immigration is based on the Latin word migratio which means the movement of people from a place or country to another place or country. This law also uses the term Foreigners, i.e. people who are not Indonesian citizens. Gatot Supramono in his book explained that foreigners can be given an understanding, namely people who are not Indonesian citizens and are in Indonesia. Understanding foreigners including foreign legal entities are legal entities established under foreign law.

B. Stateless Marriage with Indonesian Citizen

This section is the most important section of your article. The analysis or results of the research should be clear and concise. The results should summarize (scientific) findings rather than providing data in great detail. Please highlight differences between your results or findings and the previous publications by other researchers.

1. Rights of a Stateless person within a Sovereign State

The 1954 Convention was based on a basic principle: no stateless person may be treated worse than any foreigner of nationality. In addition, the Convention also recognizes that stateless persons are more vulnerable compared to other foreigners. Therefore, the Convention provides a specific set of measures for stateless persons.

The 1954 Convention guarantees the right to administrative assistance to stateless persons (Article 25), a right to identity and travel documents (Articles 27 and 28) and excludes them from reciprocal requirements (Article 7). These harmonized provisions are designed to address the specific difficulties faced by stateless persons because they do not have any nationality, for example by Provide them with a recognized travel document for stateless persons that serves in lieu of a passport. It is not regulated anywhere in international law but is among the principal legal benefits for stateless persons in the 1954 Convention. Considering the suffering of stateless persons, this Convention provides that such persons shall be treated as citizens of a State in relation to the rights of a State. such as religious freedom or primary education.

It should be emphasized that this Convention takes a simple approach detailing that some guarantees apply to all non-citizens, while others are reserved for stateless persons who are legally residing or residing in a territory.

Thus, the 1954 Convention continues the various human rights standards already in place in other international devices and provides guidance on how they are applied for people without citizenship. As provided for in Article 2 of the 1954 Convention, all stateless persons have an obligation to comply with the laws and regulations of the country in which they reside. It is important to note that the enjoyed rights guaranteed under the 1954 Convention are still inadequate for the ownership of a nationality. This is why the 1954 Convention calls on States to facilitate the naturalization (Article 32) of stateless persons. Once they get valid citizenship, stateless people are no longer stateless: so their suffering ends. (UNHCR, 2010)

2. The marital status of a Stateless with an Indonesian Citizen

Stateless conditions are experienced by refugees in the territory of Indonesia. The situation is regulated in the Director General of Immigration Number IMI-1489. UM.08.05 of 2010 on Handling illegal immigrants ("Regulation 2010"). The 2010 regulation states that an undocumented immigrant can be granted refugee-like facilities if they have been granted refugee status from UNHCR (Article 3 paragraph [1]). However, the 2010 regulation does not elaborate further on the provisions for the protection of refugee rights in Indonesia.

Meanwhile, in Law No. 1 of 1974 on Marriage ("Marriage Law"), only known marriage between Indonesian citizens with Indonesian citizens, and between Indonesian citizens with foreign nationals, which is often referred to as mixed marriage.

The provisions of the Marriage Act indicate that the applicable marriage terms and procedures follow the procedures and conditions applicable to the person. In other words, the procedures and requirements of the marriage follow the personal status of the bride and groom.

This was further emphasized by Prof. Sudargo Gautama in his book *International Civil Law Volume III Part I of Book 7*, on page 187, that the law regarding marriage includes the field of personal status. So that Indonesian citizens or foreign nationals who want to hold a marriage must meet the conditions determined by national law.

In terms of marital procedures, Prof. Sudargo stated that regarding form, formality methods, ceremonies of marriage, carried out according to the provisions of the law at the place of the marriage, namely the enactment of *adagium locus regit actum* from Article 18 *Algemeine Bepalingen van wetgeving voor Indonesie*.

Furthermore, the statelessness of statehood indicates the absence of the personal status of the man in this case. Indonesian law itself has not recognized the existence of the personal status of a non-citizen. Although internationally the 1951 Convention states that the personal status of a refugee is governed by the law of the country in which he or she is domiciled, or if it does not have a place of domicile, it can be governed by the provisions of the country of residence (Article 12 paragraph [1] of the 1951 Convention).

The provision provides clarity on the personal status of a refugee so that it can be used as a basis for determining the terms and procedures of marriage in this case. However, keep in mind that the provision is not binding on Indonesia, as it has not ratified the 1951 Convention.

So in this case, a man who is stateless, despite his status as a refugee, in Indonesian law cannot hold a valid marriage because there is no clarity of personal status that can be used as a basis for determining the terms and procedures of the marriage.

C. Citizenship status of a Stateless after marriage to an Indonesian citizen

Following main headings should be provided in the manuscript while preparing. The separation between main headings, sub-headings and sub-subheadings should be numbered in the manuscript with following example:

Status citizenship is part of the human rights that has been described in Article 15 DUHAM, so refugees are also entitled to citizenship status from Myanmar and from other countries that are willing to accommodate these refugees. Article 2 duham explains that everyone is given the freedom to defend his ethnicity and choose his religion. So it is not appropriate for these refugees to be treated unfairly

and discriminated against in the country where they live. There are many ways that refugees can obtain citizenship status in Indonesia, one of which is through marriage.

Marriage between refugees and Indonesian citizens in The Territory of Indonesia becomes direct supervision from the immigration authorities, because they are considered ineligible for a valid marriage and they are considered refugees who must be supervised. With this marriage, Indonesia cannot grant citizenship status for refugees even though from the marriage there are wives and children who must be protected by their husbands and parents. Because in the Citizenship Act Article 9 has clearly regulated about the conditions to become a Citizen. (Sabrina, 2018)

The legal status of a person who inhabits a country is called a citizen. The status of citizens is used for the purposes and protection of everyone legally. Nationality or nationality is important for everyone. A person's nationality is a continuous juridical relationship between two parties, namely the state on the one hand with the citizen on the other. The relationship includes a series of rights and obligations for both parties.

Every state has the full right to determine a person's nationality. International instruments are limited to anticipating the relationship of citizens with other citizens or countries with other citizens. If a stateless married in Indonesia, their marriage according to Article 2 paragraph (2) of the Marriage Act, cannot be recorded because it does not meet the conditions in PP No. 9 of 1975, including name, age, religion / belief, occupation and residence. Stateless person does not have clarity of residence so it cannot be issued marriage certificate in accordance with Article 12 PP Number 9 of 1975. And as a result their marriage cannot be issued a Marriage Certificate Quote as described in Article 34 paragraph (2) of the Adminduk Act. Marriage can be one way for refugees who are stateless people to get citizenship by doing marriage because there are children and wives who must be protected in the marriage. In the Convention on the Rights of the Child an international treaty recognizing the civil, political, economic, social and cultural rights of children. It was adopted by the United Nations on November 20, 1989. Indonesia is one of the countries that ratified the convention on the rights of the child, therefore Indonesia has a commitment according to national law to respect, protect, and promote, and fulfill the rights of children in Indonesia.

Similarly, the 1954 convention does not create a right for stateless persons to obtain citizenship of a particular country. However, since stateless persons do not have a State to protect them, this Convention requires States Parties to facilitate the integration and naturalization of stateless persons, for example by expediting and reducing the cost of naturalization trials for stateless persons. At a more general level, the law on human rights recognizes the right to citizenship – which is set out, for example, in the Universal Declaration of Human Rights. Therefore, countries must strive to avoid statelessness. Furthermore, the 1961 Convention on the Reduction of Statelessness provides general and global protection against statelessness which thus assists States in ensuring the right to citizenship. (UNHCR, 2010)

CONCLUSION

The results of this study show that marriage between an Indonesian citizen and someone who does not have citizenship is religiously valid but cannot be said to be legally valid. In Article 2 paragraph (1) of the Marriage Act it is explained that marriage is declared valid if carried out according to the law of each religion and its beliefs. Article 2 paragraph (2) which states that each marriage is represented according to the applicable laws and regulations. This shows that the legal condition of marriage is that if declared valid by religion and belief, the registration of marriage is an administrative condition. If in a marriage between an Indonesian citizen and a stateless person only performs a valid marriage religiously and religiously, to get recognition in the eyes of the law can apply for the establishment of marriage in a religious court or district court.

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