

CHAPTER I

INTRODUCTION

A. BACKGROUND

Citizenship is as form of protection provided by the nation in question to the person bearing the nationality in their ID. With said status one is given protection under the country they reside in. These protections are packed in one set of rights called citizens rights. These set of rights consist of the basic needs of a citizen as they live in the country they reside.

These rights are given to every citizen in every country as from the minute they are born. The state gives these rights to them as they are born in said state, because one of the requirements for a state to be considered as one is to have people bearing their citizenship or nationality. These rights would then be attached with the person until the moment they die.

One's right that comes with the citizenship dies as they do. And even if they die they die a person of said state's citizenship and nationality. This condition applies to anyone in any situation for as long as the state in question still exist and recognized its sovereignty as a state. Aside from having people in their territory, a state can only be called a state after other states have recognized their sovereignty as an independent state.

A person's citizenship status depends on the existence of said state. Their presence in the world hangs solely on the fact that their country protects them by taking them a citizen. To protect their citizen, then a state must continue to exist. Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law'¹, meaning that these people are without any direct protection under any law.

¹ 1954 Convention Relating to the Status of Stateless Person

Although there are many international treaties on the reduction or elimination of statelessness, national citizenship laws can also help. However, the fact is that the number of stateless people is still rising every year, and there is no effective legal regulation on them, the living state is chaotic, and the lack of rights has not improved.²

Statelessness has been happening for various reasons, ranging from discrimination to the disappearance of a state or the loss of a state sovereignty. Another leading factor in the production of statelessness involves technical causes. People can become stateless due to unintended gaps or conflicts in nationality and citizenship laws.³ When becoming a stateless person, one is denied the right to a nationality. Stateless people often face a range of barriers in accessing their fundamental human rights.⁴ Another basic need that a stateless person is unable to have is the right for an identity.

Due to their stateless nature, these groups of people have no valid way of identification to anywhere they go. And identification has become a safety measure when travelling to other places. This measure is done to ensure the safety of the current residents of said area. And as said in the Convention Relating to Stateless Persons Article 18, The Contracting States shall accord to a stateless person lawfully in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.

The situation for this unfortunate group of people can become

² Zhengrong, Luo. "A Study On The Legal Regulation Of Stateless Persons And The Right To A Nationality In Europe." *Економічний І Соціальний Розвиток України В ХХІ Столітті: Національна Візія Та Виклики Глобалізації* (2022): 208.

³ Lopez Oggier, Fernando A. "The Impact of Gender Discrimination on Statelessness: A Case Study of the Impact of Nationality Laws on Statelessness." *Inquiries Journal* 14, no. 04 (2022).

⁴ Beninger, Christina, and Rashida Manjoo. "The Impact of Gender Discrimination on Statelessness: Causes, Consequences and Legal Responses." *African Human Mobility Review* 8, no.

increasingly alarming for them of these said people are outside their home country or their former nationality. Due to their undocumented nature the sole fact of absence in any records is nothing new administratively. And this is where the contradicting state or in this case is able to play a part and aid them.

Even while aided by a third country, the situation remains unsafe for one to be in, because being stateless in your home soil is different to being stateless in foreign ground. This basically means you are alone in with little to zero help to any kind of protection if not aided correctly. The contribution of the contradicting state such as administrative help during the moments where the person is still unable to provide acceptable form of identification is very much needed but often overlooked.

In terms of administrative difficulties for the stateless, it is said in the 1945 Convention Relating the Stateless Article 25 Chapter 1 until 5 states

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

3. Subject to such exceptional treatment as may be

granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

4. The provisions of this article shall be without prejudice to articles 27 and 28.

The convention has already regulated on what a contracted nation should do in times when this situation happens administratively. But the reality of this situation is not done as planned or as written in the convention. The situation is then proven tricky when the actual body of the nation or origin state has disappeared or in a no state for anyone to live in regardless of who they are.

In terms of living spaces or acceptable area to stay or to seek asylum to, specifically there are existing regulation made by the European Union, namely the European Union Pact on Migration and Asylum, which they have concluded in the presence of a third country as a place for refugee and refugees to have the ability to stay in a certain safe space while waiting or idling for certain actions or aid to come to their way. This pact has served several cases and primarily shows that the presence of a third country host are the best option to the people seeking aid.

Considering the nature of humans as social creatures that seek interaction in any form they can to survive and not be solitary for a very long or uncertain amount of time. The uneasy feeling is not just a feeling and it is because being stateless essentially being alone until there is a way to get help and enter any plane in hopes of aid and protection from anyone or any organization willing to give.

One of the main issues stated and is often brought up in many discussions regarding stateless person or refugee is their inability to have or claim any type of rights they have as human being due to all legal documents

or regulation they have states that they are not technically human being. This issue has been addressed in previous regulation such as the 1951 giving all stateless people the ability to claim those rights in certain ways and with certain parties.

Organizations such as the United Nations High Commissioner for Refugee or UNHCR and the United Nations Human Rights Council has been tirelessly formulating and compiling regulations crafted so that all human beings in the world are able to receive basic human rights they need to live on decently. All the Conventions, Treaties, and Protocols made with human rights in mind are made to widespread the human rights enforcements.

Not only the United Nations but the European Union has also made regulations regarding the placement and treatment given to the refugees (whether it be stateless person or asylum seekers) within the national borders of their Member State country. A unified guide book made to set an international standard in receiving refugees and the conditions set for each Member State to help each other. The EU made sure with multiple case scenarios thought of in anticipation to the many x factors that may arise in the actual process of receiving the refugees.

The presence of a third country does relieve these stateless people's situation to a certain degree, but it can't be the sole and major solution to every other stateless case that arises. Similar issues may come to the attention of the international world that can not be solved through this solution only as it requires the help newly researched solution to accommodate the ever changing time, especially when the amount of stateless people can and will increase.

One would also need to know that there are two versions of the Safe Third Country concept, such as the STC and the European Safe Third Country Concept, in which this version of the STC has a keener a on the

humans rights aspect of providing to certain refugee protection standards. The European version of the STC has many documents and regulation guiding and promoting safe migration to both Member State of the EU to any future applicant for international protection.

Being and residing in STC gives an opportunity for all of the refugee who seek international protection for their life to have a legal status that enables them into having and claiming certain rights and facilities open to them with little to no requirements for qualification. Main idea of this system is the openness and easy access to all those in need and is in no place to indulge in complicated and elongated process.

B. PROBLEM FORMULATION

Based on the background previously stated, therefore the author will discusses the several issues in their thesis, such as:

1. Why is it important for stateless person to affirm their legal status while residing in the European safe third country?
2. What is the importance of a legal status for stateless person living in European safe third country?

C. RESEARCH PURPOSES

Based on the formulation of problems previously, the reasons for the author to write this thesis are such as:

1. Addressing the status of the Stateless Personstatus in their respective contradicting third country.
2. Analyzing the available and possible thing the contradicting third country can do for these stateless people.
3. Stating the importance of legal status while being in a third country.

D. RESEARCH BENEFIT

In writing and making this thesis, the author hopes that this research could give some benefit such as:

1. Formally, this will give new information and add to the international law perspective of the current issue at hand, specially to the stateless phenomenon.
2. Practically, this will give new materials to the International Law community as a new case to study.

E. CONCEPTUAL FRAMEWORK

The conceptual framework is a connection link between one concept to another from the issue that is researched. This conceptual framework is used to explain and to link the topic that is under research. The following will describe the conceptual framework used in this research:

1. Legal

Something that is connected or permissible by the law. Legal often refers to a condition whereas something or someone is “good” or in line with the existing or applicable law.

2. Status

Or can be defined as someone’s position, rank or standing or the state or condition of an individual that is influenced by their most recent conditions.

3. Legal Status

Legal condition of an individual, whether corporate or personal. It refers to the category of visa that an individual has been granted and the set of benefits that they receive whether they become a permanent resident or a non-immigrant (temporary

visa holder) in the context of immigration law.⁵

4. Person

Human being, especially considered as someone with their own particular character⁶ or someone who has their own identity and is part of any community, racial or religious groups.

5. Stateless

A phenomenon that involves the lack of ties to any existing state, resulting in no recognition from any country.

6. Stateless Person

A person that is deprived of their primal and major rights that is the right of a citizenship that acts as their formal version of identification. Or as person that has not country or nationality.⁸

7. European Safe Third Country

Or simply a called STC is a concept proposed by the European Commission in 2016 during the 2015-16 migration crisis happening in the EU.⁷ Equipped with improved border procedure and reformed divisions of responsibility.

8. European Union

Is a organization containing the countries of Europe. Consisting of a unique partnership between 27 European countries also known as Member States or EU Country.⁸ In which the contribution or the union between the Member State is an economical and political type of union.

9. European Union Pact of Migration and Asylum

The latest EU policy initiative to regulate migration to the

⁵ Legal Information Institute-Cornell University

⁶ Longman Dictionary

⁷ Szymańska, Jolanta. "EU Pact on Migration and Asylum—Strengthening Border Controls and Mandatory Solidarity." Polish Institute of International Affairs, available at: <https://pism.pl/publications/eupact-on-migration-and-asylum-strengthening-border-controls-and-mandatory-solidarity> (access date June 01, 2024) (2024).

⁸ Publication Office of the EU

European Union, validating certain approaches to the management of the asylum migration and the related interpretations of international human rights treaties in both the Member State and in the EU.

10. Migration

The movement of people away from their usual place of residence to a new place of residence, either across an international border or within a State.⁹

11. Asylum

A form of protection granted to individuals who have fled their home country due to persecution or a well-founded fear of persecution based on specific grounds—race, religion, nationality, membership in a particular social group, or political opinion.

12. Pact

Or can be translated as an agreement¹⁰ in case is an agreement made between two or multiple parties such as the European Union in harmonizing the asylum system. The totality of legal rules and principles that regulate relations or issues that cross national borders (international relations) and aim to give rise to certain legal consequences.

13. Common European Asylum System

Regulations throughout the European Union (EU) that seek to treat refugees equal and courteously, standardized asylum procedures among member states, and improve collaboration on issues pertaining to asylum. Its foundation is the idea of EU togetherness and shared responsibility.

⁹ International Organization For Migration

¹⁰ University of Michigan

F. THEORETICAL BASIS

The theoretical basis that is used in this research acts as the baseline. Therefore finding the relevant theory to provide the most accurate and descriptive answers to the issue at hand. In this thesis, the theoretical basis used are such as :

1. Human Rights

Fundamental rights inherent in all human beings regardless of race, gender, nationality, or other distinctions¹¹. Every human being is entitled to any type of certainty and assurance for them to live. Legal certainty is becoming an increasingly important and significant factor in law-making and law enforcement processes.¹²With this theory,one can predict and see what might happened if they do certain course of actions and how they will be accounted for. In this case, people that has been branded as stateless do not have legal certainty due to them not belonging in any country and to any nationality. Therefore no way of having their most basic human right protected for them due to them not belonging to any country at all on paper.

2. State Responsibility

This theory introduces the idea that a state is a legal subject or legal personality and is expected to bear or oblige to the international law obligations to the fullest. Moreover just as the law of State treaties is applied by analogy to the

¹¹ United Nations

¹² Shcherbanyuk, Oksana, Vitalii Gordieiev, and Laura Bzova. "Legal nature of the principle of legal certainty as a component element of the rule of law." *Juridical Tribune-Review of Comparative and International Law* 13, no. 1 (2023): 21-31.10.21143/jhp.vol49.no3.2190

treaties of other international persons.¹³

G. ORIGINALITY OF RESEARCH

To ensure the originality of this research this writer feels an obligation to attach other researches that has used similar issue or topic such as :

No	Name	Title	Result
1	Rahmawati Novia Sigit	Perlindungan Terhadap Orang Tanpa Kewarganegaraan (<i>Stateless People</i>) dalam Hukum Internasional (Studi Kasus Etnis Rohingya di Myanmar)	This research discusses the efforts and legal instruments used in achieving the legal certainty and protection of the Rohingya Ethnic from baseless and harmful accusation. The need for certain security for these vulnerable groups is considered a crucial matter in the international world.

¹³ Oxford Public International Law

2	Made Nurmawati	The Stateless Person In Indonesia : Consequenses and Legal Protection	The legal actions and consequences that comes to a person with their stateless status. This research is specified to the stateless person that is residing in Indonesia and focuses on the legal aspect of their residency.
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H. RESEARCH METHOD

1. Research Type

To find the answers regarding the issue that is being presented, a method must be used to ensure the effectiveness of the research itself. This is done also to ensure the results areas accordingly, therefore the research approach for this thesis proposal is juridical normative method that specifies on principles and regulations. Juridical normative approach is mainly used to assess the previously made regulations and formulate latest regulations. According to Soerjono Soekanto, this method is consisting of procedure to study library materials or secondary data as a basis for research by searching regulations and literature relevant to the issues being studied that covers the what the previous existing regulations unable to do.

2. Research Approach

This research uses several methods of approach in collecting data to provide this thesis proposal the updated information regarding the issue.

a. Statute Approach

This approach uses the primary data from statutes and previously made regulation that is related to the problem. By looking at the existing statute then is can enable future regulations made to furtherenable the possible human rights violation to these stateless personsand group.

b. Historical Approach

This approach uses the development and evolution of the law throughout time and aims to provide better context and understanding the application previous made regulation andimproving to serve better in the modern world. This approach uses the original text and regulation to ensure the future regulations madeis able to preserve the integrity of the original text.

c. Case Approach

This approach uses the cases that had happened before and cases that is similar in nature and context. By observing other cases and how it was settled or handled, then it can provide a better understanding to what actions can be and should be done to ensure the maximum results

3. Accumulation of Legal Matter

The accumulation of legal matter are done through analyzing legal sources such as :

1. Primary Legal Matter

That is consisting of authoritarian legal sources:

- a. Common European Asylum System
- b. European Union Pact on Migration and Asylum
- c. The 1948 Universal Declaration of Human Rights
- d. 1950 European Convention on Human Rights
- e. 1951 Convention relating to the Status of Refugees
- f. 1954 Convention relating to the Status of Stateless Persons
- g. 1961 Convention on the Reduction of Statelessness

2. Secondary Legal Matter

Secondary Legal Matter refers to documents that provides contexts and explanation regarding the law but not the law itself, for example article, journals, scientific research, books that is relating to the issue athand.

3. Tertiary Legal Matter

This is consisting of document and books that providesexplanation and further contextualization of several terms used in this research such as dictionaries.

4. Legal Matter Analysis

The legal matter analysis done for this research in done by qualitative research with these following procedure :

- a. Analyzing the contents of regulations and statutes relating to stateless persons and understanding how it has been implemented in the practice.
- b. Researching and comparing several other cases similar andrelating to stateless persons and draw a line to human rights regulations existing and the

relating cases present

- c. Studying the weakness and strength within the law and regulation standing and give suggestion or recommendation to improve said regulation in the future.

With these methods, it's hoped that this research is able to give an understanding to the implementation of the law in context of stateless person's legal status whilst living in a European Safe Third Country according to the EU Pact on Migration and Asylum and CEAS

I. WRITING SYSTEMATIC

Writing this thesis can be divided into several parts to be able to understood, as follows

- CHAPTER I : Introduction, contents that fill this chapter is
background, problem formulation,
research benefit, conceptual framework,
theoretical basis, research originality,
research method And writing systematic
- CHAPTER II : Literature Review, that consists of the general
overview regarding the stateless persons status and
general overview of human rights and it's violation.
- CHAPTER III : Research result and discussion, that consists of the
Results of the research and the facts
that's happening the real world.
- CHAPTER IV : Closing, in this chapter explains the conclusion
Sums up all analysis done in the previous
Chapters along side with suggestions relating
to research