


Stripped of Rights: The Battle for Justice and Legal Certainty for Stateless Persons in Indonesia

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Abstract

This research critically examines the justice system and legal certainty pertaining to stateless persons in Indonesia. Stateless individuals in Indonesia frequently encounter systemic discrimination and endure hardships due to inadequate legal protections. The study employs a normative juridical research approach, combining statutory analysis and conceptual exploration to assess the current regulatory framework. The findings underscore significant gaps in existing regulations that fail to adequately safeguard the rights of stateless persons. These individuals often struggle to access basic human rights such as education, healthcare, and employment, highlighting a critical need for legislative reforms. Legal certainty is a pivotal issue, as the ambiguity and inconsistencies within Indonesian laws contribute to the vulnerability of stateless populations. Furthermore, the research identifies discrepancies between national laws and constitutional mandates, which further complicate the legal landscape for stateless persons. This analysis aims to advocate for policy reforms that align with principles of justice

and constitutional integrity, proposing measures to enhance legal protections and ensure equitable treatment for stateless individuals in Indonesia. By illuminating these challenges and proposing potential avenues for legal reform, this research seeks to contribute to broader discussions on human rights, migration, and legal justice within the Indonesian context, ultimately advocating for a more inclusive and just society for stateless persons.

Keywords

Stateless Person, Justice, Certainty

A. Introduction

In Indonesia, a significant number of individuals are trapped in a precarious legal status as stateless persons, deprived of the fundamental human right of citizenship. This article explores the profound challenges and injustices faced by these marginalized individuals. For this context, statelessness not only denies individuals legal recognition and protection but also subjects them to widespread discrimination and hardship.¹ Despite the universal principle that everyone has the right to a nationality, as affirmed in Indonesian law and international human rights instruments such as the Universal Declaration of Human Rights, many stateless persons in Indonesia live on the margins of society, lacking access to essential services and opportunities.²

¹ According to international human rights instruments, including the Universal Declaration of Human Rights, everyone has the right to a nationality, yet many stateless individuals in Indonesia face marginalization and barriers to essential services. This denial of rights exacerbates their vulnerability and restricts their ability to fully participate in society. See UN General Assembly. "Universal Declaration of Human Rights." *UN General Assembly* 302, no. 2 (1948): 14-25; Patricia C. Rodda, and Charles Anthony Smith. "Stateless Refugees and Victims of Human Trafficking in the European Union." *Emerging Threats to Human Rights: Resources, Violence, and Deprivation of Citizenship* (2019); David S. Weissbrodt, and Clay Collins. "The human rights of stateless persons." *Human Rights Quarterly* 28, no. 1 (2006): 245-276.

² Made Nurmawati, "Stateless Person in Indonesia: Consequences and Legal Protection." *Jurnal Magister Hukum Udayana* 11, no. 1 (2022): 76-88; Muhammad Ibnu Abil, et al. "Legal Protection of Stateless Person in Indonesia: Human Rights Dimensions." *Hang Tuah Law Journal* 6, no. 2 (2022): 144-153;

Furthermore, human rights are inherent to all individuals from birth, bestowed universally by divine providence. Their implementation demands non-discrimination on grounds of religion, race, color, political opinion, nationality, and other distinctions. Enshrined in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Article 28 D paragraph (4) affirms that "*Everyone has the right to citizenship status.*" This principle is echoed in the Universal Declaration of Human Rights 1948 (UDHR 1948), emphasizing that every person has the right to citizenship, and none shall be arbitrarily deprived of it or denied the opportunity to change citizenship.³

Citizenship status holds paramount importance for every individual, as it signifies the right to access fundamental rights. A stateless person is someone who lacks recognition as a citizen under any national law, leading to significant challenges in securing basic rights. Citizenship establishes a legal connection between individuals and their country, enabling them to enjoy the full spectrum of human rights guaranteed by national and international legal frameworks.⁴

Sekar Anggun Gading Pinilih, et al. "The Legal Policy of Citizenship in Fulfilling the Rights of Stateless Persons as an Effort to Fulfill Human Rights in Indonesia." *Diponegoro Law Review* 7, no. 1 (2022): 17-33.

³ Ratna Kumala Sari, and Sapto Budoyo. "Perkembangan Pengaturan Hak Asasi Manusia (HAM) dalam Hukum di Indonesia." *Jurnal Meta-Yuridis* 2, no. 2 (2019): 91-100; Sri Warjiyati, "Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia." *Justicia Islamica* 15, no. 1 (2018): 123-138.

⁴ Furthermore, it is highlighted that citizenship is crucial as it grants individuals legal recognition and access to fundamental rights. The Rohingya people in Myanmar exemplify the plight of statelessness, lacking recognition as citizens under Myanmar's laws, which denies them basic rights such as education, healthcare, and freedom of movement. Stateless individuals like the Rohingya face severe marginalization and discrimination, unable to claim the protections and entitlements that citizenship affords. Citizenship serves as a vital link between individuals and their nation, ensuring they can access human rights enshrined in domestic laws and international agreements. The Rohingya's stateless status underscores the urgent need for legal reforms and international intervention to protect their rights and address the broader issue of statelessness globally. See Syed S. Mahmood, et al. "The Rohingya people of Myanmar: health, human rights, and identity." *The Lancet* 389, no. 10081 (2017): 1841-1850; Sodip Roy, "The stateless Rohingya refugee: A critical analysis of nation-states of Myanmar and Bangladesh." *Kasetsart Journal of Social Sciences* 42, no. 3 (2021): 668-673; Jawahir Thontowi, "Perlakuan Pemerintah Myanmar terhadap Minoritas Muslim

Statelessness presents a complex and enduring challenge globally, affecting an estimated 12 million individuals worldwide as reported by the United Nations High Commissioner for Refugees (UNHCR) in 2018. This issue transcends borders and nationalities, leaving individuals without legal recognition and access to basic rights. In Indonesia, this problem persists despite difficulties in precise identification and the absence of official statistics. The UNHCR's submission to the 27th session of the Universal Periodic Review in 2017 highlighted indications of a potentially significant population of stateless individuals within the country.

The impact of statelessness is profound, often resulting in exclusion from essential services and opportunities. Stateless persons in Indonesia frequently encounter barriers to education, healthcare, employment, and legal protections. Without citizenship or legal status, they face daily challenges in asserting their rights and participating fully in society. The inability to obtain official documents complicates matters further, hindering their ability to travel, access healthcare, or secure lawful employment.⁵

Addressing the issue of statelessness requires a multifaceted approach involving legal reforms, policy enhancements, and international cooperation. Indonesia's legal framework must be strengthened to provide clearer pathways to citizenship or legal residency for stateless individuals. Efforts should include improving identification mechanisms, raising awareness about statelessness, and ensuring that existing laws align with international human rights standards.⁶

Rohingya Perspektif Sejarah dan Hukum Internasional." *Pandecta Research Law Journal* 8, no. 1 (2013): 40-51.

⁵ Feby Dwiki Darmawan, and Dodik Setiawan Nur Heriyanto. "Invoking International Human Rights Law to Prevent Statelessness of International Refugee Children Born in Indonesia." *Prophetic Law Review* 5, no. 1 (2023): 22-41. See also Jessica Ball, Leslie Butt, and Harriot Beazley. "Children and families on the move: Stateless children in Indonesia." *Migration and Mobility: CAPI Field Research Report* (2014).

⁶ T. Alexander Aleinikoff, *Citizenship Policies for an Age of Migration*. (Washington, DC: Carnegie Endowment, 2011); Caroline Sawyer, and Brad K. Blitz, eds. *Statelessness in the European Union: Displaced, Undocumented, Unwanted*. (Cambridge, MA: Cambridge University Press, 2011); Alec Paxton, "Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce

Referring to Law Number 12 of 2006 concerning Citizenship, this law does not acknowledge individuals with dual citizenship or those without any citizenship status. Similarly, Government Regulation of the Republic of Indonesia Number 2 of 2007, which deals with Procedures for Obtaining, Losing, Cancelling, and Regaining Citizenship of the Republic of Indonesia, does not address the rights of stateless individuals to acquire Indonesian citizenship.⁷

Certainly, this situation leaves stateless persons vulnerable to the denial of their basic rights. They are unable to engage in economic activities essential for their livelihoods due to the lack of identity documents, which are crucial for everyday life.

Identity documents not only validate one's existence but also ensure legal certainty in contractual agreements. For stateless individuals, the absence of recognized identity poses significant hurdles in conducting business transactions necessary for meeting their essential needs. This predicament underscores the critical importance of citizenship status in accessing fundamental rights and participating fully in socio-economic life. Without legal recognition, stateless persons face barriers in obtaining employment, accessing education and healthcare, and engaging in lawful economic activities, perpetuating cycles of exclusion and vulnerability.

This study critically examines the existing legal frameworks and societal attitudes that perpetuate the vulnerability of stateless persons. It illuminates the gaps and deficiencies in current policies and practices, underscoring the pressing need for reforms to ensure justice and legal certainty. By exploring the intersection of legal complexities, social implications, and human rights imperatives, this article aims to advocate for substantive changes that uphold the dignity and rights of stateless persons in Indonesia.

Statelessness in Southeast Asia." *Pacific Rim Law and Policy Journal* 21, no. 3 (2012): 623-653.

⁷ Fadjri Khalid, and Budi Ardianto. "Stateless Person dalam Tinjauan Hukum Nasional dan Hukum Internasional di Indonesia." *Uti Possidetis: Journal of International Law* 1, no. 3 (2020): 277-309.

B. Method

The research methodology employed in this study is the normative juridical approach, combining both statutory and conceptual analyses. The statutory approach involves a thorough examination of current national and international laws and regulations relevant to the topic of stateless persons in Indonesia. This includes exploring legal frameworks pertaining to citizenship, human rights, and international conventions.

Concurrently, the conceptual approach delves into the broader theoretical perspectives and legal doctrines that inform the discourse on statelessness. This includes analyzing legal theories and scholarly viewpoints within the field of legal studies that address the complexities and challenges faced by stateless individuals.

By integrating these methodological approaches, this research aims to provide a comprehensive understanding of the legal status, rights, and protections available to stateless persons in Indonesia. It seeks to identify gaps in existing legal frameworks and propose recommendations for policy reforms that promote justice, legal certainty, and human rights for this vulnerable population.

C. Result and Discussion

1. Justice in Relation to the Stateless Person

The concept of justice has been a topic of philosophical debate since ancient times, tracing back to the era of the Greeks. The interpretation of justice is not only subjective to individuals but also extends to relationships within society and the governance of the state.⁸ Discussions on justice and injustice encompass a broad spectrum of perspectives.

The term "*justice*" encompasses three distinct meanings: first, as an attribute denoting fairness or equity (synonym: justness); second, as a function involving the application of laws and the adjudication of rights and consequences (synonym: judicature); and third, as a role held by public officials empowered to preside over legal proceedings

⁸ Zakki Adlhiyati, and Achmad Achmad. "Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls." *Undang: Jurnal Hukum* 2, no. 2 (2019): 409-431.

(synonyms: judge, jurist, magistrate).⁹ Each dimension of justice contributes to the understanding and application of principles that underpin societal norms and legal frameworks.

The Indonesian word "*adil*" derives from the Arabic "*al 'adl*," which connotes goodness, impartiality, the preservation of rights, and making righteous decisions. Synonyms for justice in Indonesian include "*qisth*," "*hukm*," among others. However, the root "*adl*," in its various forms, may sometimes diverge from its core meaning of justice. For instance, "*ta'dilu*" can connote associating partners with God, and "*adl*" can imply ransom, illustrating the semantic breadth and contextual nuances of the term across different conjugations.¹⁰

⁹ Furthermore, justice thinking, as explored by philosophers such as Plato, Aristotle, and John Rawls, encompasses profound reflections on the nature, principles, and applications of justice within societies. Plato, in his work "*The Republic*," delves into the concept of justice as a fundamental virtue essential for harmonious living in a just city-state. He posits that justice is achieved when each individual fulfills their role in society based on their natural abilities and aptitudes, promoting a harmonious balance among the various classes. Aristotle, in his *Nicomachean Ethics*, expands on Plato's ideas by emphasizing the ethical dimensions of justice. He distinguishes between distributive justice, which concerns the fair distribution of goods and honors among citizens, and corrective justice, which pertains to rectifying wrongs through legal and judicial systems. Aristotle argues that justice is about giving each person what they are due, taking into account their merit and desert. John Rawls, in his influential work "*A Theory of Justice*," redefines contemporary discussions on justice through the lens of social contract theory. Rawls proposes the idea of justice as fairness, where principles of justice are chosen behind a "*veil of ignorance*," ensuring impartiality and fairness in societal arrangements. He argues for distributive justice that promotes equal opportunities and mitigates social and economic inequalities, thereby enhancing the well-being of the least advantaged members of society. Together, these thinkers have shaped foundational theories of justice that continue to inform debates and policies regarding equality, fairness, and the distribution of resources in contemporary societies. Their contributions highlight the enduring relevance of justice thinking in addressing societal challenges and advancing ethical principles in governance and social relations. See Charles M. Young, "Aristotle's justice." *The Blackwell Guide to Aristotle's Nicomachean Ethics* (2006): 179-197; Christos Evangelou, "Socrates' conception of justice: beyond Aristotle and Rawls." *Phronimon* 8, no. 2 (2007): 59-71; Delba Winthrop, "Aristotle and theories of justice." *American Political Science Review* 72, no. 4 (1978): 1201-1216.

¹⁰ Safa'at, Muchamad Ali, "Pemikiran Keadilan (Plato, Aristoteles, dan John Rawls)", *Universitas Brawijaya*, retrieved from <<http://www.safaat.lecture.ub.ac.id/files/2011/12/keadilan.pdf>>

Justice is not merely a coveted ideal but also a revered principle. Every individual perceives justice differently, shaped by their knowledge, experiences, and interests. Consequently, what one person considers fair may be viewed differently by another. The broad spectrum of justice has fostered diverse perspectives and theories concerning its nature and application.¹¹

Aristotle emphasized his theory of justice on balance or proportion. According to him, everything in the state must be directed towards the noble ideals of goodness and goodness must be seen through justice and truth. The emphasis on balance or proportion in Aristotle's theory of justice can be seen from what he did that equal rights must be the same among the same people. This means that on the one hand it is true to say that justice also means equal rights, but on the other hand it must also be understood that justice also means inequality of rights. Aristotle's theory of justice is based on the principle of equality. In the modern version, the theory is formulated in the phrase that justice is done when equal things are required equally and unequal things are treated unequally¹².

Aristotle saw a distinction between distributive and commutative justice.¹³ Distributive justice refers to the distribution of goods and services to each person in accordance with their position in society, which is associated with the concept of equality before the law. Commutative justice, on the other hand, is a technical measure of the principles governing the application of the law, such as the standards that are commonly used to remedy the consequences of violations of the law. Justice according to Aristotle derives its power from what is determined by the law.¹⁴ Commutative justice pertains to the fair

¹¹ Brian Barry, "Humanity and Justice in Global Perspective." *Nomos* 24 (1982): 219-252; Ian Ward, *Justice, Humanity and the New World Order*. (London: Routledge, 2017).

¹² Bahder Johan Nasution, "Kajian Filosofis Tentang Konsep Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern." *Yustisia* 3, no. 2 (2014): 118-130. See also Young Kim, *Justice: Classical Foundations and Contemporary Debates*. (Lanham, Maryland USA: Lexington Books, 2018).

¹³ Allan Beever, "Aristotle on equity, law, and justice." *Legal Theory* 10, no. 1 (2004): 33-50.

¹⁴ Roger Crisp, ed. *Aristotle: Nicomachean Ethics*. (Cambridge, MA: Cambridge University Press, 2014); Amelie Oksenberg Rorty, "The place of contemplation in Aristotle's *Nicomachean Ethics*." *Essays on Aristotle's Ethics* (1980): 377-394;

determination of rights and obligations between parties, whether they involve physical or non-physical entities. This principle addresses property rights, whether inherited or acquired through legal means. Another facet of commutative justice involves the impartial treatment of individuals regardless of their merits. For instance, it ensures that everyone is treated fairly and receives their due rights, while also accepting sanctions or penalties when they err. This concept underscores the importance of equitable dealings and accountability in interpersonal and legal contexts.¹⁵

In the same vein, Hans Kelsen, in his theory "*The Pure Theory of Law*," posits a distinct separation between law and justice. He argues that law, as the subject of legal study, occupies a distinct domain independent of moral and ethical considerations, including justice. Kelsen's theory of legal purity aims to isolate legal cognition from external elements such as morals and subjective notions of justice. According to him, legal science operates under its own logic and should not be conflated with moral judgments or societal ideals of justice.

Kelsen views justice as a concept rooted in human psychology and social norms rather than an inherent attribute of legal principles. He contends that societal happiness, derived from adherence to general legal norms, constitutes justice. Happiness, in Kelsen's framework, is not merely an individual pursuit but a collective outcome achievable within society through the application of legal norms that promote social harmony and well-being. Thus, for Kelsen, justice and happiness are intertwined with the functioning of legal norms in society rather than being subjective or individualistic pursuits.¹⁶

Conversely, John Rawls identifies the primary focus of justice as the basic structure of society, encompassing all social, political, legal,

Charles M. Young, "Aristotle's justice." *The Blackwell Guide to Aristotle's Nicomachean Ethics* (2006): 179-197.

¹⁵ Anton-Hermann Chroust, and David L. Osborn. "Aristotle's Conception of Justice." *Notre Dame Law Review* 17, no. 2 (1942): 129-143. *See also* Peter Simpson, "Aristotle on Natural Justice." *Studia Gilsoniana* 3 (2014): 367-376; Englund, Izhak. *Corrective and Distributive Justice: from Aristotle to modern times*. (Oxford: Oxford University Press, 2009).

¹⁶ Hans Kelsen, "What is the Pure Theory of Law?." *Law and Morality*. (London: Routledge, 2017), pp. 101-108; Hans Kelsen, "On the pure theory of law." *Israel Law Review* 1, no. 1 (1966): 1-7; Hans Kelsen, "The Pure Theory of Law and Analytical Jurisprudence." *Harvard Law Review* 55, no. 1 (1941): 44-70.

and economic institutions. He contends that these institutions profoundly shape individuals' life prospects. Rawls argues that for a society to achieve stability and the willing participation of its members, it must be organized in accordance with justice as fairness. This principle should underpin the governing rules and practices of all its institutions.¹⁷

Rawls' conception of justice as fairness is deeply rooted in the idea that societal benefits should not be disproportionately enjoyed by those with superior talents or abilities. He advocates for a principle where these benefits also serve to uplift the opportunities of individuals who are less fortunate. In Rawls' vision, a just society is one where all citizens, irrespective of their inherent advantages or disadvantages, possess equal basic rights and liberties.

Central to Rawls' theory is the notion of an egalitarian economic system within this framework of justice as fairness. Here, economic arrangements are structured to promote equality of opportunity and ensure that individuals from all backgrounds have a fair chance to pursue their goals and aspirations. This egalitarian approach aims to mitigate the inequalities that arise from differences in talent, wealth, or social status.¹⁸

Moreover, Rawls emphasizes that his theory applies to what he terms a "*reasonably good condition*" of society. This condition assumes sufficient resources are available to meet the basic needs of all individuals. In such a context, justice as fairness becomes feasible because it allows for the realization of societal cooperation and mutual respect among citizens who hold diverse beliefs and values—a concept Rawls refers to as reasonable pluralism.¹⁹

¹⁷ John Rawls, *Justice as Fairness: A Restatement*. (Cambridge, MA: Harvard University Press, 2001). See also Andreas Follesdal, "John Rawls' theory of justice as fairness." *Philosophy of Justice*. (Dordrecht: Springer Netherlands, 2014), pp. 311-328; Michael Lessnoff, "John Rawls' theory of justice." *Political Studies* 19, no. 1 (1971): 63-80; M. Yasir Said, and Yati Nurhayati. "A review on Rawls Theory of Justice." *International Journal of Law, Environment, and Natural Resources* 1, no. 1 (2021): 29-36.

¹⁸ Edor J. Edor, "John Rawls's Concept of Justice as Fairness." *PINISI Discretion Review* 4, no. 1 (2020): 179-190.

¹⁹ Anton Jamnik, "Rawls' Theory of Justice as Fairness: Philosophical-Theological Interpretation." *Theological Review/Bogoslovska Smotra* 91, no. 5 (2021); Denis Coitinho Silveira, "John Rawls' theory of justice and the role of

Justice as fairness is possible when each party has an equal position. Equality can only be achieved in the process of seeking justice by not looking at or taking into account social status, class, wealth, asset distribution, as well as privileges on certain parties such as natural ability, intelligence, strength or power. Rawls assumes that each party does not know or ignore their conception of the good or their particular psychological tendencies. According to Rawls, as outlined in his book *A Theory of Justice*, a just society does not only guarantee "*the greatest happiness for the greatest number*", which is a well-known democratic principle.²⁰ Rather, a just society is one in which there is recognition and acceptance of difference and diversity.

Specifically, Rawls develops the notion of principles of justice by fully utilizing his invented concepts known as the "*original position*" and the "*veil of ignorance*".²¹ The original position is a foundational concept asserting that the initial state is fair, ensuring no discrimination against individuals' basic rights within society. This concept is complemented by the veil of ignorance, where individuals in the original position lack information about their own generation and specific circumstances.²²

The veil of ignorance is a hypothetical scenario where individuals are assumed to be unaware of their specific place in society, including their social class, status, talents, and personal circumstances. They also lack knowledge of political, economic, civilizational, and cultural conditions that could influence their decisions. Instead, individuals only possess general information about societal conditions. This concept helps ensure fairness by encouraging decision-making that considers the interests of all parties impartially, without bias towards any particular group or individual circumstance.²³ This is crucial because if individuals possess information about their own advantages or disadvantages within

reasonableness." *Mutatis Mutandis: Revista Internacional de Filosofia* 17 (2021): 39-49.

²⁰ Rina Rehayati, "Filsafat Multikulturalisme John Rawls." *Jurnal Ushuluddin* 18, no. 2 (2012): 208-222.

²¹ Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)." *Jurnal Konstitusi* 6, no. 1 (2009): 135-149.

²² Fadhilah Fadhilah. "Refleksi Terhadap Makna Keadilan Sebagai Fairness Menurut John Rawls dalam Perspektif Keindonesiaan." *KYBERNAN: Jurnal Ilmiah Ilmu Pemerintahan* 3, no. 1 (2012): 25-37.

²³ Catherine Audard, *John Rawls*. (London: Routledge, 2014).

society, they would no longer be in the original position. This awareness might lead them to consider alternative rational actions, possibly opting out of agreements that do not favor their personal circumstances. The veil of ignorance thus ensures that decisions made from the original position are impartial and fair, reflecting a genuine commitment to justice for all parties involved.

Furthermore, in this context, stateless person residing in various regions face daunting challenges due to the lack of clear legal protections. Discrimination based on race, color, and religion remains prevalent among stateless populations, exacerbated by their inability to access adequate legal recourse. This predicament arises because many countries do not confer citizenship rights under their national laws, leaving stateless individuals unable to assert their basic rights effectively. As a result, they often experience exclusion from essential services such as education, healthcare, and employment opportunities, alongside difficulties in obtaining legal documentation and participating fully in civic life. This denial of citizenship not only perpetuates their marginalized status but also undermines their dignity and security. Ensuring justice for stateless persons requires comprehensive legal reforms and international cooperation to uphold their rights to equality, non-discrimination, and full participation in society.²⁴

Referring to the justice delivered by Rawls, the main interest of justice is to guarantee the stability of human life, which places freedom and basic rights as the characteristics of a just society. Meanwhile, stateless persons are those who do not have the institutional means to obtain the freedoms and basic rights guaranteed by the law of a country.²⁵ The 1945 Constitution of the Republic of Indonesia as a basic norm places the protection and fulfillment of basic rights as the purpose of law. Indonesia also participated in the 1948 UDHR in the Netherlands as a form of participation in protecting human rights.

²⁴ See also David S. Weissbrodt, and Clay Collins. "The human rights of stateless persons." *Human Rights Quarterly* 28, no. 1 (2006): 245-276; Michelle Foster, and Hélène Lambert. "Statelessness as a human rights issue: A concept whose time has come." *International Journal of Refugee Law* 28, no. 4 (2016): 564-584; Mark Manly, and Laura Van Waas. "The state of statelessness research: A human rights imperative." *Tilburg Law Review* 19, no. 1-2 (2014): 3-10.

²⁵ Phillip Cole, "Insider theory and the construction of statelessness." *Understanding Statelessness*. (London: Routledge, 2017), pp. 255-267.

However, the citizenship law and the regulations under it do not provide legal protection in accordance with the objectives of human rights, to people who do not have citizenship. This means that there is a contradiction between the basic norms and the rules below them.²⁶

In addition, Kelsen argues that the validity of a norm hinges on its consistency with higher norms, including constitutional principles, thereby establishing a hierarchical framework essential for the orderly functioning of law and the pursuit of societal justice. This hierarchy ensures that laws align progressively with foundational legal principles, culminating in the overarching goal of fostering societal happiness and justice.²⁷

Lawrence M. Friedman outlines the components of a legal system: the structural framework of legal institutions, substantive legal doctrines, and the cultural context within which legal norms operate. This holistic view underscores how legal systems encompass not only formal legal structures and rules but also the broader community legal culture that shapes their interpretation and application.²⁸ The three components of the legal system are intricately interconnected. Using the analogy of a machine, the legal structure represents the mechanical framework itself, akin to the machine's physical form. It is responsible for producing or executing specific functions, analogous to the substance generated or actions performed by the machine.

The substance of law comprises the actual rules, norms, and behavioral patterns observed within the legal system. These elements dictate how individuals and institutions interact, outlining rights, obligations, and procedures that govern societal conduct. In contrast, the legal culture of society dictates the activation and operation of this legal "*machine*." It encompasses the attitudes, beliefs, and values within

²⁶ Hananda Rachman Salim, "Perlindungan Hukum Terhadap Stateless Person di Indonesia." *Novum: Jurnal Hukum* 4, no. 1 (2017): 141-155; Mochammad Ryanindityo, and A. S. Purnomo. "Pandangan Hak Asasi Manusia terhadap Pembiaran Orang dengan Status 'Stateless' di Indonesia (Studi Kasus: Danko Nizar Zlavic)." *Jurnal Ilmiah Kajian Keimigrasian* 2, no. 1 (2019): 93-100.

²⁷ Richard Delgado, "Norms and Normal Science: Toward a Critique of Normativity in Legal Thought." *University of Pennsylvania Law Review* 139, no. 4 (1991): 933-962; George E. Glos, "The Normative Theory of Law." *William & Mary Law Review* 11, no. 1 (1969): 151-184.

²⁸ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*. (New York: Russell Sage Foundation, 1975).

a community that influence how legal rules are perceived, applied, and evolved. Legal culture determines who wields authority over legal processes, how laws are interpreted and enforced, and ultimately shapes the ongoing development of legal norms and institutions. Thus, the interaction between legal structure, substance of law, and legal culture forms the dynamic foundation of any legal system, reflecting its functionality and responsiveness to societal needs and values.²⁹

Therefore, the substance of law encompasses the rules, norms, and behavioral patterns that govern human conduct within a legal system. This includes a wide array of elements such as ethical principles, legal norms, and the decisions of courts that are influenced by societal values and governmental guidance. The legal substance component comprises the entirety of the rule of law, comprising both written laws found in legal texts and unwritten norms known as living law. Court decisions play a pivotal role in interpreting and applying these laws, establishing precedents that shape future legal interpretations.

In line with this discussion concerning to legal substance, the Indonesian Constitution, as the highest legal authority in the hierarchy of laws and regulations, underscores the importance of human rights in

²⁹ Abdul Halim Barkatullah, "Budaya Hukum Masyarakat dalam Perspektif Sistem Hukum." *Jurnal UKSW* (2013): 1-18. See also Sally Merry, "What is Legal Culture? An Anthropological Perspective." *Journal of Comparative Law* 5, no. 2 (2012): 40-58; David Nelken, "Using the concept of legal culture." *Legal Theory and the Social Sciences*. (London: Routledge, 2017), pp. 279-303. Furthermore, David Nelken utilizes the concept of legal culture to explore how societal values, beliefs, and norms influence the development and application of law within a given society. Legal culture encompasses the collective attitudes towards law and the legal system, reflecting how individuals perceive and interact with legal institutions and principles. Nelken's approach emphasizes that legal systems are not solely defined by formal laws and regulations but are deeply embedded within broader cultural contexts. By studying legal culture, Nelken examines how cultural factors shape legal practices, interpretations, and responses to legal issues. This perspective helps in understanding variations in legal behavior across different societies and provides insights into how law adapts and evolves in response to cultural changes and societal dynamics. Overall, Nelken's concept of legal culture underscores the interdisciplinary nature of law, bridging sociology, anthropology, and legal studies to illuminate the multifaceted influences that shape legal systems worldwide. See also David Nelken, *Comparing Legal Cultures*. (London: Routledge, 2017); David Nelken, and Johannes Feest, eds. *Adapting Legal Cultures*. (London: Bloomsbury Publishing, 2001).

Chapter XA. Article 28A explicitly states that "*Every person has the right to life and the right to defend their life and existence.*" This constitutional recognition affirms that every individual is entitled to live with full dignity as a human being, emphasizing the right to life as foundational and inalienable.³⁰

To ensure the protection of these human rights, the law acts as the ultimate authority that safeguards these fundamental rights. This role is articulated in Article 28D, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that "*everyone has the right to citizenship status*". Citizenship serves as a crucial mechanism to guarantee the fulfillment of human rights for all individuals, establishing a legal bond between citizens and the state. This bond is essential because without citizenship, individuals may be excluded from the state's protection and assistance, leading to potential neglect of their human rights.³¹

The Indonesian state, under Law Number 12 of 2006 concerning Citizenship, does not recognize individuals with dual citizenship or those who are stateless. Consequently, Government Regulation of the Republic of Indonesia Number 2 of 2007, which deals with Procedures for Obtaining, Losing, Cancelling, and Regaining Citizenship of the Republic of Indonesia, does not address the rights of stateless persons in acquiring Indonesian citizenship. This omission creates a legal gap, leaving stateless individuals without clear pathways to obtain citizenship and thereby denying them access to essential rights and protections guaranteed to citizens under Indonesian law.³²

³⁰ Tenang Haryanto, et al. "Pengaturan tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum dan Setelah Amandemen." *Jurnal Dinamika Hukum* 8, no. 2 (2013): 136-144; Devosit Malensang, "Implementasi Hak untuk Hidup Berdasarkan Undang-Undang Dasar 1945." *Lex Privatum* 5, no. 2 (2017); Rian Adhivira Prabowo, "Beberapa Catatan dari Limitasi atas Limitasi Pengaturan HAM dalam Konstitusi." *Indonesian State Law Review (ISLRev)* 2, no. 2 (2020): 148-166.

³¹ Rokilah Rokilah. "Implikasi Kewarganegaraan Ganda bagi Warga Negara Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 1, no. 2 (2017); Diya Ul Akmal, "Pencabutan Kewarganegaraan Indonesia Anggota the Islamic State of Iraq and Syria (ISIS): di antara Kedaulatan Negara dan Hak Asasi Warga Negara." *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 3, no. 1 (2023): 18-35.

³² Risvonda Souhaly, Salmon Eliazer Marthen Nirahua, and Vica Jillyan Edsti Saija. "Kewargaanegaraan Warga Negara Indonesia Eks Islamic State of Iraq and

The United Nations High Commissioner for Refugees (UNHCR) estimates that there are still 12 million stateless people as of 2018. Indonesia itself is not free from the problem of statelessness. Although it is difficult to identify and there is no official number, in UNHCR's submission to the 27th session of the Universal Periodic Review in 2017, it was stated that there are indications of a potentially large population of stateless people in Indonesia.

Stateless people certainly cannot have official documents to conduct their lives as human beings. As a result, Stateless persons are often treated inhumanely due to not having identity documents or signs as humans. This is certainly due to the existing laws and regulations, which do not provide a mechanism for stateless people to be recognized as citizens.

In the Universal Declaration of Human Rights (UDHR), Article 2 and Article 6 affirm³³:

Article 2 reads:

"Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, origin or community, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, legal or international position of the country or territory from which a person derives, whether from an independent state, trust territory, colony or territory under any other limitation of sovereignty".

Article 6 reads:

"Everyone is equal before the law and entitled to the equal protection of the law without discrimination. All are entitled to equal protection against any form of discrimination contrary to this declaration and against any incitement to discrimination".

Syria." *TATOHI: Jurnal Ilmu Hukum* 1, no. 2 (2021): 154-162; Jemmy Pietersz, and Vica Saija. "Citizenship Status of ISIS Members from Indonesia." *Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*. 2021; Yordan Gunawan, Ravenska Marchdiva Sienda, and A. A. S. Rizaldy Anggriawan. "The Rights to Nationality for Indonesian Ex-ISIS Combatants Repatriation Under International Law." *Jurnal Hubungan Internasional* 10, no. 2 (2022): 108-110.

³³ Yogi Zul Fadhli, "Kedudukan Kelompok Minoritas dalam Perspektif HAM dan Perlindungan Hukumnya di Indonesia." *Jurnal Konstitusi* 11, no. 2 (2014): 352-370.

The principle of non-discrimination is also found in the International Covenant on Economic, Social and Cultural Rights. Article 2 paragraph (2) stated that *The States parties to the present covenant undertake to ensure that the rights set forth in the present covenant shall be applied without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, descent or other status.*³⁴

In the human rights perspective, minority groups, in this case stateless persons, are on an equal level with other rights-holding individuals. However, because minorities are in fact subordinated class citizens, special rights are needed to elevate their dignity. Special rights are not privileges, but they are granted so that minorities are able to maintain their identities, distinctive features and traditions. Such special rights are important to achieve equal treatment without discrimination³⁵.

Discrimination that occurs within a regulation means that the process towards social justice cannot be achieved. Regulations that are the flow to move a country must accommodate all the interests of various elements with certain limits. The state needs to provide space for stateless people to respect human rights.³⁶

³⁴ Furthermore, the principle of non-discrimination found in the International Covenant on Economic, Social and Cultural Rights is particularly relevant when addressing the status of stateless persons and ex-ISIS members. Stateless individuals often face significant discrimination and are denied basic rights due to their lack of recognized nationality. This non-discrimination clause ensures that all rights within the covenant apply equally to stateless persons, regardless of their lack of citizenship. Similarly, ex-ISIS members, despite their past affiliations, are entitled to these rights without discrimination. The application of this principle is crucial for ensuring that all individuals, regardless of their background or status, receive equal treatment and protection under international law. *See also* Poerwoko Hadi Sasmito, and Beniharmoni Harefa. "An Analysis of Indonesian Children Repatriation in Syria." *Indonesian Journal of Criminal Law Studies* 5, no. 1 (2020): 39-54; Andi Iswandi, "Government Policy against Former Followers of International Terrorist Organizations." *Qonuni: Jurnal Hukum dan Pengkajian Islam* 2, no. 1 (2022): 50-57.

³⁵ Danang Risdianto, "Perlindungan Terhadap Kelompok Minoritas di Indonesia dalam Mewujudkan Keadilan dan Persamaan di Hadapan Hukum." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 125-142.

³⁶ Adhithia Pradana, "Kehilangan Kewarganegaraan Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia (Tinjauan

Structure is one of the fundamental and tangible elements of the legal system. When an observer endeavors to describe a legal system comprehensively, two primary elements are typically highlighted: the structure and the processes within it. The structure of a system can be likened to its skeleton, providing the permanent form and institutional framework that defines its boundaries. This structure consists of the rigid, foundational components that ensure the processes within the system operate within established parameters. In practical terms, this refers to the institutions and law enforcement apparatus—the dynamic elements within the system’s mechanism—that uphold and implement the law.³⁷

The case of Danko Nizar Zlavic began when Zlavic was subject to immigration measures in the form of quarantine (the term for "*detention*" at that time) in Bali because he could not show his travel documents or immigration documents as referred to in Article 39, Law Number 9 of 1992 concerning Immigration (before being amended into Law Number 6 of 2011 concerning Immigration) at that time. Furthermore, on November 29, 2002, Zlavic was transferred to the Jakarta Immigration Detention Center and placed there for 10 (ten) years without any country recognizing him as a citizen until Zlavic passed away in 2017.³⁸

This situation raises the question of why Zlavic was detained for 10 years solely because he could not produce citizenship documents. The case against Zlavic should serve as a lesson for law enforcement officials to go beyond procedural rigidity and fulfill a sense of justice by

Yuridis Terhadap Peristiwa Kewarganegaraan Arcandra Tahar dan Gloria Natapradja Hamel)." *Jurnal Idea Hukum* 4, no. 1 (2018); Widodo Ekatjahjana, "Masalah Kewarganegaraan dan Tidak Berkewarganegaraan." *INOVATIF: Jurnal Ilmu Hukum* 2, no. 3 (2010).

³⁷ Muhamad Romdoni, et al. "A critique and solution of justice, certainty, and usefulness in law enforcement in Indonesia." *Journal of Law Science* 5, no. 4 (2023): 174-181.

³⁸ Ryanindityo, and Purnomo. "Pandangan Hak Asasi Manusia terhadap Pembiaran Orang dengan Status 'Stateless' di Indonesia (Studi Kasus: Danko Nizar Zlavic)." *See also* M. Alvi Syahrin, "Penerapan Hukum Deteni Tanpa Kewarganegaraan (Stateless) yang Ditahan Lebih dari 10 (Sepuluh) Tahun di Rumah Detensi Imigrasi Jakarta." *Fiat Justicia* 3, no. 2 (2017); Yogi Prabowo, and Taufiqurrohman Syahuri. "Citizenship In Immigration Perspective." *Journal of Law and Border Protection* 4, no. 2 (2022): 49-62.

utilizing discretion. Additionally, lawmakers should consider humanitarian reasons alongside the interests of citizens.

Obtaining citizenship in Indonesia involves submitting an application to the Ministry of Law and Human Rights, which must be accompanied by immigration documents, a marriage book, and other documents as specified in Government Regulation No. 2 of 2007. The application is then forwarded to the President for approval or disapproval, with input from the People's Advisory Council. These requirements are nearly impossible to fulfill for someone without citizenship, as such individuals are not recognized as citizens by any national law. The lack of recognition as a citizen means that a person cannot obtain official documents necessary to support their basic rights. This non-fulfillment of basic rights results in stateless persons often facing discrimination and being unable to meet their needs due to the absence of legal certainty.³⁹

According to Hilman Hadikusuma, legal culture represents the collective response of a specific society to legal phenomena. This response encapsulates a unified perspective on legal values and behaviors within that society. In essence, legal culture reflects the patterns of individual behavior as members of the community, demonstrating a consistent orientation towards the legal life experienced by that society.⁴⁰

³⁹ Andi Agus Salim, Rizaldy Anggriawan, and Mohammad Hazyar Arumbinang. "Dilemma of Dual Citizenship Issues in Indonesia: A Legal and Political Perspective." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 101-154; Putu Arya Wibisana, "The Legal Aspect of Dual Citizenship Enactment in Indonesia: Demand of the Diaspora." *Journal La Sociale* 1, no. 5 (2020): 1-9.

⁴⁰ Hilman Hadikusuma, *Pengantar Antropologi Hukum*. (Bandung: Citra Aditya Bakti, 2004); Darmika, Ika. "Budaya Hukum (Legal Culture) dan Pengaruhnya Terhadap Penegakan Hukum di Indonesia." *To-Ra* 2, no. 3 (2016): 429-436. See also Achmad Irwan Hamzani, "Legal Culture and the Influence on Law Enforcement in Indonesia." *International Journal of Education Humanities and Social Science* 2, no. 5 (2019): 79-93; Achmad Irwan Hamzani, "Law enforcement problems and impacts of the law development in Indonesia." *International Journal of Psychosocial Rehabilitation* 24, no. 4 (2020): 3244-3254; Arsyad Aldyan, and Abhishek Negi. "The model of law enforcement based on Pancasila justice." *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 178-190.

To explain in more detail, legal culture encompasses the attitudes, values, and opinions held by individuals regarding the law and legal institutions. It is shaped by various factors, including historical experiences, social norms, and cultural practices. This collective mindset influences how laws are interpreted, enforced, and adhered to within the community. For instance, in a society where legal culture emphasizes the importance of justice and fairness, individuals are likely to exhibit behaviors that support these principles. They may actively participate in legal processes, respect judicial decisions, and advocate for reforms that enhance justice. Conversely, in a society with a legal culture characterized by distrust in legal institutions, individuals may exhibit behaviors that undermine legal authority, such as non-compliance with laws or widespread corruption.⁴¹

Hadikusuma's concept underscores the significance of understanding legal culture when analyzing the functioning of legal systems. It highlights that the effectiveness of laws and legal institutions is not solely determined by formal legal rules but also by the societal attitudes and behaviors towards those rules. Thus, legal culture serves as a crucial lens through which the interplay between law and society can be comprehensively understood.

The legal culture of society will affect the implementation of the law itself. Laws can die because people do not accept them because they are considered not part of the norms that must be obeyed. In the view of Hikmahanto Juwana, law in the formal sense and as known in European or American society is "unknown" in Indonesian society. Indonesian society, when contrasted with European and American society, falls into the category of a non-law-oriented society. In a society that is not law-oriented, the law may not work as expected. The law is considered to be manageable. Law is even just a symbol that does not need to be obeyed⁴².

Indonesian society is known to have a lot of diversity and differences. The influence of this diversity and difference makes

⁴¹ Hadikusuma, *Pengantar Antropologi Hukum*.

⁴² Natasya Yunita Sugastuti, "Esensi Kontrak Sebagai Hukum Vs Budaya Masyarakat Indonesia Yang Non-Law Minded dan Berbasis Oral Tradition." *Jurnal Hukum Prioris* 5, no. 1 (2015): 31-44.

Indonesian society in general open and not afraid to accept differences.⁴³ Recognition and acceptance of differences is one of the requirements for a just society, according to Rawls.⁴⁴

2. Legal Certainty for Stateless Persons in Indonesia

Legal certainty is defined as a situation where the law is certain because of the existence of concrete power for the law concerned. The existence of the principle of legal certainty is a form of protection for justices (justice seekers) against arbitrary actions, which means that a person will and can obtain something that is expected in certain circumstances⁴⁵.

In this case, legal certainty serves as a value that must exist in every law that is made and applied. Which provides a firm determination, stands alone and does not look at anyone or equality before the law. So that the law can provide a sense of justice and can realize order in life⁴⁶. The law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Law without the value of legal certainty will lose its meaning because it can no longer be used as a guide to behavior for everyone⁴⁷.

⁴³ Thomas Tokan Pureklolon, "Eksistensi Budaya Politik di Indonesia: Sebuah Kajian." *Communitarian: Jurnal Prodi Ilmu Politik* 3, no. 1 (2021); Krishna Sen, and David T. Hill. *Media, Culture, and Politics in Indonesia*. (Sheffield, UK: Equinox Publishing, 2007). See also Tania Murray Li, "Compromising power: Development, culture, and rule in Indonesia." *Cultural Anthropology* 14, no. 3 (1999): 295-322.

⁴⁴ Will Kymlicka, "Liberal multiculturalism and human rights." *Political Liberalism and Plurinational Democracies*. (London: Routledge, 2012), pp. 73-92; Boaventura de Sousa Santos, "Toward a multicultural conception of human rights." *Human Rights*. (London: Routledge, 2017), pp. 341-355.

⁴⁵ Mario Julyano, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Crepido* 1, no. 1 (2019): 13-22.

⁴⁶ Nyoman Gede Remaja, "Makna Hukum dan Kepastian Hukum." *Kertha Widya* 2, no. 1 (2014). See also John Braithwaite, "Rules and principles: A theory of legal certainty." *Australasian Journal of Legal Philosophy* 27 (2002): 47-82; Lifante-Vidal, Isabel. "Is legal certainty a formal value?." *Jurisprudence* 11, no. 3 (2020): 456-467.

⁴⁷ Itok Dwi Kurniawan, "Correlation between Justice, Legal Certainty, and Benefit in Law Enforcement in Indonesia." *JIM: Jurnal Ilmiah Mahasiswa Pendidikan*

According to Utrecht, legal certainty encompasses two key meanings. First, it involves the existence of general rules that enable individuals to understand what actions are permissible or prohibited. Second, it provides legal security for individuals against government arbitrariness. With the presence of general rules, individuals are able to ascertain what actions the State can take or impose upon them, thus ensuring a predictable and stable legal environment.⁴⁸

The doctrine of legal certainty originates from the Juridical-Dogmatic teaching, which is rooted in the positivistic school of thought. This perspective views law as an autonomous and independent entity, essentially a collection of rules. For adherents of this school, the primary purpose of law is to ensure the realization of legal certainty. The theory of legal certainty is closely tied to positivism, which emphasizes the importance of legal predictability and clarity. Consequently, law must comprise written rules in the form of laws and regulations established by the authorities based on the constitution. In this view, there is no law beyond what is codified in legislation, adhering to a strict interpretation of legalism.⁴⁹

According to Hans Kelsen, "*Justice*" means legality. Because a legal certainty that can bring justice is present in society. Legal uncertainty will not provide justice to society. For this reason, the law must be written, so that justice in the frame of justice can provide happiness for all people. A general rule is fair if it is actually applied, while a general rule is "*unfair*" if it is applied to a case and not applied to another similar case. This concept of justice and legality is applied in the national law of Indonesia, which means that national legal regulations can be used as a legal umbrella (law umbrella) for other national legal regulations according to their level and degree and the

Sejarah 8, no. 4 (2023): 3970-3977; Jarot Jati Bagus Suseno, "Pandangan Tentang Hukum dan Keadilan." *Ilmu Hukum Prima (IHP)* 1, no. 2 (2018): 377-399.

⁴⁸ Fernando Morganda Manullang, "The Purpose of Law, Pancasila and Legality According to Ernst Utrecht: a Critical Reflection." *Indonesia Law Review* 5, no. 2 (2015): 187-207.

⁴⁹ Gerrit Betlem, "The doctrine of consistent interpretation—Managing legal uncertainty." *Oxford Journal of Legal Studies* 22, no. 3 (2002): 397-418.

legal regulations have binding force on the materials contained in the legal regulations⁵⁰.

Legal certainty according to Hans Kelsen also has a function as the validity of a norm. Hans Kelsen argues that a rule of law has been valid since it was promulgated correctly, even though at the initial moments of making the rule of law, the rule of law may still not be well received by the community. However, according to Hans Kelsen, if the rule of law is continuously not accepted by the community, then such a rule of law loses its validity, thus turning into an invalid rule of law⁵¹.

Hans Kelsen also requires a reciprocal relationship between the elements of validity and effectiveness of a rule of law. According to him, before applying effectively, a legal norm must first be valid, because if a legal rule is invalid then the judge, for example, will not apply the law, until the legal rule is never effectively applied but on the contrary, it is also true that effectiveness is an absolute requirement for a valid legal rule. Therefore, if at any time due to changes in society, a rule of law that was originally valid and effective in force, then becomes ineffective then the rule of law then becomes no longer valid.⁵²

Hans Kelsen through *Stufenbautheory* provides the flow of the creation of various rules from the *grundnorm* (basic norm). The basic norm becomes the source of the various rules below it. In this sense, Kelsen views that the law must be systematic, meaning that the law must be arranged from general to specific like an inverted pyramid, the process is referred to as concretization.⁵³

Concretization in the sense of providing a hierarchy of laws and regulations. The establishment of hierarchy is necessary to provide certainty of a norm so that it does not conflict with each other. Or when

⁵⁰ Hans Kelsen, *What is justice?: Justice, law, and politics in the mirror of science*. (California: Univ of California Press, 2022).

⁵¹ Nazaruddin Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui atau Merekayasa Masyarakat." *PALAR (Pakuan Law review)* 3, no. 1 (2017).

⁵² Hans Kelsen, *General Theory of Law and State*. (London: Routledge, 2017).

⁵³ Paolo Carrozza, "Kelsen and Contemporary Constitutionalism: The Continued Presence of Kelsenian Themes." *Kelsenian Legal Science and the Nature of Law* (2017): 75-98; Jörg Kammerhofer, "Sources in Legal Positivist Theories: The Pure Theory's Structural Analysis of the Law." *The Oxford Handbook of the Sources of International Law* (Oxford: Oxford University Press, 2017).

a norm contradicts, it can be resolved by prioritizing the norm above it, because the lower norm arises from the norm above⁵⁴.

States have an obligation to respect, protect and fulfill the human rights of all stateless persons on their territory or subject to their jurisdiction, including the right to be free from arbitrary detention. States' rights obligations towards stateless persons apply at all times, including in the exercise of immigration control.

States have an obligation to identify stateless persons on their territory or subject to their jurisdiction, as a first step to ensure the protection of their human rights⁵⁵. All persons, including stateless persons, are equal before the law and are entitled without discrimination to the benefits and equal protection of the law, including equal and effective access to justice. National laws, policies and practices related to immigration detention must not discriminate against stateless persons and must not be applied in a discriminatory manner.

The state's obligation to implement and respect human rights must be in line with the legal formulations enacted. Indonesia as a state of law is clearly stated in Article 1 paragraph (3) of the 1945 Constitution. The law itself is present to oversee every human interest so that it can run properly. Law for humans, not humans for the law means that the law was created to respect human rights.

Indonesian legislation concerning the protection of human rights for stateless persons has been widely criticized for its inadequacies. Stateless individuals in Indonesia face significant challenges due to the lack of a structured mechanism to obtain essential "*human documents*" necessary for daily life, such as identification papers crucial for accessing education, healthcare, and employment opportunities. Effective enforcement of these laws requires active involvement from state law

⁵⁴ Nasution, "Kajian Filosofis Tentang Konsep Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern."

⁵⁵ Metnico V. Bawulang, "Perlindungan Hukum Bagi Warga Negara Asing Yang Tidak Memiliki Status Kewarganegaraan di Indonesia." *Lex Et Societatis* 6, no. 2 (2018). See also N. Farida Ariani, and B. Lora Chrisyanti. "Law and Human Rights Approach of Limited Double Citizenship Policy in Indonesia." *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*. Atlantis Press, 2019; Yayan Sopyan, "Access to Justice of Citizenship Rights for Stateless Indonesian Migrant Workers' Children in Sarawak, Malaysia." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 2 (2021): 476-502.

enforcement officials and institutions, yet existing frameworks often fall short in providing adequate support and legal avenues for justice. There is a clear need for legislative reforms that establish comprehensive procedures and mechanisms to ensure stateless persons receive the protection and rights they are entitled to, thereby promoting their integration into society and upholding their dignity and human rights according to international norms.

Obtaining citizenship in Indonesia involves submitting an application to the Ministry of Law and Human Rights, accompanied by immigration documents, marriage certificates, and other required paperwork as stipulated in Government Regulation No. 2 of 2007. This application is then forwarded to the President for approval or rejection, taking into account the advice of the People's Advisory Council. However, individuals who do not possess citizenship are unable to fulfill these requirements, as they are not recognized as citizens under any national law. This lack of recognition denies them access to official documents essential for securing their basic rights. Stateless persons consequently face discrimination and struggle to meet their needs, lacking legal certainty to engage in economic activities.

Furthermore, law enforcement faces significant challenges in providing welfare for stateless individuals due to the strict provisions of Law Number 12 of 2006 on Citizenship, which does not recognize dual citizenship or individuals without citizenship. Consequently, Government Regulation Number 2 of 2007, which outlines procedures for obtaining, losing, canceling, and regaining Indonesian citizenship, does not address the rights of stateless persons to acquire Indonesian citizenship. This legal gap leaves stateless individuals without the protection of their fundamental rights. They are unable to fulfill basic needs such as accessing essential services or engaging in economic activities because they lack identity documents necessary for legal recognition and participation in society. This situation underscores the urgent need for legal reforms that acknowledge and address the rights and welfare of stateless persons in Indonesia.

Stateless persons face a complex array of challenges due to their lack of citizenship, necessitating nuanced and differential treatment, often referred to as positive discrimination. This approach is essential for upholding their human rights while acknowledging the practical and ethical dimensions involved. The overarching goal remains equality, but

achieving this goal requires equitable means that account for the unique circumstances of stateless individuals with proportionality and fairness.

In the realm of law enforcement, however, there is a notable absence of clear regulations that would provide stateless persons with a sense of comfort and security. This regulatory gap severely limits their access to legal protections and often results in their detention by immigration authorities until their citizenship status is resolved. This prolonged uncertainty further exacerbates their vulnerability and undermines their ability to fully participate in society, as they lack identity documents essential for basic rights such as healthcare, education, and employment.⁵⁶

To address these shortcomings, it is imperative to develop comprehensive legal frameworks that grant stateless persons limited freedoms and robust legal safeguards. These frameworks should align with international human rights standards and ensure that stateless individuals are treated with dignity and respect. By establishing clear pathways to legal recognition and protection, authorities can mitigate the hardships faced by stateless persons and uphold their fundamental rights to live securely and participate fully in their communities.

D. Conclusion

Stateless persons confront significant challenges living in a region due to the absence of robust legal protections. They are vulnerable to discrimination based on race, color, and religion, without any recourse to legal remedies. This situation arises because many countries do not recognize citizenship for stateless people under their national laws, thereby denying them access to fundamental rights.

The concepts of justice and legal certainty are intricately linked; without legal certainty, achieving justice becomes challenging, and conversely, without justice, the purpose of law is undermined. These two principles are inseparable. In the pursuit of justice, the primary aim is to ensure the stability of human life by upholding freedom and basic rights as foundational elements of a just society. Regrettably, stateless

⁵⁶ Eka Widi Astuti, and Xavier Nugraha. "ISIS Ex-WNI or Indonesian Ex-ISIS? An Overview in the Perspective of National Law and International Law." *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 4, no. 3 (2021): 4187-4197.

persons lack adequate institutional mechanisms to secure the freedoms and rights guaranteed by national laws.

Moreover, within the framework of legal certainty, current legal instruments fail to provide avenues for protecting stateless persons under Indonesian national law. Referring to the *stufenbau* theory, which stipulates that regulations at lower levels must not contradict those at higher levels, it becomes evident that the Citizenship Law and related regulations do not align with constitutional mandates. This discrepancy further exacerbates the challenges faced by stateless persons in accessing legal recognition and protection within Indonesia's legal framework.

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