

# The State Obligation for Stateless Citizens: A Study of Sanger Philippines in Indonesia

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**ABSTRACT---** *Citizenship not only gives a legal identity, but also the right to obtain legal guarantees and protections from the State, their constitutional rights and other rights as stipulated in national legislation or regulated in international law. The issue of citizenship does not only occur in other countries but also in Indonesia. One of them is a stateless person of Filipino descent living in North Sulawesi Province, especially in Bitung City. The results show that the substance of human rights in the field of economic and social for peoples without citizenship gives the obligation for the State to reduce the status of stateless persons. One of them is through arrangements that ease them to obtain citizenship status. Nationally, there is no specific regulation regarding stateless person in Indonesia, but it is only limited to the regulation of the conditions for obtaining citizens in the citizenship law. The state obligation to fulfill the economic, social and cultural rights of Sanger Philippines citizens in North Sulawesi Province has not been fulfilled due to the bureaucratic, budgetary and cultural obstacles.*

**Keywords---** *Citizenship; Stateless Persons; Sanger; Local Government*

## I. INTRODUCTION

Human right is a basic right protected by a State constitution that declares as a constitutional State. In Indonesia, the affirmation of the human right' protection can be seen constitutionally in the preamble of the 1945 Constitution as a highest law. Norms in a constitution are basic norms so that they still need to be elucidated in legislation. As a consistency of Indonesia in providing protection and fulfillment of human rights, Indonesia has ratified the International Covenant on Social and Cultural Economic Rights and the International Covenant on Civil and Political Rights 1966 as a legal instrument that applied nationally.

The concept of human rights includes 3 (three) main elements as a consequence of human existence as individuals as well as social beings, namely human integrity, freedom and equality. These three elements provide a conceptual framework towards the understanding and implementation of the nature of human rights (Ashri, 2018). It causes the value of human rights have universal values. The arrangement of international human rights instruments has been accepted by many countries and has created a legal binding by these countries to provide guarantees for the protection of human rights.

In the perspective of international instruments, human rights violation is violations of State' obligations that emerge from human rights instruments either because it deliberately did not conduct their obligations or the neglect of State so that it cannot conduct its obligations. Citizenship status is one part of human rights arrangements that

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must be recognized, fulfilled, protected and respected by the State as stated in a Report of the Equal Rights Trust (2010) that:

Nationality is a concept of both national and international law. The international law concept of nationality is a universally accepted set of customary principles and treaty body standards (including international human rights law) which establish certain rights and obligations to both individual and state, which are attached to nationality.

The above view shows that citizenship has 2 (two) dimensions, namely the dimension of national and international law. The concept of citizenship in international law has been universally accepted which can be seen from the birth of obligations for individuals and countries relating to citizenship. It is clear that the recognition of international law regarding the importance of citizenship both legally and practically as part of the protection and fulfillment of human rights. This provides conditions for all countries in the world to do protection and fulfillment of citizenship rights to ensure that everyone has citizenship.

The position of citizenship for someone is legal ties between a person and their country and the status of this citizenship is an important basis for someone to obtain basic rights such as education, health, employment, equality before the law. Therefore, it can be said that the important role of citizenship for a person is identity that allows them to have and use various kinds of rights inherent in it.

A person who does not have citizenship or the condition of a person without citizenship or known as *stateless person* can cause a condition where their rights cannot be fulfilled. For example, someone who does not have citizenship status or a clear identity of a country cannot vote political rights by participating in general elections as Benhabib (2004) argues that the lost of citizenship rights, therefore, contrary to all human rights declarations, was politically tantamount to the lost of human rights altogether. This view shows that citizenship not only gives a legal identity, but also the right to obtain legal guarantees and protections from the State, their constitutional rights and other rights as stipulated in national legislation or regulated in international law.

The issue of citizenship does not only occur in other countries but also in Indonesia even though Indonesia has regulated and ratified human rights instruments governing citizenship. One of them is a *stateless person* of Filipino descent living in North Sulawesi Province especially in Bitung City. As a fact to the citizenship that has not been owned or granted by the State to Sangihe and Talaud citizens, if it is examined from human rights arrangements at the international or national level, the regulation on citizenship is the responsibility of the State to respect, fulfill, protect, uphold everyone. A status of citizenship is part of human rights, so if the State does not or ignores the citizenship rights of every person then the State can be subject to sanctions that have violated human rights.

## II. METHODOLOGY

The research was conducted in North Sulawesi Province, precisely in Bitung city. It is selected by considering that the fulfillment of human rights and the presence of Sanger Philippines have greatly troubled the community and the government of Bitung city, and Sanger Philippines are domiciled in Bitung city, North Sulawesi province. Data analysis was performed by grouping data based on data suitability with the problem studied. Then, primary and secondary data obtained are analyzed using qualitative analysis techniques and presented descriptively.

## III. RESULTS

### ***The History of Arrival of Stateless Persons in North Sulawesi Province***

Sanger Philippines person are residents who inhabit many districts in North Sulawesi Province. Their presence in North Sulawesi through a long history and until now their existence still exists even more in North Sulawesi Province, including in Bitung. In the history of European colonialism, in the 17<sup>th</sup> century there was competition between European countries in expanding regions, namely Spain, Britain, Portugal and the Netherlands. History records that North Sulawesi was a struggle area between Spanyol, Portuguese and Dutch while America ruled an island called Miangas or La Palmas islands. The islands are very fertile and rich in spices (Ulaen et al., 2011).

The proximity of Miangas and Mindanao is not just a territory issue but a history of kinship because in the view of Miangas' people, from Mindanao they came from. Then, if they choose not to join the Philippines, it is because of fear of Moro tribe in Mindanao. The stories about Moro tribe are very close to their memories because they are heritable stories. In addition, the problem of poverty in the southern Philippines is a reason they do not want to return to the Philippines.

The history above shows a very close relationship between Miangas Island and the Philippines and although Miangas Island have become Indonesian territory. In addition to the formal relations between Indonesia and the Philippines that continue to exist, emotional relations between their citizens are still intertwined and mutual visits between families in Miangas Island with the Philippines continues both legal and illegal. This proximity has caused hundreds of migrants from Mindanao to be found on the Sangihe and Talaud islands and on the mainland of North Sulawesi. Their presence especially the members of Sangihe community and from other ethnic communities in Mindanao, due to family visits, as well as invitations from their friends, Sangihe and Talaud residents who while in Mindanao, stay with the family. This population group is traveling without identity. The mobility of the residents who have inherited are cannot be seen as free from the people' reasons that they are in an area that has always been a cultural entity. In addition, on the border islands both in the territory of the Republic of Philippines and in the territory of the Republic of Indonesia, both during the colonial rule of the Dutch East Indies in the archipelago and the Spanish colonial and continued by the United States in the Philippines, there were no immigration and customs facilities to whom the passers must report himself.

Basically, foreigners residing in Indonesia can bring benefits to the country. Besides, every foreign citizen in good faith lives in Indonesia obtains the right to be protected and given security guarantees includes their life, property and business (Hamidi and Christian, 2015). For their obligation as a foreigner residing in Indonesia, they are obliged to obey all regulations as applied in the country they occupies or resided in and is ready to be deported to their country of origin or abroad due to the expiration of their residence permit and also includes the extension of their residence permit.

Oversight for foreigners needs to be increased as the increasing of international or transnational crime, such as trafficking, smuggling, and narcotics crimes which are mostly conducted by organized international crime syndicates. The oversight is not only done when they enter, but also while they are in the territory of Indonesia including its activities. Oversight for immigration includes enforcement of immigration law, both administrative and criminal offenses.

To guarantee the benefit and protect various national interests, then the principles, oversight system, service for the entry and exit of people to and from the territory of Indonesia must be in accordance with the national values and objectives of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945

Constitution. Services and oversight in the field of immigration are conducted based on the principle of selective policy. Based on this principle, only foreigners who can provide benefits to the welfare of the people, nation and state of the Republic of Indonesia and do not endanger security and order and are not hostile to the people, or the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution are permitted to enter or outside the territory of Indonesia. Foreigners for certain reasons, such as hostility towards the people and State of the Republic of Indonesia based on the Pancasila and the 1945 Constitution, can temporarily be denied entry into the territory of Indonesian (Setiabudhi et al., 2019).

Based on selective policy, selectively residence permits can be arranged for foreigners in accordance with their intent and purpose in Indonesia. For Indonesian citizens, the principle applies that every Indonesian citizen has the right to exit or enter the territory of Indonesia, but these rights are not something that cannot be restricted for certain reasons and for a certain period of time Indonesian citizens can be prevented from the territory of Indonesian and can be denied entry into the territory of Indonesian. Oversight of the presence of foreigner in the territory of Indonesia operationally requires an immigration role which translates into the concept of the immigration trifunction, namely the functions of community services, law enforcement, and security.

#### ***Relation of the Fulfillment of Human Rights and Stateless Person Reality of Sanger Filipinos in North Sulawesi Province, Indonesia***

The General Declaration of Human Rights explicitly regulates the necessity of an individual to have the issue of citizenship but in reality, there are still many stateless persons. The problems of stateless person are still an international problem. A report of The Equal Rights Trust (2010) states that national authorities are often uncertain as to how such persons must be dealt with. Mistakes are made, policies are silent or insensitive to such difficulties and the result can be unnecessary and at times indefinite detention awaiting a deportation which is impossible to put into effect.

The above view shows that national authorities sometimes do not have certainty regarding the handling of stateless people. Silence or omission of stateless people is a silence or attitude of not doing anything in terms of the concept of international law is a violation of human rights. The General Declaration of Human Rights has stipulated that everyone has the right to citizenship even though this provision does not specify a certain nationality for a person. The arrangements of citizenship in DUHAM provide an illustration of the importance of citizenship for everyone. A stateless person in a country, their rights as citizens cannot be fulfilled either political or economic rights, social and cultural rights. In political rights, stateless people are negated from political processes because they do not have the right to vote and under international law there are conditions for having rights in political processes that must have citizenship so that a stateless person loses their right to obtain political rights. Only citizens have infinite rights to enter and reside in a country so that citizens stateless person can end without residence status or even end up with long-term detention. A stateless person situation also causes various difficulties in various other fields, such as in terms of travel, access to education and health care (UNHCR, 2010).

Bitung is a city in North Sulawesi Province which has a fast development due to the presence of a seaport which encourages development acceleration. It relies on the fisheries and marine sector, with most of its residents living on the coast and making a living as fishermen. The fishing industry in Bitung has a rapid progress, especially after the presence of fishing companies that absorb a lot of labor. The presence of this fishing company provides

benefits for Bitung' peoples because it can absorb a lot of labor, but in reality in Bitung, fishing industry companies employ cheap labor by frequently receiving illegal foreign workers.

According to BAPPEDA (2016) the foreign workers who work in several fishing companies in Bitung consist of 3 (three) groups, namely local workers, legal foreign workers and foreign workers who are not officially documented or known as citizens without identity or citizens without citizenship (*undocumented person*) who known as the Sanger Philippines. These illegal and undocumented workers live and reside in the villages on the coast of Bitung city. Generally, citizen without identity in Bitung are ethnic or descendants of Sanger (Sanger) and Filipinos who have traditionally practiced fishing for a long time. The residents originally came from Sanger and Talaud districts, North Sulawesi Province; they were residents who made a living as fishermen and fishing areas that were conducted from Sanger and Talaud to the Southern Philippines because of their close geographical location.

Sanger and Talalud people have a close relationship with them in the Southern Philippine islands especially residents of these two regions are historically and genealogically bound. Family ties and livelihood activities that are inherited a long ago through family visits as well as trade, exchange and barter of luggage between South Mindanao and Sanger and Talaud peoples. This then developed into traditional cross-border trade. This mobility became polemic after Indonesia and Philippines became sovereign countries and Sanger and Talaud of North Sulawesi Province switched status to border areas and activities in the regions began to be limited by positive laws in force in their respective countries. Family visits and commercial activities that run naturally begin to shift to activities based on the *Border Crossing Agreement (BCA)*, which regulates taxation, payment, luggage sizes and time periods across borders.

As a newly-independent country after World War II, the presence of tens of thousands of Sanger in Mindanao and Mindanao peoples in North Sulawesi province became a problem that could potentially hamper diplomatic relations between the two countries. On that basis, in 1956 the governments of Indonesia and Philippines held a meeting to discuss the issue of crossing-borders to regulate it and create an *Agreement on Immigration between the Republic of the Philippines and the Republic of Indonesia* in Jakarta on July 4, 1956. The government of Philippine was represented by Jose Feuntebella and the government of Indonesia was represented by Soekardjo Wirjopranoto (Pristiwanto, 2016).

At least, this explanation shows the discourse that is developed in the perspective of policy of the State and citizens in this region. The State as also formally written in this Law sees the mobility of citizens in this region as a problem, while citizens see it in reverse and more natural as a "custom". This continues for the current generation. Legal and social consequences that occur in stateless persons, causing they are difficult in fulfilling their rights and obligations to meet the needs of life, such as not having a personal identity card (passport or identity card), difficulty in having a house, bank account, health, education, being legally married or registering the birth of a child to be legally recorded. Waas (2008) argued that the birth of a child is one of the pivotal events that nationality policy must deal with since it entails the arrivals of a new human life which must be given its place in the global political system. If left "unclaimed" by any state as its national, the child will be stateless. This view shows that the birth of a child is one of the important events that must be faced by national policy because it requires the arrival of a new human life that must be given its place in the global political system. If left "uncultured" by any country as a citizen and the child does not have citizenship (*stateless person*).

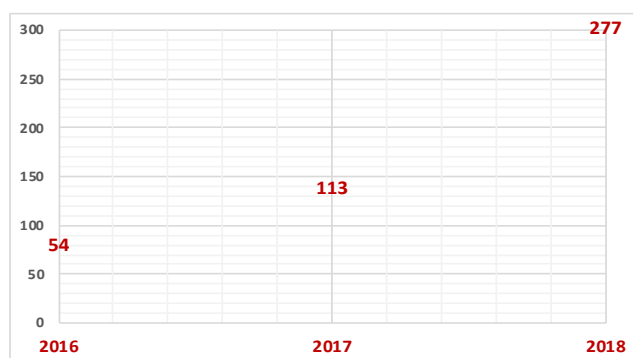
The number of Sanger Filipino residents living in the Philippines and categorized as undocumented citizens because they do not have immigration documents is 7.694 based on data from the survey of the Consulate General in Davao, 2003. Sanger Filipino residents who have settled in Mindanao are known as fishermen skilled in fishing. They sometimes catch fish until they enter the territorial waters of Indonesia, which results in them being caught for illegal fishing and accommodated by the local government of Bitung city.

Now, the life of the Southern Philippines has been difficult to find work so to continue the lives, many Sanger Filipino peoples who came to Bitung to find work both as fishermen and as farmers. They came to Bitung without border-crossing at the borders of Indonesia and the Philippines, they entered Indonesia through empty islands so that they passed from border area officers, it was said by Waty Pontoh as civil servant at the Regional Office of Law and Human Rights of North Sulawesi Province who had an interview with Sanger Philippines peoples.

They were caught for illegal fishing or came secretly even though they came from the Philippines, but the government of Indonesian cannot return them to the Philippines because they are not Filipino citizens. This is a problem for the government of Bitung because of their increasing number. The number of Sanger Filipinos who did not have immigration identity or documents in 2013 as data obtained from the Head of Bankum of Bitung, Mr. Ferdy Tanos. SH, amounted to 1492 peoples. The presence of citizens without identity also causes problems besides the government of Bitung also brings problems for the local community, because their presence is increasingly and disturbing the peoples in Bitung city, besides they generally live on the coast, they also often hide or secretly do their activities. Many of them have lived together without marital status, and already have children; it causes their children are unable to go to school because they do not have a birth certificate because there is no marriage certificate. They also live in isolation because many cannot speak Indonesian, making it difficult to communicate with the community and government.

So far, the attention of the government, both the central and regional governments is still not optimal in the settlement of citizens without identity or citizens without citizenship (*stateless person*). This can be seen from the data that there are residents without identity who have lived in Bitung city for 15 years, even some who have been 21 years. And until now, they do not have citizenship status. The source of this data was obtained from the Legal Section of the Government of Bitung through the Legal Affairs Section of the Government of Bitung, Mrs. Meiva Woran, SH.

The government through the Regional Office of Law and Human Right of North Sulawesi Province has also verified citizens without documents to become Indonesian citizens, but it may be that the socialization has not been maximized due to many obstacles faced. Data from the Regional Office of Law and Human Right of North Sulawesi Province that the number of citizens who have been verified as citizens of Indonesia as seen on Graph 1.



**Figure1:** Data resident without identity and willing to become Indonesian citizens

Actually, this number is very small when compared to the overall number of Sanger Philippines in 2013 in Bitung city. Until now, the government of Bitung city does not have clear data on the number of Sanger Philippines in Bitung. Thus, through this condition, it can be seen that there is no attention from the regional government to the problems and the central government is less responsive to the problems that exist in areas bordering other countries. The handling of undocumented person should have sought a solution in the context of fulfilling human rights which is the responsibility of the government (Ardhana, 2013).

The international law have been regulated about human rights, especially citizenship status in the Preamble of UDHR 1948 affirms the right to citizenship which has an impact on the State to be responsible for preventing citizenship in its territory. The presence of stateless person in Bitung city has been going on for a long time but there are still many people from this group who live far from welfare. They work in fish companies only as cheap laborers because they do not have adequate education. Their standard of living is very far from health and even they live alongside rivers, the sea or around bridges by establishing slums that are very far from a healthy standard. Their lives are very far from protection and security. Stateless person status causes them to not obtain any guarantee of protection and fulfillment of human rights especially economic, social and cultural rights.

The presence of stateless people in Bitung city is a dilemma for the government of Bitung city because on the one hand their presence is an undeniable reality but on the other hand, the reality of their presence in Bitung city without citizenship status causes them to not be able to access fulfillment of economic, social and culture rights because without the status of citizenship they do not have a identity card which is generally a document in every activity and activity conducted by the government towards the community. The necessity for a citizen to have an identity card is not only limited to identity but is a main requirement for someone to get aid from the government or local government. It shows that from the aspect of legal certainty, in order to be able to obtain services from the government, a person must have an identity card and vice versa without any citizenship status they lose the basic rights that should be given to them in their human position and reality in Bitung city for stateless person shows the tendency of injustice for them because as humans they should still obtain economic, social and cultural rights.

#### **IV. CONCLUSION**

The substance of human rights in the field of economic and social for peoples without citizenship gives the obligation for the State to reduce the status of stateless persons. One of them is through arrangements that ease them to obtain citizenship status. Nationally, there is no specific regulation regarding stateless person in Indonesia, but it is only limited to the regulation of the conditions for obtaining citizens in the citizenship law. The state obligation to fulfill the economic, social and cultural rights of Sanger Philippines citizens in North Sulawesi Province has not been fulfilled due to the bureaucratic, budgetary and cultural obstacles. In addition, to obtain citizenship as one of the requirements to be able to obtain the rights stipulated in the constitution, there is no real effort from the central and local government to provide facilities for stateless persons to obtain citizenship and

there is no attempt by the government to conduct socialization in order to increase their awareness and there is no effort to coordinate with the Philippine government related with the status of stateless person citizens.

## REFERENCES

1. Ashri, M. (2018). *Hak Asasi Manusia, Filosofi, Teori & Instrumen Dasar*. Makassar: CV. Social Politic Genius.
2. The Equal Rights Trust. (2010). *Unravelling Anomaly, Detention, Discrimination, and the Protection Needs of Stateless Persons*. London: TERT.
3. Benhabib, S. (2004). *The right of others, Alien, Residents, and Citizens*. UK: Cambridge University Press.
4. Ulaen, A.J. et al (2011). *Sejarah Wilayah Perbatasan Miangas-Filipina 1928-2010 Dua Nama Satu Juragan*. Ministry of Culture and Tourism, Indonesia.
5. Hamidi, J., and Christian, C. (2015). *Hukum Keimigrasian Bagi Orang Asing di Indonesia*. Jakarta: Sinar Grafika.
6. Setiabudhi D.O., Palilingan, T.N., Irwansyah., Maramis, F., and Yunus, A. (2019). *Collective land certification policy for improving good land governance*, IOP Conf. Ser.: Earth Environ. Sci. 343 012068.
7. UNHCR. (2010). "Mencegah dan Mengurangi keadaan tanpa kewarganegaraan". Available online at: <https://www.unhcr.org/id/wp-content/uploads/sites/42/2017/05/Mencegah-dan-Mengurangi-keadaan-tanpa-Kewarganegaraan-BAHASA-FINAL.pdf>
8. BAPPEDA. (2016). "Rencana Pembangunan Jangka Menengah Daerah Provinsisulawesi Utara 2016-2021". Available online at: <http://bappeda.sulutprov.go.id/wp-content/uploads/2016/10/BAB-7.pdf>
9. Pristiwanto. (2016). *Dinamika Pisang (Filipina-Sangihe) Di Perbatasan Indonesia-Filipina*. *Jurnal Antropologi Indonesia*, 37 (1): 42.
10. Waas, L.V. (2008). *Nationality Matters Statelessness under International Law*. *School of Human Rights Research Series*. 29(1): 32-41.
11. Ardhana, I.K. (2013). "History Education In Borderline Territory." *Historia: Jurnal Pendidik dan Peneliti Sejarah*, 14 (1): 23-34.