

CHAPTER I

INTRODUCTION

A. Background

As the world becomes a global community and movements of people increase due to various factors, the issues of the right to citizenship as a constitutional right and the threat of statelessness as a legal challenge become as topical as they are ever dichotomic cognizant of their national and global status.¹ The world has entered an era of constitution-making and political regime change that defy the logic of the nation-state because of the collapse of Marxist-Leninist governments in 1989 and their aftermath. The international community has paid considerable attention to the basic and everyday issues of coexistence in a postmodern setting during discussions that have preceded the creation of new constitutions.² This problem of citizenship as a right, features prominently in international engagements.

Over the last few decades, the ideology of citizenship has gained increased importance and appeal to both local and international communities. As a result of the fundamentally challenging effects that

¹Ajami Turki Jiyad Al-Amir, 2022, “The Impact of Constitutional Legislation in Supporting the Idea of Citizens in the Iraqi Constitution”, *World Bulletin of Management and Law*, Vol. 17, p. 154

²Herman R. Van Gunsteren, 2018, *A Theory of Citizenship – Organizing Plurality in Contemporary Democracies.*, Routledge, New York, p. ix

global trends have had on the structure of contemporary nation-states, the subject of citizenship has recently gained more attention. The most recent change in this trend is the recognition of previously marginalized groups of individuals, such as children and young people as significant consumers of community-driven services and participants in their communities.³ Citizenship is of utmost importance because governments focus on representing the choices and interests of their citizens as a legitimate component of democracy and statehood.⁴ States are also obligated to do this in response to their commitment to their social contract with the citizens.

Citizenship provides people with an identity that entitles them to the full range of state rights and services as well as the obligation to do specific activities and fulfil these obligations. One's identity being recognized by the state is typically a requirement to receive all of citizenship's benefits.⁵ A significant change is taking place in the institution of citizenship which is the bond that binds a person to their

³Kirsi Pauliina Kallio, Bronwyn Elisabeth Wood and Jouni Häkli, 2020, "Lived citizenship: conceptualising an emerging field", *Citizenship Studies* Vol. 24 No. 6, p. 714

⁴Jan Rosset and Christian Stecker, 2020, "How well are citizens represented by their governments? Issue congruence and inequality in Europe", *European Political Science Review* Vol. 11 No. 2, p. 145

⁵Nehginpao Kipgen, 2019, "The Rohingya Crisis: The Centrality of Identity and Citizenship" *Journal of Muslim Minority Affairs*", Vol. 39 No. 1, p. 62

state legally.⁶ The Roman concept of citizens as lawful men replaced the Greek concept of citizens as *zoon politicon* (political animal) as the foundation for the legal concept of citizenship.⁷ However, as constitutionalism and waves of democratization start spreading, citizenship becomes a phenomenon premised on the reality that every human being is entitled to it as a right.

The history of citizenship can be traced back to two eras: before and after the French Revolution. Prior to the French Revolution (1789 – 1794), a citizen is a person born to citizens according to Athens' legal system. Up to the middle of the fifth century, citizenship could be obtained through just one parent – typically the father. Only individuals born to two citizens could, however, take part in the Athenian city-state under Pericles' Citizenship Law of 451/0. Men and women alike did involve in religion in several ways. In addition, holding political office and the associated financial management were significant areas of civic engagement for male residents over the age of 18, in addition to military responsibilities.⁸ In essence, it is found that descent is the primary need

⁶Yossi Harpaz and Pablo Mateos, 2019, "Strategic citizenship: negotiating membership in the age of dual nationality", *Journal of Ethnic and Migration Studies* Vol. 45 No. 6, p. 844

⁷Winarno, Muchtarom and Erna Yuliandari, 2021, "Characterization of Indonesia citizenship in legal perspective", Vol. 18 No. 2, p. 201

⁸Josine Blok, 2017, *Citizenship in Classical Athens*, Cambridge University Press, Cambridge, p. ix

for citizenship in Athenian law and that engagement in religion and other activities are the normative manifestations of citizenship.

The institution and philosophy of citizenship were first developed during the French Revolution. Establishing civic equality, accepting shared rights and obligations, institutionalizing political rights, and legalizing and emphasizing the distinction between citizens and noncitizens are all examples of formalizing the boundaries of citizenship. For the first time, these developments came together during the revolution on a national scale. The rest of the world was given a glimpse of its own future through this national citizenship paradigm.⁹ The French Revolution, according to Rogers Brubaker, is where modern citizenship and the concept of “nation” originated. Even though he agrees with the revolutionary relevance of the French instance of citizenship reform, Peter Sahlins, for instance, provides proof of major citizenship transformation in France beginning in the 1750s.¹⁰ According to the doctrine of the rights of man, all persons are eligible to become citizens either of their own nations or of France provided they meet a number of prerequisites.

⁹William Rogers Brubaker, 1989, “The French Revolution and the Invention of Citizenship”, *French Politics and Society* Vol. 7 No. 3, p. 30

¹⁰Djordje Sredanovic, 2017, “Was citizenship born with the Enlightenment?”, *Miranda* Vol.15, p. 2

Therefore, race, religion, and language are theoretically unimportant because these rights are universal; all that is required is to be an individual with a demonstrated desire and capacity to bring value to the life of the country.¹¹ Citizenship has always been viewed as a function of official or legislative membership in a nation-state. One has the status of being a citizen or not. The acquisition of citizenship and national citizenship regimes, the nexus between citizenship and civic engagement and political participation, the relationship between immigration and citizenship, and other themes have all been the focus of citizenship research. Additionally, more contemporary conceptions of citizenship have considered citizenship's consequences for social inequalities and a sense of belonging for those who are not viewed as "ideal citizens" in addition to its legal status.¹²

Significant issues have been raised on what statelessness is, who is stateless, and the basis upon which a state recognizes a person as its citizen. According to Article 1 of Convention on the Status of Stateless Persons 1954, a stateless person is a "person who is not considered as a national by any State under the operation of its law". Historically, stateless people have been split into two groups: those who lack a legal

¹¹Michael Rapport, 2000, "Conclusion: The French Revolution, Citizenship, and Nationality" In. *Nationality and Citizenship in Revolutionary France: The Treatment of foreigners – 1789 – 1799*, Oxford University Press, Oxford, p. 327

¹²Jean Beaman, 2016, "Citizenship as Cultural: Towards a theory of Cultural Citizenship", *Sociology Compass* Vol. 10, p. 849

nationality, or are “de jure” stateless, and those who lack an “effective” nationality, or are “de facto” stateless. This classification results from an early viewpoint that widely linked refugees with the de facto statelessness while regarding the de jure statelessness as a separate group.¹³ This is synonymous to what scholars describe as statelessness in *situ* and the migratory context.¹⁴ Statelessness is still frequently described as abnormal compared to norms of citizenship.

However, the emergence of stateless people in a world governed by citizenship and sovereignty norms is not at all unanticipated.¹⁵ In the strictest sense, someone is considered stateless if they do not qualify as a citizen of any state as defined by the laws of that state.¹⁶ The vast amount of scholarly research on statelessness, which fascinates and perplexes the world community, is the most significant indication that the area of statelessness studies has developed. Statelessness was once thought of as a technical issue of coordinating state nationality rules but after World War II it took on a humanitarian component.¹⁷

¹³Gihan De Chickera and Denver Pereira, 2020, *Unravelling Anomaly (Detention, Discrimination and the Protection Needs of Stateless Persons)*, The Equal Trust

¹⁴Jamie Chai Yun Liew, 2019, “Homegrown Statelessness in Malaysia and the Promise of the Principle of Genuine and Effective Links”, *Statelessness & Citizenship Review* Vol. 2 No. 2, p. 97

¹⁵Birgit Schipper, 2020, *The Routledge Handbook to Rethinking Ethics in International Relations*, Routledge, New York, p. 148

¹⁶Raymond A. Atuguba, Francis Xavier Dery Tuokuu and Vitus Gbang, 2020, “Statelessness in West Africa: An Assessment of Stateless Populations and Legal, Policy, and Administrative Frameworks in Ghana”, Vol. 8 NO. 1, p. 14

¹⁷David Baluarte, 2019, “The Arrival of ‘Statelessness Studies’”, *Statelessness & Citizenship Review* Vol. 1 No. 1, p. 156

The status of right to citizenship is one of the many rights that a state is obligated to uphold and defend for its citizens. Citizens will be able to live more easily by dint of this status, both in the nation that grants citizenship and in other nations.

B. Legal Issues

Based on the above introduction, the legal issues that will be explored in this research are:

1. What is the gap between constitutional right to citizenship and the problem of statelessness?
2. What are the legal implications of statelessness in modern constitutionalism?
3. How would a stateless person be included in the concept and perception of national human rights frameworks?

C. Research Objectives

In this research, the researcher aims at achieving the following:

1. Reducing the gap between constitutional right to citizenship and the threat of statelessness.
2. Examining the legal effects of statelessness in the current constitutional governance; and
3. Analyzing how a stateless person can be included in the concept and perception of national human rights frameworks.

D. Research Benefits

In this research, the researcher establishes a comparative study of citizenship in The Gambia and Indonesia. Application of this study will help in reducing the impact of statelessness in these countries and any country with the same model of citizenship laws. To create inclusivity and avoid discrimination, this research will help in understanding the need to not only sign and ratify international instruments on citizenship and statelessness but also the need and urgency for commitment to domesticate them into national laws through application of the theory of dualism in international law.

E. Originality of Research

I hereby attest that the research work I have submitted is the result of my own independent and unique work. All the sources from which the thoughts and passages were derived have been properly and duly acknowledged. This work has not been submitted for publication anywhere and is devoid of any instances of plagiarism in accordance with the rules of this institution.

According to Dicosola, the right to citizenship is incredibly weak both at national and international levels.¹⁸ This is particularly true in the case of the United Kingdom although the preservation of the right

¹⁸Maria Dicosola, 2022, The right to citizenship and human dignity. In D. Bedford, C. Dupré, G. Halmai, & P. Kapotas (Eds.), *Human Dignity and Democracy in Europe.*, Edward Elgar Publishing, Cheltenham, p. 137

to citizenship is much stronger in the United States of America. This disparity might also be explained by the fact that, unlike in the American context where human dignity is regarded as the theoretical underpinning of the right to citizenship, there is no mention of this principle in European case law.

In his Book Chapter, von Rütte submits that being a citizen of a sovereign state became a requirement for membership in the political community. He argues that citizens were identified from “foreigners” by having specific national qualities such as a shared origin, culture, religion, language, and so forth.¹⁹ As a result, the state’s borders and its boundaries became congruent, and the pre-modern notion of citizenship law’s foundation was replaced with the principle of spatial exclusion.

In the African context, Manby posits that without using citizenship legislation, African leaders have used ethnic identification to deadly effect as could be seen in the case of Rwanda in the 1994 genocide. Countries with faultless citizenship rules have also seen crises in which ethnic differences predominated as in Chad and Angola.²⁰ In their studies on Africa, the authors argue that citizenship grants those who are included in society civil rights in many African

¹⁹Barbara von Rütte, 2022, “Citizenship and Nationality” In. *The Human Right to Citizenship.*, Brill | Nijhoff, Leiden, p. 21

²⁰Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging.*, Hart Publishing, Oxford, p. 311

countries.²¹ However, many people particularly young people, immigrants and other marginalized groups frequently do not receive equal attention in society between the government and the citizen. They cannot access the same resources to social welfare, social protection and justice services.

According to Manby in her book, “Citizenship Law in Africa: A Comparative Study”, few African countries explicitly grant the right to a citizenship. The right to citizenship is generally guaranteed by the constitutions of Angola, Ethiopia, Guinea-Bissau, Kenya, Malawi, Rwanda and South Africa among others or that each child is entitled to a name and a nationality.²² Other countries’ several laws, notably in legislation, have created the right to a citizenship concerning the rights of children. The citizenship laws themselves, however, do not guarantee that this commitment will be kept. In Ethiopia, for instance, the citizenship law does not adhere to the constitution because it does not allow a child born in the country who would not otherwise be stateless.

F. Concept Limitation

In this research, concept limitation is made on the following relevant terms:

²¹Melber, Bjarnesen, Hallberg Adu, Lanzano and Mususa, 2020, “The politics of Citizenship: Social Contract and Inclusivity in Africa”, The Nordic African Institute, p. 3

²²Bronwen Manby, 2016, Citizenship Law in Africa a Comparative Study., African Minds, New York, p. 4

1. Citizenship, according to Black's Law Dictionary in page 311, is the status of being a citizen. It further defines a citizen in page 310 as "A member of a free city or jural society, possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties".
2. A stateless person, according to Article 1 of "Convention Relating to the Status of Stateless Persons, 1954", is a person who is not considered as a national by any State under the operation of its law. Therefore, statelessness is a circumstance in which a person is rendered noncitizen of any state.
3. Dichotomy, according to the Third Edition of Cambridge Advanced Learner's Dictionary in page 388, is a difference between two completely opposite ideas. In this context, there is a constitutional problem of two opposite ideas of constitutional right to citizenship and statelessness.
4. While this research puts a general canvass to contextualize the problem of statelessness, it is limited to comparison of issues of citizenship and statelessness between The Gambia and Indonesia.