CHAPTER II

LITERATURE REVIEW

A. Literature Review

1. The Dichotomy of Citizenship and Statelessness

The issue of citizenship and statelessness has gained traction and its humanitarian impacts on the world is being discussed and written about in different fora. However, the right-centric aspect of it as a legal issue concerns this research. Again, for Manby in the context of Africa, the groups of individuals who are at risk of becoming stateless in the Horn of Africa are comparable to those in other regions of the continent. The first category – vulnerable children and the adults they grow into – is the most widely spread. Orphans, abandoned children, and infants are included in this group. It also includes children raised by foster homes, children who are homeless, children who have been trafficked across borders and other children who have been removed from their parents, especially when they were young of foreign or missing parents.[23]

According to her, it is crucial to make a distinction between national and international law while analysing issues of citizenship. The

[23]Bronwen Manby, 2021, "Citizenship and Statelessness in the Horn of Africa", SSRN Electronic Journal, p. 49

circumstances under which a person is entitled to a state's citizenship or to enter and reside in its jurisdiction may or may not be in accordance with the rules of international law.[24] Other states are not required to recognize a state's claim that a person is its citizen if it is not consistent with their law. This is one of the main causes of the contemporary problem of statelessness.

Prener states that the current doctrinal rationales on statelessness are founded on several misconceptions about the suitability, effectiveness, necessity and subsequently, proportionality of denationalization in Western societies and that, its resurgence in the 21st century is not only indicative of the shortcomings in current discrimination law norms but also strengthens them.[25] In an attempt to evaluate statelessness, de Lange argues that its concept is assessed as an ambition and aptitude that determines migration patterns in the context of difficulties in obtaining citizenship.[26]

A state's protection of everyone living in its territory, regardless of nationality, was its greatest duty and it was intended that the state

[24]Bronwen Manby, 2020, "Legal Identity for All' and Statelessness: Opportunity and Threat at the Junction of Public and Private International Law", Statelessness & Citizenship Review Vol. 2 No. 2, p. 252

[25]Christian Brown Prener, 2022, "The dichotomy within denationalisation: Perpetuating or emancipating from its discriminatory past?", International Journal of Discrimination and the Law Vol. 22 No. 3, p. 305

[26]Yentl de Lange, 2023, "Understanding drivers of migration: a preliminary case study of Libyan Tuareg", Journal of North African Studies Vol. 28 No. 3, p. 679

would serve as the highest legal entity whether it took the shape of a new republic or a reformed constitutional monarchy. The tragedy of nation-state was that these functions were hampered by the public's growing national consciousness. The state was compelled to grant full civil and political rights to only those who belonged to the national community by right of origin and fact of birth in the name of the will of the people. Only "nationals" were allowed to be recognized as citizens. As a result, the state underwent a partial transformation from a law instrument to a national instrument. According to Arendt's analysis, the phenomenon of statelessness is a direct outgrowth of the logic of sovereignty that underlies the nation-state system, not only a coeval phenomenon.

Also, this intrinsic conflict between the state and the nation as well as that between universal rights and civil rights is what makes the crisis of modern statelessness which was caused by the exclusionary logic of what had been supposed to be human rights so apparent.[27] Statelessness is generally acknowledged to be a significant oddity rather than an isolated incident. Unfortunately, there is a glaring lack of accurate and precise data when attempting to understand the

[27]Kiran Banerjee, 2009, "Negotiating the Claim to Inclusion: Statelessness and Contestation of the Limits of Citizenship", Comparative Research in Law and Political Economy Vol. 6 No. 2, p. 2

phenomenon's reach by evaluating the extent of statelessness around the world. The only thing that is known is that no one truly understands the entire scope of the issue. The various estimates of the number of stateless people are due to several factors, not the least of which is the continuous debate over what constitutes statelessness.

2. Overview of Citizenship

One aspect of state studies, which often comprises Constitutional Law and State Administrative Law, is the study of citizenship. According to Article (1) of Montevideo Convention on the Rights and Duties of States 1933, citizenship is a necessary component of state existence. The question of citizenship is crucial in the context of statehood since the state is composed of few elements: a defined territory, individuals who share citizenship, the sovereign government as a constitutive element, and the recognition of other nations as declarative elements.[28] In the aforementioned convention, citizenship is identified in paragraph (a) of same Article as "a permanent population".

Prior to delving into the historical trajectories of citizenship, it is important to define the term used here. The first, and presumably most popular, emphasizes "political rights to engage in processes of

[28]Sekar Dani Ajeng Adinda, Antikowati and Rosita Indrayati, 2020, "Political Rights of the Indonesian Citizen Possessing Dual Citizenship: A Contextual Analysis", Vol. 1 No. 1, p. 1

popular self-governance". This has roots in the political thought of classical antiquity. The second focuses on an individual's "legal position as a member of a certain, legally sovereign political community". Following the introduction of the modern constitution by the French Revolution, this notion becomes prevalent in 19th century Europe. The third one utilizes a considerably broader scope and defines citizens as "those who join any human association" which became more prevalent in the 20th century. The final definition is even more inclusive and refers to "certain criteria of proper conduct".[29] The connecting thread among all these four definitions is that citizenship involves adhering to social norms and being a member of human associations.

It is also possible to term citizenship as both active and passive membership in a nation-state with a set of equal rights and responsibilities.[30] Citizenship can also be divided into two parts: the communitarian part, which includes belonging to a community and a sense of responsibility on the part of the citizens, and the legal-political part which includes rights, duties and entitlements.[31] Citizenship is linked to the creation of members of a polity with certain rights and

[29]Maarten Prak, 2018, Citizens Without Nations: Urban Citizenship in Europe and the World, c. 1000 – 1789., Cambridge University Press, Cambridge, p. 5

[30]Thomas Janoski and Brian Gran, 2022, "Foundations of Rights", In. Handbook of Citizenship Studies., SAGE Publication, London, p. 13

[31]Josine Blok, 2013, Citizenship, the citizen body and its assemblies. In H. Beck (Ed.), A Companion to ancient Greek government., Malden/Oxford, p. 161

obligations as it has been passed down to us through Aristotle in Ancient Greece, Leonardo Bruni the Renaissance, Jean-Jacques in the French Revolution and the framers of American Constitution.[32] The rest of the world only enters this scene once they are freed from colonialism. As a result, post-colonial independence in Asia and Africa compels the new states' governments to establish citizenship.

Early in the 20th century, Chinese scholars and translators frequently utilized native phrases like "guomin" (literally, "the people of the country or state"); they did not choose translation as a method to emphasize the artificiality and radical dichotomies of the concept. However, the idea they put out was novel.[33] The state has rights and duties under international law as a subject of that law. Although it is currently not confined to states alone but also includes other international law subjects, the state is the only legal subject that possesses all of the qualities or requirements to be a subject of international law in terms of dealing with issues of citizenship. The existence of a permanent population as citizens, a defined territory, a government and sovereignty all satisfy the requirements of Article 1 of Montevideo Convention on the Rights and Duties of States 1933

[32]Maarten Prak, 2022, "Citizenship among the historians", Citizenship Studies Vol. 26 No. (4-5), p. 609

[33]Hilde De Weerdt, 2019, "Considering citizenship in imperial Chinese history", Citizenship Studies, Vol. 23 No. 3, p. 256

making the state a subject of international law. The state and the citizen are topics that are interconnected. According to the constitutional ideology, the relationship between people who are citizens of a country will give rise to rights and obligations between the state and its citizens.[34]

According to Aristotle, the capacity to take interest in government and courts is the finest way to define what it is to be a citizen. For him, a full citizen was a state being with political rights.[35] The Renaissance period of citizenship, which conceptualizes elites as actively participating in self-rule of their own political community, has grown in response to classical inspirations and political realities. According to an uneven notion of citizenship that excluded individuals outside the elites, elites established ethics of good citizenship centred on the active engagement and contribution of armed citizens to the political community.

By formalizing the laws governing who was or was not a member of the political community, how citizenship was obtained and what the various levels of civic status were, jurists further elaborated

[34]Sekar Anggun Gading Pinilih, Aditya Yuli Sulistyawan, Irma Cahyaningtyas and Adya Paramita Prabandari, 2022, "The Legal Policy of Citizenship in Fulfilling the Rights of Stateless Persons as an Effort to Fulfill Human Rights in Indonesia", Diponegoro Law Review Vol. 7 No. 1, p. 18

[35]Krzysztof Trzciński, 2021, "Citizenship in Europe: The Main Stages of Development of the Idea and Institution" Studia Europejskie - Studies in European Affairs Vol. 25 No. 1, p. 8

citizenship in law.[36] In the pre-revolutionary period, citizenship was generally recognized as a legal and socioeconomic standing within the city's borders. It was dominated in France and the British American colonies by the idea of the "subject", who was only given a restricted set of rights. Nevertheless, a consensus started to form and use the concept of a citizen more often over the 18th century, stretching it in new ways and giving it interpretations and aspirations.[37]

In the contemporary phase, citizenship can be described in terms of both rights and responsibilities but unfortunately, too many contemporary theories of rights fail to link entitlement to obligation, despite the innate reciprocity between the two. Therefore, citizenship is a framework of rights that involves a connection between what we give back to a community and what we get in return even if it is only approximate.[38]

In establishing a nexus between the right to citizenship and constitutional law, it is imperative to distinguish between the modern constitution and classical constitution. The modern constitution refers to the constitution made after World War II while classical constitution

[36]Guy Lurie, 2018, "Citizenship, Renaissance" In. Encyclopaedia of Renaissance Philosophy., Cham: Springer International Publishing, Gewerbestrasse, p. 1

[37]René Koekkoek, 2020, "Introduction" In. The Citizenship Experiment., BRILL, Leiden, p. 2

[38]Bryan Turner, 2017, "Contemporary Citizenship: Four Types", Journal of Citizenship and Globalisation Studies Vol. 1 No. 1, p. 11

is the one made in the 19th century. Even more pertinently, it should be thought about if the constitution signifies a turning point between classical forms of government and the modern, democratic and representative forms of government that Jefferson and Madison had foreseen. Citizenship in the modern constitution implies that people have the right to adopt an equal active role in creating the legal and political structure of contemporary society including the right to take part in electoral or deliberative procedures that legitimize legislation.

According to this theory, for a law to be legitimate, citizens must believe that they had a free hand in its formulation. The French Revolution served as a symbol of the fundamental transformation that declared the modern society and constitutionalism by identifying the individual not only as a subject but also as the holder of rights.

3. Requirements for Citizenship

Citizenship demonstrates the nexus between the people and the state. Every person has a fundamental right to citizenship. The state can, however, unquestionably choose the criteria for defining citizenship based on its laws. As per Article 1 of Convention on Certain Questions Relating to the Conflict of Nationality Law 1930, "It is for each State to determine under its own law who its nationals are. This law shall be recognized by other States in so far as it is consistent with international conventions, international customs, and the principles of law generally

recognized with regard to nationality". While there are various types of citizenships in national law, their criteria vary from one jurisdiction to another. Unlike international law that has a one-side-fit-all requirements as a yardstick for citizenship, the criteria for citizenship in national laws vary from one country to another.

While states have their individual requirements for citizenship the international benchmark is a sine qua non as it is a subject of utmost concern and interest to the international community. It is widely acknowledged that citizenship-related matters are not covered by international law and are instead handled by states in line with their unique domestic legal systems. State sovereignty and non-interference in the internal affairs of other states serve as the foundation for this rule. The discretion to choose the state's permanent people, or to put it another way, the authority to decide who shall be the state's citizens, is the primary understanding of state sovereignty.[39]

4. Citizenship Law in Indonesia

Indonesia through Law Number 12 of Year 2006 on Citizenship of the Republic of Indonesia provides provisions for citizenship. Conceptually, Indonesia recognizes Pancasila as its own ideal concerning a perfect citizen. Indonesia, to a limited extent, abides by

[39]Yaffa Zilbershats, 2002, The Human Right to Citizenship., Transnational Publishers Inc., New York, p. 7

the ius sanguinis and ius soli principles when deciding citizenship status. In essence, Indonesia only recognizes one citizenship. However, in order to safeguard and fulfil human rights, children may be granted a restricted dual citizenship. There are still stateless people notwithstanding the control of citizenship under both national and international law. Additionally, the existence of stateless people cannot be separated from Indonesia.[40] Although contested statehood will always have a detrimental effect on citizenship rights, the extent of the obstruction determines one's submission to legal jurisdiction.[41]

Numerous modifications to Indonesian citizenship law restrictions still do not accommodate all citizens. The Indonesian diaspora pushed for the implementation of dual citizenship following the promulgation of Law Number 12 of Year 2006 concerning Citizenship. Others in the community rejected this inclination because it puts security, the economy, politics, and citizenship at risk.[42]

According to Article 26 of the 1945 Constitution of Indonesia, citizens in Indonesia include both people of indigenous Indonesian

[40]Yogi Prabowo and Taufiqurrohman Syahuri, 2022, "Kewarganegaraan dalam Perspektif Keimigrasian (Citizenship in Immigration Perspective)", Journal of Law and Broader Protection Vol. 4 No. 2, p. 49

[41]Gëzim Krasniqi, 2019, "Contested States as Liminal Spaces of Citizenship: Comparing Kosovo and the Turkish Republic of Northern Cyprus", Ethnopolitics Vol. 18 No. 3, p. 298

[42]Hilal Ramdhani, 2022, "The Citizenship Paradigm Debate in Dual Citizenship Discourses in Indonesia", Jurnal Bina Praja Vol. 14 No. 1, p. 43

descent and those who were granted citizenship by law. In accordance with its constitutional obligations, Indonesia is a state that upholds human rights. Because they are guaranteed by the constitution, human rights must be upheld, respected and protected by the state concerned. There are individual rights and responsibilities as citizens in addition to human rights and obligations. In terms of citizenship, Indonesia has established norms in the 1945 Constitution and other various laws that are derived from the fundamental freedoms guaranteed by this constitution. Both citizens of the indigenous Indonesian nation and those of other countries are recognized by law. Additionally, various articles on human rights have controlled the duties and rights of residents.

All citizens thereafter hold the same place in law and government if it is connected to Article 27 of the 1945 Constitution in the aftermath of the amendment. From this, it can be deduced that the Republic of Indonesia's current citizenship laws aim to treat all of its citizens equally in order to realize the objectives of the Unitary State of the Republic of Indonesia as stated in Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia.

The Republic of Indonesian Citizenship Law No. 12 of Year 2006 has eight chapters, 46 articles and 50 sections. General Provisions are provided for in Chapter I. Chapter II provides for Citizens of the

Republic of Indonesia. Chapter III enshrines the requirements and procedures for acquiring citizenship of the Republic of Indonesia. Chapter IV provides for loss of citizenship of the Republic of Indonesia. The requirements and procedures for regaining citizenship of the Republic of Indonesia are articulated in Chapter V. Chapter VI provides for provisions that deal with criminal acts. Chapter VII provides Transition clauses, and Chapter VIII provides the closing.

Based on the above description, it is fitting to stipulate that the law regulates the following issues: 1) individuals who become citizens of Indonesia; 2) conditions and procedures for obtaining citizenship of the Republic of Indonesia; 3) individuals who lose their citizenship of the Republic of Indonesia; 4) conditions and procedures for regaining citizenship of the Republic of Indonesia; and 5) provisions for criminal acts for individuals who break the law. This law also includes transitional provisions that specify that, if demands for naturalization, declarations to maintain Indonesian citizenship, or requests to regain Indonesian citizenship have already been submitted but not yet been finalized upon the promulgation of this law, the requests and declarations shall then be finalized in accordance with this law.

Everything pertaining to people who are citizens of a certain country is referred to as citizenship and this is a reciprocal connection relating to the rights and obligations of citizens towards their country

and pertains to the citizenship status for someone who becomes a citizen of a particular country. According to Article 26 (1) of the 1945 Constitution, citizens include both native-born Indonesians and those from other countries who have been legally recognized as citizens. Given that the procedures for citizenship status are regulated and reinforced in a national law as previously said, this makes the notion of citizenship in Indonesia more complex.[43] It is its complexity that creates the lacuna that promotes statelessness.

Also, the informality and bureaucratic hijack state which weakens Indonesian citizenship's ability to maintain social justice, serves as the foundation for the country's lack of ability and proclivity to successfully institutionalize law and justice in its daily sociopolitical affairs. In spite of this, it is important to remember that everyday life and the discursive concept of citizenship are frequently matters of nation or state. In order to better appreciate Indonesian citizenship which is shaped by and expresses informality as a nation's feature rather than a state feature, it is crucial to recognize this state-centric contention.[44] One of the key concepts developed is the bureaucracy's hijacking of the state, preventing it from delivering socio-economic

[43]Rizkya Dwijayanti and Caesar Demas Edwinarta, 2023, "The Citizenship Criteria for the Candidacy in Indonesian General Election: The Formality of Validation Process", AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam Vol. 5 No. 2, p. 1125

[44]Syamsul Asri, 2018, "Rearticulating the Ontological Root of Contemporary Indonesian Citizenship", Jurnal Politik Profetik Vol. 6 No. 1, p. 20

justice.[45] But if justice and equality of right to citizenship is a reciprocal term that is determined by daily actions rather than a unitary endeavour of the state, then the bureaucracy's failure to uphold this ideal is only a reflection of the state's collapse in terms of its inability to exclude the nation, both in terms of legitimation and material practices.

Due to the multifaceted dimensions of citizenship, dual citizenship continues to be a concept that enjoys contestation in Indonesia for some time now. Indonesian citizenship law policy does not in totality recognize dual citizenship. Since they are not Indonesian citizens, community members of the Indonesian diaspora who possess other citizenships lack the locus standi to ask the Constitutional Court to review of Law No. 12 of Year 2006 to seek Indonesian citizenship. Article 23 of this law does provide that Indonesian citizen loses their citizenship status if the person concern voluntarily takes an oath or pledge allegiance to a foreign country or part of that country. The concept of dual citizenship must be used within the parameters of Indonesian Citizenship Law Policy for a person to be able to acquire Indonesian citizenship without losing his or her foreign nationality.[46]

[45]Gerry van Klinken and Ward Berenschot, 2018, "Everyday citizenship in democratizing Indonesia." In. Routledge Handbook of Contemporary Indonesia, Taylor & Francis, London, p. 151

[46]Tundjung Herning Sitabuana, 2016, "Indonesian Chinese Diaspora, Dual Citizenship and Indonesian Development", Constitutional Review Vol. 1 No. 1, p. 50

This is important because more than four million Indonesians residing abroad are without Indonesian citizenship.[47]

In essence, no law regulates all aspects of human activity as thoroughly or simply without some grey areas. Laws are to certain extent compared to society that is evolving occasionally,[48] and this is where the demand for dual citizenship faces stiff setback in Indonesia. The idea of dual citizenship is still only applicable to children of intermarriage in Indonesia, but given the size of the Indonesian diaspora abroad, now is the perfect time to update or reform the country's citizenship laws.[49] The concerns that preoccupy Indonesian citizenship are mostly domestic in nature and centre on how they relate to nationalism. Many people believe that proposing dual citizenship trivializes nationalism. Nationalism is revered and unquestionable in Indonesia, where it is frequently deemed as a goal of achieving and preserving national unity.

So, limited dual citizenship, as the name implies, is the new kid on the block that the country applies to certain conditions and a category

[47]Susi Dwi Harijanti, Bilal Dewansyah, Ali Abdurahman and Wicaksana Dramanda, 2018, "Citizenship and the Indonesian Diaspora: Lessons from the South Korean and Indian Experiences", Border Crossing Vol. 8 No. 2, p. 300

[48]Suryo Gilang Romadlon, FX. Adji Samekto and Retno Saraswati, 2022, "Harmonization of Citizenship Regulation in Indonesia", Baltic Journal of Law & Politics Vol. 15 No. 7, p. 319

[49]Andi Agus Salim, Rizaldy Anggriawan and Mohammad Hazyar Arumbinang, 2022, "Dilemma of Dual Citizenship Issues in Indonesia: A Legal and Political Perspective", Journal of Indonesian Legal Studies, Vol. 7 No. 1, p. 107

of people. The importance of citizenship is demonstrated by the different laws and regulations that govern it. The 1945 Constitution's Articles 26, 27, and 28D all mention citizenship. Law No. 12 of Year 2006 on Citizenship, which replaced Law No. 62 of Year 1958 on Citizenship of the Republic of Indonesia, has further regulations in this area. Law No. 62 of Year 1958 and Law No. 12 of Year 2006 differ significantly in their treatment of the citizenship of children of mixed marriages.

According to Law No. 62 of Year 1958, the father's citizenship comes first when determining the child's citizenship. Article 6 of Law No.12 of Year 2006 meticulously provides for dual citizenship for children under 18 years and the necessity to choose one citizenship upon attainment of this age limit. As per Article 4 of this same law, the criteria for children with dual citizenship include: (a) children from a legal marriage with an Indonesian father and a foreign mother; (b) children from a legal marriage with a foreign father and a foreign mother; (c) children outside a legal marriage with a foreign mother whom an Indonesian father recognises; (d) children born outside the territory of Indonesia to an Indonesian father and mother because the provisions of the local country also give citizenship to the child; (e) Indonesian children born outside a legal marriage before 18 or unmarried whom a foreign father legally recognises; (f) an Indonesian

child under five years old legally adopted as a child by a foreigner with a court decision.

Although this this not a sufficient gesture so to say, it is an effort to minimize stateless people in the country and the world at large.[50] This limited dual citizenship on the part of children is also an exception to single citizenship to guarantee the constitutional right of citizens. In all of the above, the Republic of Indonesia recognizes two types of citizenship: ius soli and ius sanguinis, meaning citizenship by birthplace and citizenship by descent respectively. Because selecting a nationality can be done for three years between the ages of 18 and 21, it differs from Japanese laws. Children in Japan have the option to release or choose their citizenship when they are 22 years old. Because Japanese law restricts those who seek to have Indonesian citizenship, this disparity is the primary issue that every Indonesian Japanese citizen faces.[51] In the legal citizenship system, these kinds of legal conflicts are inevitable due to differences in laws of the two countries. It is, therefore, important to deconstruct, examine and assess these statuses or types of

[50]Antikowati Antikowati, Muhammad Bahrul Ulum, Iwan Rachmad Soetijono and Reyka Widia Nugraha, 2023, "Globalisation and Indonesia's Demand for Dual Citizenship: Problems and Alternatives", Legality: Jurnal Ilmiah Hukum Vol. 31 No. 1, p. 46

[51]Nevey Varida Ariani and B. Lora Chrisyanti, 2019, "Law and Human Rights Approach of Limited Double Citizenship Policy in Indonesia", Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019), Atlantis Press, Paris, p. 166

citizenship in Indonesia so as to establish an informed nexus with the international benchmark on citizenship.

The principles of ius soli and ius sanguinis are not merely natural in Indonesian citizenship. The historical bases of ius soli are not in civic principles but rather in monarchs' insistence that all people born in a given territory are their subjects. Ius sanguinis has its roots in the post-French Revolutionary citizens' right to pass on their citizenship to their children. In fact, the modern interpretation of both is substantially different where the issue is not just the rights of or against a monarch, but of inclusion in a political community. However, neither ius sanguinis nor ius soli have anything intrinsically ethnic or civic about them.[52]

Ius sanguinis only applies to people born to citizens of the concerned state; as a result, immigrants or stateless people are not allowed citizenship under a pure ius sanguinis government, and in some cases of certain indigenous persons or groups not considered citizens. Ius sanguinis is not always exclusive on the basis of ethnicity, though. Ius sanguinis citizenship is inclusive on those dimensions if citizens comprise persons of other ethnicities, which is frequently the case.[53] Ius

[52]Iseult Honohan and Nathalie Rougier, 2018, "Global Birthright Citizenship Laws: How Inclusive?", Netherlands International Law Review, Vol. 65 No. 3, p. 339

[53]Costica Dumbrava, 2015, "Bloodline and belonging: Time to abandon ius sanguinis?" In. *Bauböck, R.* (eds) Debating Transformations of National Citizenship., Springer Nature Switzerland AG, Gewerbestrasse, p. 74

sanguinis is not inherently more exclusive than ius soli, and vice versa. Both might be excessively inclusive or insufficiently exclusive. Children of all citizens inherit citizenship under an unconditional ius sanguinis system but immigrants are not included unless they have naturalized, nor are descendants of citizens of other countries who may not have lived in the country themselves or even those who have had no contact with it for generations.[54] Children born to citizens who are temporarily overseas are not included in a pure ius soli system, which also covers children born to temporary workers and even visitors.

Dual citizenship and statelessness are categorically rejected by Law No. 12 of Year 2006. The Elucidation of Law No. 12 of Year 2006 provides the following confirmation: "This law basically does not recognize dual citizenship (bipatride) or statelessness (apatride). Article 4 paragraphs (10), (11) and (12) reject the status of statelessness in Indonesia. They state that:

(10) Children newly born and found in Indonesian territory and whose parents are undetermined;

(11) Children born in Indonesian territory whom at the time of birth both parents were stateless or whose whereabouts are undetermined;

[54]Rainer Bauböck, 2018, Democratic Inclusion., Manchester University Press, Manchester, p. 5

(12) Children born outside the Republic of Indonesia from an Indonesian father and mother whom due to law prevailing in the country of birth automatically provides citizenship to the child;

The above provisions are only applicable to ius soli principle. With this clause, it is believed that children born from mixed marriages whose parents' nationalities are unknown or whose whereabouts are unknown can avoid being classified as stateless. Therefore, it is evident that the direction of state legal policy regarding citizenship is the protection of the dignity of every Indonesian citizen and that, nothing is expected of Indonesian residents who lose or even become stateless, even though there are no specific provisions regarding a stateless person in Law No. 12 of Year 2006.

The legislation states that ethnic groups who support the existence of the Indonesian state have united to form the nation of Indonesian citizens. In addition, a rule is established that states that everyone who resides on Indonesian territory is presumed to be a citizen of just the Republic of Indonesia (the principle of single citizenship). A citizen of Indonesia has the right to all types of protection from the state

or government wherever they may be, so it should not be simple for him or her to lose such status against their consent.[55]

Indonesia needs to revamp its laws on citizenship and provide for dual citizenship because this grants citizens full access to work both domestically and overseas. The diaspora has the power to act transnationally. Additionally, this position may encourage domestic investment that supports economic potential. If this can be fully utilized, the diaspora will play a significant part in the development of the nation.

5. Citizenship Law in The Gambia

Since The Gambia regained its independent state on 18 February 1965, citizenship has been a topic of discussion in a number of sociopolitical contexts. British citizenship law has a significant impact on citizenship in The Gambia although political and social changes are simultaneously transforming it which include the recent proposals to amend the 1997 Constitution's present citizenship-related clauses. Making citizenship automatic for all people born in the country, regardless of whether their parents are Gambians or not, is one of these proposals. Another suggested adjustment would lower from seven to

[55]Atma Suganda, 2021, "The Principles and Meaning of Indonesian Citizenship Conception According to the 1945 Constitution", Proceedings of the 3rd International Conference on Indonesian Legal Studies., ICILS 2020, Semarang, p. 6

five the number of years that must pass after a person marries a Gambian citizen in order to register for citizenship in that nation.[56]

Majority of Gambian laws and the country's legal system are undeniably influenced by colonial authority. The Gambia's citizenship laws are similarly unable to shed the vestiges of its colonial past. To comprehend The Gambia's citizenship system better, it is important to consider its historical setting. The development of citizenship laws in The Gambia must be examined from two distinct perspectives: the time of colonial rule and the post-colonial period.

The inhabitants of The Gambia, including the Mandinka, Fula, Wolof, Jola, Serahuli and Serer, among others, had an indigenous system of administration of justice that used both customary and sharia laws prior to the formation of British colonial administration. Customary law, which is unwritten and native to the aforementioned tribes among others, was the only law that applied in The Gambia before to the arrival of Islam. On the other hand, shariah was codified but was not a product of The Gambia. Instead, it was a product of Islamic invasion of the country. However, both laws – namely, customary law and shariah – were simultaneously administered to the

[56]Constitutional Review Commission, 2020, Draft Constitution of The Republic Gambia, p. 7, https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5e837b8fc031321ec1faf8e1/1585675156697/CRC+-+FINAL+DRAFT+CONSTITUTION.pdf accessed on 15 November 2023

aforementioned localities.[57] A number of ordinances were passed by the colonial government to bolster their authority over the Colony and the Protectorate.

One of these laws was the Protectorate Ordinance of 1894 which acknowledged the applicability of customary law and procedure throughout the Protectorate insofar as it was not "repugnant to natural justice, equity, and good conscience" or in conflict with any written law that was then in effect in the Colony or Protectorate.[58] This "repugnance to natural justice, equity and good conscience" is still applied as a litmus test on customary laws in determining their acceptance or otherwise in The Gambia. This is recognized in Section 5 of Law of England (Application) Act which is found in CAP 5:01 Volume 1 Laws of The Gambia, 2009.

While customary law was only applied to the indigenous people in the provinces, local colonial laws and received English law were also applied to the provinces as a result of political and constitutional events. Under colonial control, Gambians had various citizenship rights that were applied in various ways. In colonial Gambia, the issue of citizenship is viewed from two perspectives: the residents of the Colony

[57]Flora Ogbuitepu, Guide to Gambian Legal Information, https://www.nyulawglobal.org/globalex/Gambia.html accessed 18 November 2023

[58] Gaye Sowe and Maria Saine, 2021, "Report on Citizenship Law: The Gambia", Research Report, European University Institute, p. 2

territory and its surroundings, as well as those of the Protectorate, were British protected persons, making them subjects.[59]

Towards the era of regaining independence, under the British Nationality Act 1948, unless they possessed a different nationality, Gambia indigenes were either "citizens of the UK and colonies" (CUKCs) if they were born in the colony or "British protected persons" (BPPs) if they were born in the protectorate. However, at the transition to independence, Section 1(1) of the Independence Constitution 1965 attributed citizenship to any person who was before independence a citizen of the UK and colonies, or a British protected person shall become a citizen of The Gambia effective 18 February 1965. Section 1(2) provides for automatic recognition of those who were naturalized citizens of The Gambia under the British Nationality Act 1948 to remain as Gambian citizens. It is obvious in section 3(a) of this same constitution that a person born in The Gambia with neither of their parents a Gambian shall not be citizen of The Gambia. In my assessment, this is one of the conditions that renders some people stateless despite being born in the country. It is worth noting that from 18 February 1965 to 23 April 1970, Sir Dawda Jawara was the Prime Minister as Head of Government while the British monarch still

[59]Fatou Janneh, "The Gambia: Citizenship and Civic Consciousness", Studies in Social Science Research Vol. 2 No. 3, p. 98–99

remained the Head of State. This is where the influence and elements of the Westminster Constitution gain traction in the country.

Soon after regaining independence in February 1965, The Gambia's Head of State and Prime Minister, Sir Dawda Jawara planned to hold a referendum on whether the state should be a republic with an executive president. The proposed republican constitution was opposed at the time by the opposition political parties, and it was rejected by 751 votes in a referendum held in October 1965, just eight months after the country regained independence. By 1969, the republican issue arose again and the government drafted another constitution which was approved by the two-third majority in Parliament. By 24 April 1970, the republican constitution was promulgated thereby making it a republic with indigenous president as head of state and government.

The requirements for citizenship under the constitutions of The Gambia 1965 and 1970 are the same. According to section 5 of Constitution of The Gambia 1970, every person born in The Gambia after 17 February 1965 shall be a Gambian citizen with the same exception as in the 1965 Constitution. Also, when a person was born outside of The Gambia, they automatically became citizens of The Gambia as long as their father was a citizen of the country and had also been born there. Using the procedures outlined by an Act of Parliament, a woman who was married to a Gambian was permitted to apply for

citizenship in that country. Similar to the Independence Constitution of 1965, only women who marry or have married Gambian men are eligible to become citizens under the 1970 Constitution.

Currently in The Gambia, citizenship remains a constitutional edict in Chapter III of the Constitution of The Gambia 1997, and it is categorized into citizen by birth, descent, marriage, and naturalization each having different criteria from another. Citizen by birth requires that one is born in The Gambia after the coming into force of this constitution shall be presumed to be a citizen if at least one of his or her parents is a citizen of the country at the time of birth. Citizenship by descent requires that a person be born outside The Gambia after the coming into force of this constitution, and at the time of his or her birth, one of his or her parents is a Gambian.

Attainment of citizenship by marriage requires that one is married to a Gambia and since marriage, has been ordinarily resident in The Gambia for at least seven years; or was married to a person who was during marriage, a citizen of The Gambia and, since the end of the marriage (whether by annulment, divorce or death), has been ordinarily resident in The Gambia for at least seven years, shall be entitled to Gambian citizenship upon making application to be registered as a Gambian citizen. Citizenship by naturalization requires that a person lives in The Gambia for at least 15 years and is of full age and capacity,

is of good character, has proven that if naturalized, they intend to continue to permanently reside in The Gambia, and is also capable of supporting themselves and their dependents. Without prejudice to the generality of the above requirements for the four statuses of citizenship in The Gambia, anyone born prior to the enforcement of this constitution shall maintain their same status of citizenship or otherwise as provided in the previous constitution.

Aside from citizenship being a constitutional edict, it is also a legislative product in The Gambia Nationality and Citizenship Act CAP. 16.01 Volume IV Revised Laws of The Gambia 2009 which gives a deeper and broader enunciation of the norms and procedures that govern this right. The controversial and yet, pertinent issues of citizenship in both the constitution and the aforementioned legislation centre on the following: (a) the 15 years of residence in The Gambia; (b) the principle of non-recognition of children born in The Gambia whose parents are non-Gambians (ius sanguinis); and (c) granting only Gambian citizens by birth and descent the exclusive right to dual citizenship as provided in Section 13(1) of the Constitution and reaffirmed by Section 10 of The Gambia Nationality and Citizenship Act.

6. Overview of Statelessness

According to Article 1(1) of Convention Relating to the Status of Stateless Persons 1954, a "stateless person" is someone who is not considered as a national by any State under the operation of its laws. There were 3.5 million stateless people in 77 different countries in 2014. According to reports from the United Nations High Commissioner for Refugees, there were 10 million stateless people worldwide prior to 2020. The true number is difficult to estimate since, unlike refugees, stateless people are typically not registered, do not receive legal status, and do not have any documentation.[60] According to projections for 2020, there are at least 15 million stateless people globally.[61] The global trend of statelessness is quite alarming. A country's constitutional system and acknowledged national sovereignty underpin the tie or relationship which is referred to as a political contract by the international community.[62]

According to a few recent studies, statelessness is a prevalent condition that is not getting enough attention. Many issues relating to statelessness in Europe are caused by the absence of effective statelessness determination mechanisms. These include shortcomings

[60]Pristina Widya and Najamuddin Khairur Rijal, "The Role of the United Nations High Commissioner for Refugees (UNHCR) in Dealing with Stateless Problems in Malaysia", Journal of Social and Policy Issues Vol. 2 No. 2, p. 44

[61]Laura van Waas and María José Recalde Vela, "Nationality and Statelessness" In. International Law., Oxford University Press, Oxford, p. 1

[62]Kaysha Ainayya Sasdiyarto, 2017, "Statelessness: International Law Perspective", Juris Gentium Law Review Vol. 5 No. 2, p. 12

in statelessness prevention and reduction, as well as insufficient protection for stateless people.[63] The issue of statelessness has a terrible effect on people's lives all across the world. A multitude of factors, such as discrimination against specific racial or religious groups and conflicts that result in significant numbers of displaced people, can lead to statelessness. Statelessness has major repercussions because individuals who lack a state are frequently denied access to essential rights that are limited to citizens like identity documents, employment in certain sectors of state affairs, education and healthcare. Additionally, it triggers social and political unrest in vulnerable nations all over the world. Large populations being excluded and denied rights owing to statelessness may cause marginalized groups to become radicalized and violently extremist.[64]

When Angola regained its independence, the majority of its local residents lost their Portuguese citizenship. The 1975 Angolan nationality legislation granted citizenship to everyone born there (ius soli) but subsequent modifications in 1984 and 1991 changed this to a

[63]Katja Swider, 2014, "Protection and Identification of Stateless Persons through EU Law", Research Paper, University of Amsterdam, p. 3

[64]Jeri L. Dible, 2016, The Social and Political Consequences of Another Stateless Generation in the Middle East, United States Army Command and General Staff College, p. 1

system based on descent (ius sanguinis) thereby increasing the possibility of statelessness.[65]

7. Causes and Effects of Statelessness

The status of citizenship in modern constitutions and laws has gradually evolved until recently when the law declares some groups of individuals to be neither minorities nor citizens and to be stateless.[66] Statelessness is mostly brought on by direct and indirect discrimination worldwide. Patriarchal nationality rules that restrict or limit women's capacity to obtain, maintain, and pass on their nationality to their children most frequently indicate direct discrimination of both spouses and children. Due to women's frequently subordinate status, there are numerous indirect kinds of discrimination that might affect women's and their children's susceptibility to statelessness. In general, patriarchal practices and deeply ingrained gender inequality expose women to a variety of escalated and compounded statelessness hazards.[67]

As per Bureau of Population, Refugees, and Migration, U.S. Department of State, statelessness is caused by the following: 1) Lack

[65]Michael Offermann, 2022, Statelessness and its risk in Angola and for Angolans living abroad. UNHCR, Luanda, p. 8

[66]Archana Parashar and Jobair Alam, 2019, "The National Laws of Myanmar: Making of Statelessness for the Rohingya", International Migration Vol. 57 No. 1, p. 94

[67]Christina Beninger and Rashida Manjoo, 2023, "The Impact of Gender Discrimination on Statelessness: Causes, Consequences and Legal Responses", AHMR African Human Mobility Review Vol. 8 No. 3, p. 17

of birth registration and birth certificates; 2) Birth to stateless parents; 3) Political change and transfer of territory, which may alter the nationality status of citizens of the former state(s); 4) Administrative oversights, procedural problems, conflicts of law between two countries, or destruction of official records; 5) Alteration of nationality during marriage or the dissolution of marriage between couples from different countries; 6) Targeted discrimination against minorities; 7) Laws restricting acquisition of citizenship; 8) Laws restricting the rights of women to pass on their nationality to their children; 9) Laws relating to children born out of wedlock and during transit; 10) Loss or relinquishment of nationality without first acquiring another.

The increase in the number of stateless people around the world has several effects that have mostly gone unnoticed. Stateless population is the least apparent but most vulnerable population on earth, and it threatens both global security and social harmony with millions. The effects of statelessness may not be limited to the territory of the state in question given the rising interdependence among States.[68] Everyone aspires to be a citizen of a state since it signifies a strong connection to the nation in which they have applied for citizenship. An individual who holds citizenship enjoys the legal protection of their

[68]Bilkis Afroza Siddika, 2019, "Impact of Statelessness: Are We Ready to Face?", Open Journal of Social Sciences Vol. 7 No. 12, p. 1

country even if they are not physically present there. Citizenship can relate to a state legal status that belongs to people who are members of a particular country but not to those who are not members of that country.[69]

Stateless people suffer tremendously as a result of being denied access to education and the absence of the Right to Education among others. Statelessness forces children into a lifetime of marginalization through generations, often being denied an education, or falling victim to vulnerability, crime, and vice, according to reports and research from the United Nations. A child who is stateless lacks a national identity and is essentially non-existent in the country of residence.[70]

Statelessness violates the right to citizenship which is recognized in Universal Declaration of Human Rights, other international agreements, case law and government policy. Stateless people are subsequently prevented from fully participating in public life and are deprived access to fundamental rights including education,

[69]Made Nurmawati, 2022, "Stateless Person in Indonesia: Consequences and Legal Protection", Jurnal Magister Hukum Udayana Vol. 11 No. 1, p. 76

[70]Kanageswary Selvakumaran, Jal Zabdi Mohd Yusoff and Tie Fatt Hee, 2020, "A Legal Perspective on the Right to Education for Stateless Children in Selected ASEAN Countries", Pertanika Journal of Social Science & Humanity Vol. 28 No. 1, p. 361

health, property ownership, and free movement because their right to nationality has been infringed.[71]

In Indonesia to be precise, stateless children who live in its territory and are subject to its legal jurisdiction shall be respected and protected by Indonesia as a state party. On the other hand, children born to refugees in Indonesia have two options for obtaining citizenship status, including giving citizenship through positive law and naturalization under Indonesian laws and regulations, particularly law No. 12 of Year 2006 regarding Indonesia Citizenship. Two challenges, though, stand in the way of these strategies. There is no single law that regulates the process for providing Indonesian citizenship status to children born in Indonesia to parents who are stateless or of unknown nationality. Positive laws are used to confer citizenship.[72] Children born to international refugees in Indonesia who have refugee status cannot be naturalized since there are no standards governing the granting of residence permits and it is difficult for them to find employment. This is as a result of the requirements needed to be fulfilled for naturalization process.

[71]Andrew Songa, 2021, "Addressing statelessness in Kenya through a confluence of litigation, transitional justice, and community activism: reflecting on the cases of the Nubian, Makonde and Shona communities", African Human Rights Yearbook Vol. 5, p. 254

[72]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 Vol. 5 No. 1, p. 23

In The Gambian context, statelessness is being caused by the gaps in the citizenship provisions of The Gambia Nationality and Citizenship Act CAP. 16.01 Volume IV Revised Laws of The Gambia 2009 and Constitution of the Republic of The Gambia, 1997. One of the gaps found during this study is that foundlings' rights are not covered by the law, and it is likely that the citizenship rules do not protect them in this regard. This also applies to children who are found in The Gambia whose parents are unknown. Children born outside The Gambia to Gambian parents are likewise subject to the law's restrictions on the transfer of citizenship to only one generation increasing the likelihood that they may grow up stateless. The law also allows for dual citizenship to be restricted and denied. The loss of citizenship due to fraudulent nationality acquisition puts other people at danger of becoming stateless.

Only Gambians by birth and descent are guaranteed dual citizenship since they are able to keep their citizenship even after gaining another nationality. Otherwise, citizens by marriage and naturalization are denied from acquiring dual citizenship. The negative intrigue of acquiring citizenships by naturalization and marriage is that they can be revoked as provided in Section 13 of the Constitution. It is worth noting that one of the requirements set out for acquiring citizenship by naturalization and marriage is to, inter alia, denounce any

citizenship they had prior to this new status. So, if they lose these citizenship statuses in The Gambia, they are automatically rendered stateless.

Also, according to the Constitution, the naturalization and registration processes might result in statelessness. The primary requirements, which include a lengthier stay period of 15 years, being of legal age and capacity, as well as having excellent moral character, may be difficult for some people to meet. In conclusion, stateless people seeking registration or citizenship in The Gambia are not protected by the Constitution or Article 12 of the Citizenship Act.

The effects of statelessness are quite conspicuous in The Gambia in terms of what it espouses the people to. It might be argued that stateless persons lack identity which prevents them from exercising their fundamental rights accorded to only citizens including the right to obtain free or certain benefits of healthcare and education. A birth certificate or other form of identification must be presented as proof of nationality while taking a school exam or applying for a scholarship. The Gambia is one of many West African countries where child registration is a requirement for them to attend school.

It will be hard for a child who is not registered to receive free medical treatment, especially if they are unregistered. Travel limitations apply to stateless persons since they are unable to cross international

borders without a valid form of identification unless there is an exception, they are fleeing persecution, or they are refugees. The marginalized stateless population becomes radicalized and extremist because of the denial of basic human rights and marginalization in the country.

B. Theories

Generally, there are two different types of citizenship theories: normative theories, which attempt to outline the obligations and rights that citizens ought to have, and empirical theories, which seek to outline and explain how people came to acquire those obligations and rights. The normative models of citizenship that are currently in use have roots in classical Greece and Rome. The formation of democratic citizenship inside Western European nation states is the subject of the most significant empirical hypotheses. These latter theories seek to understand the two prominent normative frameworks as partial manifestations and fusion of the two democratic and welfare regimes that exist today.[73] This is important because these systems of government occupy a significant place in modern governance. These theories include:

1. State Obligation Theory

[73]Richard Bellamy, 2008, "Theories of citizenship and their history", In. Citizenship, Oxford University Press, Oxford, p. 27

The state is a community of individuals, land, and a sovereign government that is located in a region or a particular area. In this instance, the government has the ability and power to control how it operates and control its population. The parties hereto shall always comply with all applicable laws and regulations.[74] A state's obligation to the right to citizenship as a recognized right in Article 15 of Universal Declaration of Human Right anchors on three fundamental norms, that is, the state's obligation to protect, to respect and to fulfil this right. There is a reciprocal relationship between rights and obligations, according to the "correlation theory" put out by utilitarians. They contend that each commitment a person has is connected to each other's rights, and vice versa. Therefore, rights and obligations must be balanced.

John Locke, who wrote in the late 17th century, was the most outspoken early proponent of this viewpoint. "Life, Liberty, and Property" was the order in which he listed these rights in his *Two Treatises on Government (1690)*. Thomas Jefferson included this idea as "Life, Liberty, and the pursuit of Happiness" into the American Declaration of Independence 86 years later. This declaration of the

[74]Ijal Herdiana, Listiawati, Riska Tiara Rahmawatie, Ahmad Lukman Nugraha, 2023, "Harmony of Rights and Obligations of the State and Citizens", International Journal of Civic & Pancasila Studies Vol. 1 No. 1, p. 2

importance of rights in the system of government suggested that government was good insofar as it upheld these rights, a theory that had significant ramifications for both the institutions of government and the ideals they represented.[75] A government whose people have surrendered themselves for its protection must pursue, in the words of Jeremy Bentham, the greatest happiness of the greatest people by securing their right to citizenship and not segregating them.

States engage in a significant portion of what is considered the ideal of international commitments in response to their perceived self-interest, and the commitments of states result in duties and obligations. When a state engages in self-interested behaviour – whether it is laudable or debatable – it creates obligation, which is a moral and legal duty that is acknowledged and actionable by the law. In reality, what actually defines an obligation may not always be the same, executed in the same way by the same persons, or grant the same rights. It is challenging to construct a consistent framework with which to address governmental obligation in all circumstances.[76]

2. Derogation and Limitation Theory

[75]Kevin Harrison and Tony Boyd, 2018, "Rights, obligations and citizenship" In. Understanding political ideas and movements, Manchester University Press, Manchester, p. 124

[76]Marc G. Pufong, 2008, "State Obligation, Sovereignty, and Theories of International Law", Politics & Policy Vol. 29 No. 3, p. 478

A constitution is intended to limit the actions of the states and the extent to which states can derogate certain rights of the people, among other things. It also aims to preserve the constitutional rights of the citizens of the nation. Dealing with constitutional rights issues in a nation requires a strong understanding of the constitutional philosophies of absolute and derogating rights as well as the condition of emergency.[77] A state is not a private enterprise that has the right to arbitrarily admit or exclude members. Instead, as customary international law has grown, governments now have some restrictions on how to grant citizenship. One of the earliest legal instruments to acknowledge these restrictions was the Hague Convention of 1930.[78] According to Article I of this convention, "It is for each state to determine under its own law who are its nationals. This law shall be recognized by other states in so far as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality".

Decisions concerning the acquisition or loss of citizenship will therefore only be accepted to the extent that they are in line with current legal norms. These norms are currently stated in the 1961 United

[77]Ousu Mendy, 2023, "A Comparative Analysis of Constitutional Rights in the Gambia and Indonesia", Constitutionale Vol. 4 No. 1, p. 86

[78]Nafees Ahmad, 2017, "The Right to Nationality and the Reduction of Statelessness – The Responses of the International Migration Law Framework", Groningen Journal of International Law Vol. 5 No. 1, p. 3

Nations Convention on the Reduction of Statelessness and the 1954 United Nation Convention Relating to the Status of Stateless Persons, both of which entered into force in 1960. The norms are:

Modern constitutionalism embraces the theory of derogation and limitation of certain rights of the citizens under certain constitutionally legitimate circumstances. Derogation in this context allows for temporary deviation that limit or detract the right to citizenship while limitation forms justifiable restrictions on the right to citizenship.[79] These clauses, which are referred to as "special measures" as a whole, are intended to achieve a balance between the rights of the person and the responsibilities of the state. The idea that a person owes allegiance to their state has deep historical roots and has been upheld both in theory and in law. Additionally, citizenship revocation has a lengthy history. Even while the definition of allegiance is still elusive, examples like these show that, despite modern tolerance of dual citizenship, the fundamental idea that commitment to the state must be unbroken and solemn has persisted. The notion that conducts affect citizenship is also not new.[80] This is so because certain rights are not absolute without the people contributing positively to their realization.

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[79]Gemmo Bautista Fernandez, 2019, "Within the Margin of Error: Derogations, Limitations, & the Advancement of Human Rights", Philippine Law Journal Vol. 92 No. 1, p. 4

[80]Helen Irving, 2019, "The concept of allegiance in citizenship law and revocation: an Australian study", Citizenship Studies Vol. 23 No. 4, p. 372

Human beings cannot coexist peacefully without laws restricting their personal freedoms due to their conflict-prone nature. Every Bill of Rights considers the protection of the public interest and the rights of individuals, striking a balance by allowing the government to restrict rights in certain situations. Typically, rights are limited and derogated in the form of general limitation clauses that apply to all rights or particular restriction clauses that only apply to certain rights. Therefore, it is acceptable to assume that the goal of restricting rights is to allow for humanity's self-preservation.[81] So, while there is advocacy on the right to citizenship, this does not ex cathedra overshadow the interest of the public. This is often associated with the common Latin cliché of *Pro bono publico* (that is, for the good of the public).

It is widely acknowledged that those affected by catastrophic disasters continue to have their rights protected. However, national and international legal frameworks provide for the potential of limiting or suspending some rights in order to protect general social interests like public order and decency. The type and extent of these restraints vary depending on the current situation, with more dire conditions allowing for more stringent restrictions.[82]

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[81]Odhiambo Brian Patrick, 2015, The Limitation of Rights under the Kenyan Constitution, University of Pretoria, p. 9

[82]Emanuele Sommario, 2018, "Limitation and Derogation Provisions in International Human Rights Law Treaties and Their Use in Disaster Settings" In. Routledge Handbook of Human Rights and Disasters., Abingdon, Oxon; New York, NY: Routledge, p. 98

3. Theory of Legal Protection

Legal protection of the rights of people is a significant pillar of the rule of law. Legal protection of rights occupies a significant space in modern constitutional development. The state organization did not exist before the constitution. Because the government was established in accordance with the terms of the Constitution, Thomas Paine said that the Constitution existed prior to the establishment of government. He also made an additional argument in favour of the idea of the constitution as a social contract, saying that a constitution is not the act of government but of a people creating a government and a government without a constitution is a power without right.[83] A national law that is void of legal protection is a law that is doomed and cannot withstand the test of constitutionalism and constitutionality.

John Locke asserts that the power of the ruler conferred by a social contract cannot be absolute on its own. This idea of recognition later included the idea of legal protection by the State. The reason for the existence this power is to protect, inter alia, the right to citizenship from any threats it may face, both internally and outside. The state's laws are also responsible for defending these fundamental freedoms.[84]

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[83]Leli Tibaka and Rosdian, 2018, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia", FIAT JUSTISIA: Jurnal Ilmu Hukum Vol. 11 No. 3, p. 268

[84]Safrin Salam, 2023, "Legal Protection of Indigenous Institutions in the Frame of the Rule of Law (Perspective of Legal Protection Theory)", Cepalo Vol. 7 No.1, p. 69

As demonstrated above using John Locke's concept of protection, state law is required to defend human beings' inherent rights. In order to understand how the protection theory of John Locke relates to the laws that States have passed to give their citizens legal protection, both a legal and a sociological analysis are required.

In the theory of law, there is ongoing debate over how to conceptualize "legal protection" and how it relates to the idea of "legal defense" at this point in knowledge development. According to this theory, there are regulatory and protective processes governing legal relations and standards.[85] The direction of legal influence aiming to protect the relationship between individuals and States, their inalienability of their right to citizenship and, consequently, the displacement of relations alien to society is how the protective function of law operates.

Constitutional rights analysis is a crucial component of the legal process in any nation with a Bill of Rights. There continues to be a contention to uphold these rights consistently and occasionally, the underlying justification is lost as more and more countries pass human rights legislation and sign on to international human rights conventions. As the first written constitutions emerge, ideas concerning the necessity

[85]Anastasia E. Semyonovykh, 2022, "Legal Protection and Legal Defense: Approaches to the Study of Concepts", SHS Web of Conferences 134, p. 1

for unique safeguards to defend the Constitution start to take shape. The study of constitutional protection reveals the legal strategies available to defend the values and principles of the constitution. As soon as the first constitutions appeared, ideas for legal protection in the Constitution emerged. They were enacted gradually, either by finding their embodiment in the constitutional language itself or by adopting judicial practice as it evolved.[86]

4. Natural Law Theory

The right to citizenship can be understood in the context of John Locke's theory of natural rights on "liberty" as a Second Generational Rights. Locke makes the claim that all people are born with certain inalienable inherent rights, including the right to citizenship, and that no government has the authority to revoke these rights in his work "The Second Treatise of Civil Government and a Letter Concerning Toleration". The state is given the responsibility for this inalienable right to citizenship through a social contract.[87]

The theory of natural theory can be taken back to ancient times with Stoic philosophy down to modern times through the writings of

[86]S. G. Trifonov, 2021, "The Constitution as an Object of Legal Protection: The Historical and theoretical Aspect" Scientific Notes of V. I. Vernadsky Crimean Federal University. Juridical Science, Vol. 6(72) No. 3, p. 30

[87]Syafrinaldi and Syafriadi, 2018, The Concept of Human Rights, Democracy, and the Rule of Law. Internationalization of Islamic Higher Education Institutions Toward Global Competitiveness" Semarang, p. 275

naturalists like Saint Thomas Aquinas. Thomas Aquinas' work was later developed by Hugo de Groot, a Dutch jurist, by breaking down Aquinas' thesis. It is on the basis of this that John Locke developed his ideologies on the theory of natural rights which arise from natural law forming the basis of the emergence of the revolution of rights in the revolutionary moments. Acquinas contends that natural law, which is determined by a rational evaluation of the common good, gives human laws their legal status and ability to bind people in conscience.

Humans are endowed with rights that they enjoy just by virtue of being human which is fundamental to the idea of natural law. They naturally result from the single fact that man is man, which is from the necessary purposes defined by human nature. The right to citizenship cannot be an exemption to this. In fact, this is well advocated by philosophers of the Renaissance era to ensure inclusivity as against discrimination.

Though the concept of moral rights can be applied to a broader canvass beyond mankind, historically, philosophers have been most interested in the moral rights that humans enjoy. Of those rights, the theory of natural rights and human rights have received the much attention and significance especially among political philosophers.

Those two categories of right are interconnected. The theory of natural rights is deemed to be the foundation of the concept of human rights.[88]

5. Social Contract Theory

The ideology that people's moral and, or political obligations rely on a contract or agreement among them to create the society in which they live is known as social contract theory, which is almost as old as philosophy itself. Political theory has always viewed the notion of the social compact as establishing the moral foundation for political order and justifying the use of governmental power.[89] The legitimate origin of citizenship and its relationship with the State is articulated by the Genevois philosopher, Jean-Jacques Rousseau in his political exposition, wherein we find the theory of social contract.

The understanding of the modern concept of citizenship is mostly based on sociohistorical and, to a lesser extent, legal approaches, and the philosophical approach does not make as significant of a contribution as we would want. The new idea of citizenship is fundamentally influenced by Hobbes' political philosophy. Because of these consequences, Thomas Hobbes may be credited as the creator of the current concept of citizenship. It appears that he founded his role as

[88]Peter Jones, 1994, "Natural Rights and Human Rights", In. Rights: Issues in Political Theory, Palgrave, London, p. 72

[89]Mark E. Button, 2008, Contract, Culture, and Citizenship: Transformative Liberalism from Hobbes, Penn State University Press, Pennsylvania, p. 27

the creator of the contemporary concept of citizenship on two ideas: The first is the concept of "individual", which is one of the most crucial points of rupture between the new political philosophy and the pre-modern one and serves as a significant pillar for several novel ideas, such modern citizenship. The second is the substitution of natural rights for natural law or the natural right's subordination to natural law. The modern state that is built on the individual was transformed as a result.[90]

[90]Shervin Moghimi Zanjani, 2918, "Thomas Hobbes and Founding of New Idea of Citizenship", Contemporary Political Investigation Vol. 8 No. 26, p. 109