


Ideal Government Policy In Fulfilling The Social and Cultural Economic Rights of Sangir Philippine Citizens

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Abstract

Introduction: Fulfillment of economic, social and cultural rights is a reflection of guaranteeing human rights. However, the economic, social and cultural rights of every citizen must be supported by their status as a citizen. Because a person's citizenship status has the effect of giving them a number of rights as a citizen. This problem occurs for Sangir Filipino residents whose citizenship status is unclear.

Purposes of the Research: Is to examine and analyze the ideal policies taken by the government, especially the regional government of Bitung City, North Sulawesi Province, in addressing issues that provide economic, social and cultural rights for Sangir Filipino residents who have unclear citizenship status, so that this has an impact. on Providing their rights as part of providing human rights.

Methods of the Research: In this research is normative juridical research using statutory regulations and a contextual approach. The sources of legal materials used in this research are primary legal materials, secondary legal materials and tertiary legal materials. This legal material was obtained through literature review and then explained qualitatively.

Results of the Research: Show that the citizenship status of Sangir Filipino residents does not clearly have an impact on the provision of economic, social and cultural rights. There is a need for policies by the Regional Government and the Central Government, such as updating national laws that simplify the citizenship registration process, providing outreach to Sangir Filipino residents about the importance of a clear citizenship status, and the need for participation from all elements of society in order to overcome this problem.

Keywords: Ideal Policy; Rights; Citizens; Sangir Philippines.

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INTRODUCTION

Citizenship status is one part of human rights arrangements that must be recognized, fulfilled, protected and respected by the state. An individual who does not have citizenship or the condition of someone without citizenship or known as a stateless person can create conditions where their rights cannot be fulfilled. Even though the state guarantees protection and fulfillment of their rights as citizens. The realization of the ideals of a rule of law through the protection of human rights is also carried out by ratifying several international instruments that regulate the protection of human rights. one of them was by ratifying the International Covenant on Economic, Social and Cultural Rights in 1966 which was followed up by the establishment of Law Number 11 of 2005 concerning Ratification of the Covenant on Economic, Social and Cultural Rights, and ratifying the International

Covenant on Civil and Political Rights in 1966 which was followed up with the establishment of Law Number 12 of 2005 concerning Ratification of the International Covenant Concerning Civil and Political Rights. In this case, the UDHR is soft law, that is, a source of law with weak binding force from a legal perspective, which is then further elaborated in various covenants which become hard law with strong binding force from a legal perspective.

Even though Indonesia has regulated and ratified human rights instruments that regulate citizenship, the issue of citizenship remains a serious problem. One of them is a stateless person or stateless person of Filipino Sanger descent who resides in Bitung City. Bitung City is one of the cities in North Sulawesi Province which is developing rapidly because of the presence of a sea port which encourages accelerated development. The city of Bitung relies on the fisheries and marine sectors, with some of its residents living on the coast and making their living as fishermen.

Sanger Filipinos are residents who live in several districts in the province of North Sulawesi. The existence of Sanger Filipinos in North Sulawesi has a long history and to this day their existence still exists and is even increasing in North Sulawesi Province, including in Bitung. Their existence goes through a long history that began with mobility between countries, naturally not based on legally bound territorial boundaries. The mobility of undocumented citizens in cross-border activities has been going on for a long time, even before Indonesia and the Philippines became independent, so that the citizens of these two regions are tied historically and genealogically. This mobility actually became a polemic after Indonesia and the Philippines became sovereign countries and Sangihe and Talaud provinces of North Sulawesi changed their status to border areas and activities in this area began to be limited by positive laws that applied in their respective regions.¹ There are several previous studies that discuss the fulfillment of rights as citizens, but they are different from this paper. Research conducted by Femmie Cynthia on dual citizenship status in Indonesia outlines in general how dual citizenship status is regulated in Indonesia and the exceptions.² Furthermore, research conducted by Marianus Watungadha et al, which discussed the citizenship status of former East Timorese refugees, concluded in their research that all former East Timorese refugees who were domiciled in Belu Regency had become Indonesian citizens.³ Research on citizenship ambiguity was also carried out by Rendra Marliyanto et al, but the discussion was more general in nature by examining the citizenship status of stateless people based on Law No. 12 of 2006 concerning Indonesian Citizenship. ⁴ Furthermore, Misyanto's object of study in his research turned out to be the same as the author, namely the Sangir Filipinos (who live in the Indonesia-Philippines border area). However, Misyanto further studied and analyzed statelessness on the Indonesia-Philippine border in supporting national defense stability.⁵

¹ Pristiwanto, *Mobilitas Undocumentes Citizen Di Wilayah Perbatasan Indonesia-Filipina* (Yogyakarta: Kepel Press, 2015), p. 2.

² Femmie Cynthia, "Status Kewarganegaraan Ganda Di Indonesia," *Jurnal Hukum Adigama* 4, no. 2 (2021): 2223-45, <https://journal.untar.ac.id/index.php/adigama/article/view/17156>.

³ Marianus Watungadha, "Status Kewarganegaraan Orang Yang Tinggal Di Daerah Perbatasan Antara Republik Indonesia Dan Republik Demokratik Timor Leste (Studi Kasus Eks Pengungsi Timor Timur)" (Fakultas Hukum Universitas Atma Jaya Yogyakarta, 2014), <https://e-journal.uajy.ac.id/5921/>.

⁴ Rendra Marliyanto, Antikowati, and Rosita Indrayati, "Analisis Yuridis Status Kewarganegaraan Terhadap Orang Yang Tidak Memiliki Kewarganegaraan (Stateless) Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia" (Fakultas Hukum Universitas Jember, 2013), <https://repository.unej.ac.id/handle/123456789/58687>.

⁵ Misyanto, "Statelessness Di Perbatasan Indonesia - Filipina Dalam Mendukung Stabilitas Pertahanan Negara," *Jurnal Inovasi Pertahanan* 8, no. 2 (2022): 80-89, <https://www.kemhan.go.id/balitbang/wp-content/uploads/2023/01/Jurnal-Inovasi-Pertahanan.pdf#page=90>.

The research conducted by the author more specifically examines and discusses the citizenship status of Sangir Filipino citizens in terms of fulfilling their economic, social and cultural rights as citizens. The lack of clarity in citizenship status has implications for the fulfillment of their rights as human beings, such as economic, social and cultural rights. This is the author's concern to study and analyze in more depth the ideal policies implemented by the Government in fulfilling the economic, social and cultural rights of the citizens of Sangir Philippines. As stated in Paragraph IV of the Preamble to the 1945 Constitution (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia) which essentially emphasizes that the aim of the Indonesian state is to protect the Indonesian nation, general welfare, intelligence and world order. Regulations regarding Human Rights in Indonesia have found a place in the constitution, namely in Chapter X.A, the 1945 NRI Constitution, starting from Article 28A to Article 28J.⁶

METHODS OF THE RESEARCH

This research is normative juridical in nature, by conducting an in-depth examination of legal facts, to then seek a solution to the problems that arise in the phenomenon in question.⁷ This research is also complemented by socio-legal studies which are an alternative approach that examines doctrinal studies of law.⁸ This research is normative in nature, but still requires field data to support and complete the author's analysis. The approach used in this research is a statutory approach and a conceptual approach. The aim of this research is basically to provide a concept that can be a reference for finding what should be done.⁹ The technique for collecting legal materials is carried out through literature study, but it still requires supporting data in the field obtained through observation and interviews. Next, it was analyzed qualitatively.

RESULTS AND DISCUSSION

A. State Obligations in Fulfilling the Social, Economic and Cultural Rights of Sanger Filipino Citizens

Economic, social and cultural rights are human rights related to socio-economic and cultural aspects, such as the right to education, the right to housing, the right to an adequate standard of living, the right to health and the right to participate in cultural life. Economic, social and cultural rights are recognized and protected by international and regional human rights instruments.¹⁰ Economic, social and cultural rights are usually categorized as positive rights (Positive Rights) which are formulated in the language "rights to", while civil and political rights are categorized as negative rights (Negative Rights) which formulated in the language of "freedom from". As positive rights, economic, social and cultural rights are understood as rights that cannot be demanded in court (non-justicible), in contrast to civil and political rights, as negative rights, can be demanded in court before the court.¹¹

⁶ Nurul Qamar, *Hak Asasi Manusia Dalam Negara Hukum Demokrasi (Human Rights in Democratic Rechtsstaat)* (Jakarta: Sinar Grafika, 2013), p. 6.

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI- Press, 2010), p. 43.

⁸ Sulistyowati Irianto et al., *Kajian Sosio-Legal* (Denpasar: Pustaka Larasan, 2012), p. 2-3.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016), p. 89.

¹⁰ Scott Leckie and Anne Gallagher, *Economic, Social, and Cultural Rights: A Legal Resource Guide* (Philadelphia: University of Pennsylvania Press, 2006), p. 65.

¹¹ I Made Subawa, "Hak Asasi Manusia Bidang Ekonomi Sosial Dan Budaya Menurut Perubahan UUD 1945," *Kertha Patrika* 33, no. 1 (2008): 1-7, <https://doi.org/10.24843/KP.2008.v33.i01.p05>.

Fulfillment of socio-economic rights is a unified process that provides and provides freedom and independence for rights holders, so standards continuously become an opportunity to improve the quality of life. These three points must be fulfilled to achieve an ideal decent life. The standard position in such conditions is not sufficient to provide certainty in the implementation of the principles in the reality of society.¹² Reflection and transformation of economic, social and cultural rights including freedom, availability, accessibility and suitability. The following is an explanation of the four standards:¹³ 1). Freedom: Formal rules are intended to explain the extent of the state's responsibilities and commitment to guaranteeing rights. In the context of fulfilling rights, this means that the state also limits people's ways of fulfilling eco-social rights. This pattern only creates dependency which further impoverishes citizens' independence; 2). Availability: The state guarantees that the framework for fulfilling rights is fulfilled, which is a commitment to providing needs. The needs in question include facilities, institutions, bodies and organs that are able to support the fulfillment of eco-social rights. In the context of fulfilling the right to education, for example, the element of availability is related to how the state is able to provide educational facilities to support educational programs in sufficient and appropriate quantities; 3) Accessibility: The resources provided must also be accessible to every citizen. Weaknesses and limitations as a result of competing social structures in society and the free market must not be an excuse to allow groups to not have access to eco-social rights; 4) Suitability: The role of the state is to determine the direction and objectives of fulfilling eco-social rights. The challenge that arises is the suitability of standards and the methods used to fulfill rights.

Human rights are based on the concept that every state has an obligation to respect human rights and that other states and the international community have the right and responsibility to protest if these obligations are not carried out in accordance with original expectations. The government has responsibility for the protection, promotion, enforcement and fulfillment of human rights as confirmed in Article 8 of Law Number 39 of 1999. The government's obligations and responsibilities include effective implementation steps in the legal, political, economic, social and cultural fields, and security and other areas of development as confirmed in Article 72 of Law Number 39 of 1999.

Regarding the issue of stateless persons, residents of Sangir Philippines who also have human rights that must be protected, we will first discuss the position of international law in national law, of which there are two theories, namely the theory of incorporation and the theory of transformation. The incorporation theory is a continuation of the monist view which considers that international law is part of national law because the two are one unit. So that international law applies in national law automatically. Meanwhile, transformation theory is a continuation of the idea that international law and national law are two different and independent types of law. So that the application of international law to national law must first obtain approval from the legislature.¹⁴ Stateless persons are entitled to protection based on the Convention Relating To The Status Of Refugees 1951. Likewise, the issue of protection for stateless persons can be seen in the Convention Relating To The Status Of Stateless Persons 1954. The national legal instrument that regulates foreigners can be seen

¹² Ramdlon Naning, *Gatra Ilmu Negara* (Yogyakarta: Liberty, 1983), p. 43.

¹³ James Reinaldo Rumpia and H. S. Tisnanta, "Hukum Dan Bahasa: Refleksi Dan Transformasi Pemenuhan Hak Ekonomi, Sosial Dan Budaya," *Lentera Hukum* 5, no. 2 (2018): 230-47, <https://doi.org/10.19184/ejrh.v5i2.7534>.

¹⁴ Khalid Fadri Siddiq and Budi Ardianto, "Stateless Person Dalam Tinjauan Hukum Nasional Dan Hukum Internasional Di Indonesia," *Jurnal Uti Possidetis: Journal of International Law* 1, no. 3 (2020): 277-309, <https://doi.org/10.22437/up.v1i3.10873>.

in Law Number 6 of 2011 concerning Immigration. There is also Law No. 12 of 2006 concerning Citizenship, which in our national law does not recognize stateless people or dual citizenship, this is different from international legal instruments which recognize these two things. However, the Citizenship Law adheres to a number of universal principles, namely; 1) The principle of *jus sanguinis* (law of the blood) is a principle that determines a person's citizenship based on descent, not based on the country of birth; 2) The principle of *ius soli* (law of the soil) is a limited principle that determines a person's citizenship based on the country of birth, which applies to children in accordance with the provisions regulated in this Law; 3) The principle of single citizenship is the principle that determines one citizenship for each person; 4) The principle of limited dual citizenship is the principle that determines dual citizenship for children in accordance with the provisions regulated in this Law.

Thus, the recognition in international law of citizenship status, whether stateless or dual citizenship, has an impact on the fulfillment and protection of their rights as human beings. On the other hand, in the absence of recognition in national legal instruments, it will be difficult to fulfill and protect their rights as citizens, including rights in the economic, social and cultural fields.

B. Role of Regional Government

The existence of stateless persons in Bitung is a reality that cannot be denied. Their existence has gone through a long history which shows their attachment to North Sulawesi Province. To be able to obtain socio-economic and cultural rights, they must become Indonesian citizens. In the framework of natural law, reasons of sovereignty should not hinder the enforcement of human rights considering that human rights are an inherent part of every individual, whether he is part of a state entity or not. In the view of researchers, the failure to fulfill the economic, social and cultural rights of stateless persons can give rise to various problems, including: 1) Lack of education will cause their children to grow up uncontrolled and be very vulnerable to bad influences such as narcotics or terrorism; 2) The very low level of economic life will make stateless people very easily influenced to commit criminal acts that are detrimental to the people of Bitung City; 3) without paying attention to them will cause them to not have a sense of love for the country so that at any time they can do things that are detrimental to the nation and state; 4) Their illegal status will prevent them from participating in development. The regional government of Bitung Regency in reality shows that: a) The Bitung City Government does not have a policy regarding undocumented persons; b) The Bitung City Government only records undocumented persons when there is a request for data on the number of undocumented persons by the Regional Office for Law and Human Rights of North Sulawesi Province; c) Request for undocumented person data by the Regional Office for Law and Human Rights of North Sulawesi Province to the Bitung City Government when there is a policy or program to explain citizenship status; d) There is no special policy for dealing with stateless persons.

Apart from the Bitung City government, the party that has authority regarding citizenship is the Regional Office for Law and Human Rights of North Sulawesi Province and regarding stateless persons in Bitung City, there are several conditions related to the policies of the Regional Office for Law and Human Rights, namely: 1) The opportunity has been opened for citizens without documents to register themselves as Indonesian citizens, but due to a lack of socialization, knowledge and approach by the government, information

cannot be directly obtained by stateless persons; 2) Socialization of the Regional Office of Law and Human Rights of North Sulawesi Province only to the Bitung City government, in this case to sub-district heads, village heads and related agencies; 3) Socialization is not provided directly to undocumented people, so that information on programs explaining citizenship status is not known to stateless people.

To overcome the increasingly protracted problems related to the existence of stateless persons in Bitung City, it is necessary to have a policy model for handling them, namely: 1) Form a national policy through naturalization for undocumented persons in Indonesian territory (domestic). This requires cooperation from various agencies (across agencies), for example the Ministry of Law and Human Rights, including immigration, local government, police, academics, NGOs working in the field of human rights. Steps for handling the settlement of people without citizenship status include: a) Data collection, in the form of recording the total number of stateless persons in the North Sulawesi Province area; b) Education, stateless citizens are educated about the importance of citizenship status, the rights that can be fulfilled if they have citizenship status, then they are given the choice of whether they want to become Indonesian citizens or become Filipino citizens. If they do not want to choose to become Indonesian citizens, they must leave Indonesia; c) Naturalization is for stateless persons who have lived in Indonesia for a long time without going through an application but the initiative comes from the government and the stateless person only needs to give consent to become a citizen; d) Resocialization, for undocumented persons who choose to become Indonesian citizens, they are given socialization about the rights and obligations of being an Indonesian citizen; e) Assimilation is a process of adapting one's original characteristics to the characteristics of the surrounding environment. These characteristics will form social order, including culture and habits where stateless people who are married to local residents or the surrounding community must adapt and blend in with the culture of the local community. 2) Form of cooperation with the Philippine government (Overseas), namely renewing the cross-border agreement with the Philippines according to the current situation and conditions of the border area, then adding a clause for resolving the citizenship status of Undocumented persons in each country because if it is not resolved between the two Indonesia and the Philippines, the problem of undocumented persons will not be resolved. For this reason, cooperation between the two countries is needed regarding cross-border and undocumented person issues which have been a problem for the two countries for years; 3) A time period must be given for implementing the policy, for example two years are given so that the problem of stateless residents can be resolved completely.

C. Citizenship Status in Malaysian Legal Perspective

In Malaysian institutions, there are 4 ways to obtain citizenship status, namely: ¹⁵ a) *Ius Soli*; Based on this principle in the Malaysian constitution, people born in Malaysia between Independence Day, August 31 1957 and October 1962, automatically become Malaysian citizens without regard to the nationality of their parents. This is in accordance with Institutional Deed (pindaan) No. 14 1962. It is different if the person was born after November 1962, then they must fulfill several requirements as contained in Part I of the Second Schedule, namely: (1) When he was born, one of his parents was a citizen; (2) When

¹⁵ Mohd Zalani Bin Junoh, "Hak-Hak Dasar Kewarganegaraan Malaysia Di Dalam Perspektif Fiqih Siyarah" (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah, 2011), <https://repository.uinjkt.ac.id/dspace/handle/123456789/4490>.

he was born, one of his parents was someone who lived in this country; (3) Due to her birth, she does not have citizenship of any country. b) *Ius Sanguinis*; Based on this principle, a person whose descent is a citizen will remain a citizen, even though he was born abroad, because his father's citizenship was inherited by him. Based on the institution, a person born abroad can become a citizen if his father is a citizen and one of the conditions is met (as regulated in Article 1 (1) (d) and (e) Part I and Article 1 (b), (c) and (d) Part II): (1) His father himself was born in Malaysia; (2) His father held a position in the government or state government; (3) His birth is registered at the Malaysian consul's office or with the Malaysian government within one year after his birth or within a longer period if permission is obtained from the government. As regulated in Article 1 (1) (e) Part I and Article 1 (c) Part II, Second Schedule of the 1962 Institutional Deed (Pindaan) (No.14 1962). c) Marriage; Based on this principle, a foreign woman can become a citizen if she marries a male Malaysian citizen and meets the following requirements: (1) The husband became a citizen in October 1962 or earlier and the marriage is still permanent; (2) The foreign woman had lived in the Malaysian community for 2 years before the application was made and her intention was to live permanently in the Malaysian community and be of good character. d) Naturalization ; Based on this principle, Article 19 of the Federal Constitution, foreigners aged 21 years or over may make an application to become a citizen, with the following conditions: (1) He has lived in the Fellowship for the previous 12 years from and up to the date of the application not less than 10 years; (2) Intend to live permanently in this country; (3) Be well behaved; (4) Have good Malaysian language skills.

One of the stateless problems faced in Malaysia is the case of the stateless community which continues to grow in the state of Sabah, Malaysia. In the 1970s the State government allowed Filipino refugees from Mindanao to enter Sabah. As time went by, in 1985, their arrival was no longer as refugees but as economic migrants. A number of documents are issued to residents of Filipino descent in Sabah, such as the Kad Burung-Burung, under the Sabah Chief Minister's Department, and the Sijil Banci by the National Security Council of Malaysia (NSC). However, obtaining these documents is not easy, plus the application is not transparent and unclear, resulting in an increase in the number of stateless people in Sabah.¹⁶

The Malaysian government has made a number of efforts to overcome the problem of statelessness for citizens of Filipino descent in Sabah. Such as providing shelter for these children so that they no longer live on the streets and also to hold their parents accountable. In terms of health services, policies during the pandemic that state that no one should be left behind even if they do not have documented status, are steps which the Malaysian government has taken so that even citizens without citizenship status can be served. In 2018, the Ministry of Education introduced the No Refusal Policy to allow students with Malaysian citizen parents to enter state schools. However, the policy does not currently apply to stateless children. Access to education for stateless children can only be enjoyed up to elementary school level and is supported by various communities and alternative learning centers that provide basic education for stateless children.¹⁷

¹⁶ Aime Marisa Chong, Stephanie Joseph Benedict, and Mary Anne K. Baltazar, "Sabah's Stateless Issue: Navigating a Complex Legal Landscape for Basic Rights," <https://www.hurights.or.jp/>, 2023, <https://www.hurights.or.jp/archives/focus/section3/2023/03/sabahs-stateless-issue-navigating-a-complex-legal-landscape-for-basic-rights.html>.

¹⁷ *Ibid*

CONCLUSION

In efforts to uphold human rights, especially the economic, social and cultural rights of stateless persons in Bitung, real and systematic efforts need to be made by all relevant parties, including the regional government. Citizenship issues are not within the authority of the regional government, but guaranteeing security and order for all communities in the region is the responsibility of the government so that the regional government needs to take an important part in efforts to fulfill the economic, social and cultural rights of stateless persons in Bitung. It can be taken into consideration in the citizenship process that Stateless Persons in Bitung City have lived in Bitung City for a long time, have interacted with residents, there are even many of those who are married who have children but cannot register their marriage so this can create new problems for Bitung City government. The Government's ideal form of policy in fulfilling the Economic Rights of Sanger Filipino citizens is 1) a policy in the form of national legal reform that makes it easier for stateless persons to obtain citizenship, 2) legal reform that allows the granting of citizenship by taking into account socio-cultural aspects using indicators of the period of time for stateless persons residing in Indonesia, 3) increasing the role of local governments to carry out outreach and communication programs with stateless persons to increase their awareness of obtaining citizenship status.

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