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NAJAMUDDIN KHAIRUR RIJAL - The Role of the United Nations High Commissioner for Refugees (UNHCR) in Dealing with Stateless Problem in Malaysia

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The Role of the United Nations High Commissioner for Refugees (UNHCR) in Dealing with Stateless Problems in Malaysia

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ABSTRACT

This study discusses the role of the United Nations High Commissioner for Refugees (UNHCR) in dealing with stateless problems in Malaysia from 2014-2017. As an international organization, UNHCR deals with stateless issues, namely people who are not considered citizens by any country according to their legal operations. The research method used is descriptive-qualitative. The results found that UNHCR performed its role as an information provider, law enforcer, and policy implementer. As an information provider, UNHCR carries out the #Ibelong campaign and provides information about its partners. As a rule enforcer, UNHCR encourages Malaysia to ratify the stateless convention and provide legal assistance. As a policy implementer, UNHCR carries out mapping projects and provides funding for stateless programs.
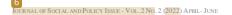
INTRODUCTION

A stateless person is a person who is not considered a citizen by any country according to its legal operations. Stateless does not have self-identity, as evidenced by not having a valid official document from a country concerned. In 2014 there were 3.5 million stateless persons from 77 countries (UNHCR, 2014b). The number of stateless persons worldwide reaches ten million, this is based on estimates from the United Nations High Commissioner for Refugees (UNHCR). It is difficult to estimate the true number because, unlike refugees, stateless persons in most countries are unregistered, not granted legal status, and are not documented.

One country that has a problem with statelessness is Malaysia. Malaysia is known as a country that depends on millions of migrant workers. These migrant workers are largely believed to be in the country illegally, either entering without the proper documents or staying on after expiry and for generations (Peter, 2020). However, most stateless persons in Malaysia are not foreigners or migrant workers (Paulsen, 2019). They are people who have lived a long time and most of them were born in Malaysia. These people could not prove their citizenship because they did not have documents, even though they were originally Malaysians. When Malaysia became independent in 1957, they did not immediately register themselves as citizens, so this stateless problem continued for generations.

Based on data from UNHCR's Global Trends, stateless persons in Malaysia in 2014 were estimated at 40,000 people. After the collaboration with local Malaysian NGOs, UNHCR was able to identify the number of stateless, namely in 2015 there were 11,689 individuals, in 2016 there were 10,931 individuals and in 2017 there were 10,068 individuals (UNHCR, 2014b). This number only includes the Indian Tamil community in western Malaysia, while for eastern Malaysia it is unknown. The citizenship law in Malaysia is one of the barriers for stateless persons. Malaysia has the legal principle of jus sanguinis, which means that the acquisition of citizenship is determined by lineage or family (Bonasir, 2020). Whereas stateless in Malaysia mostly have limited access to information about their lineage and background.

Under the Malaysian Constitution, any person born in Malaysia who is not born as a citizen of another country and who does not acquire another nationality within one year after birth is a Malaysian citizen by law. But in some cases, this rule does not apply, Malaysia has a high standard of proof for stateless (Leong, 2020). In addition, Malaysia's National Registration Department has a procedure that requires the presence of two witnesses, who are at least 15 years older than the subject for late birth registration (Sinapan, 2020). Those born in Malaysia before 1957 remain stateless because they cannot find witnesses to support their application. They must show that the witness is older than the applicant, meaning they are over 64 at least if they were one year old at the time.

To deal with the stateless in Malaysia, the role of the United Nations High Commissioner for Refugees is needed. The General Assembly of the United Nations has given a mandate to the United Nations High Commissioner for Refugees to protect and guarantee the rights of the stateless person. Stateless persons are one of the groups that are of concern to UNHCR. UNHCR's mandate is based on a series of General Assembly Resolutions, notably Resolutions 50/152 of 1995 and 61/137 of 2006 which entrusted UNHCR with responsibility for stateless issues (UNHCR, 2014a).

Given the decline in the number of stateless in Malaysia from 2014 to 2017, as well as the #Ibelong campaign program to end stateless from UNHCR which began in 2014, the purpose of this study is to find out how the role of UNHCR in dealing with

stateless problems in Malaysia in 2014 to 2017. The author chose the country of Malaysia to study because he saw the legal standards for having citizenship in Malaysia which are difficult to reach for the stateless and most of the stateless are native Malaysians. The Malaysian Federal Government first issued the India Malaysia blueprint in 2017 containing a faster permit system to grant citizenship to Indians living or born in Malaysia before1957 (The Arabian Post, 2017). This shows the progress of the Malaysian Government in dealing with the stateless problem (Jayasooria, 2017). All previous efforts stemmed from the aspirations of political parties, academics, or civil society who lobbied the government to address stateless issues.

Furthermore, several previous studies discuss the role of UNHCR, specifically relating to stateless and handling refugees (Bakhsh & Safdar, 2020; Chimni, 1993; Faruque, 2020; Shabrina et al., 2018; Stevens, 2016; Subkhi & Harmiyati, 2020; Sutiarnoto et al., 2020) However, none of these studies specifically discusses UNHCR in Malaysia. Meanwhile, research on the stateless in Malaysia was found in several studies. Meanwhile, research on the stateless in Malaysia was found in several studies (Allerton, 2014, 2017a, 2017b; Duraisingam, 2016; Khoso & Hussin, 2020; Liew, 2019; Rahmat et al., 2021; Sopyan, 2022; Yusoff et al., 2019). However, there has also been no study on stateless in Malaysia concerning the involvement and role of UHCR

METHOD

This research uses a descriptive research type. Descriptive research is research that has the aim of describing or explaining various natural phenomena or existing man-made phenomena. These phenomena are objects of form, activity, characteristics, relationships, similarities, and differences from one phenomenon to another (Ikbar, 2014). This study describes how the role of UNHCR in dealing with stateless problems in Malaysia from 2014-2017.

Data collection techniques used through literature study, namely data collection techniques by searching, collecting and studying, and researching data collected from books, journals, official reports, official websites, archives, and so on related to research cases. Sources of data used in this study were taken from secondary data, namely data obtained from the literature, research results, and so on. Secondary data includes documents, books, journals, theses, research results in the form of reports, and so on.

RESULTS AND DISCUSSION

Stateless Problems in Malaysia

Stateless people in Malaysia are not foreigners or illegal migrants. They were born and raised in Malaysia. They are people who become stateless not because of crossing borders, but because of a lack of political will to regulate their rightful citizenship status and also a lack of assistance from government officials to help stateless humanity. They are stateless not because they are unfit or because they are fraudulent or deviant. They are stateless due to bad luck, unfavorable circumstances, and a lack of understanding of the processes and documentation required to obtain citizenship. Almost all of them are stateless because the state refuses to legally recognize them as members of Malaysian society.

The distribution of stateless persons in Malaysia is divided into two parts, namely West Malaysia and East Malaysia. The territory of West or Peninsular Malaysia includes the areas of

Perak, Kedah, Pulau Pinang, Kelantan, Terengganu, Pahang, Johor, Malacca, Negeri Sembilan, Selagor, Perlis, Kuala Lumpur and Putrajaya. The stateless group in West Malaysia of concern under the UNHCR mandate is the Tamil Indian Community. They came from India in the 19th century to work on rubber plantations and public services when Malaya was still under British colonial rule (UNHCR, 2021a). This community has faced challenges related to identity documentation and confirmation of Malaysian citizenship for many years. Most Indians have been in Malaysia for three or four generations. These people are Malaysian by birth, but because of their lack of knowledge and awareness of the importance of documents, they become stateless.

In other cases, non-registration occurs because some parents do not register their child's birth within the stipulated 14-day mandatory period or thereafter for fear of being fined or reprimanded by National Registry officials. Likewise, due to illiteracy or lack of education, they cannot communicate fluently in Bahasa Malaysia (Sharief, 2015). As a result, they cannot communicate effectively with government officials and face difficulties in understanding their bureaucratic procedures and requirements. Ethnic Indians also face discrimination in religion, society, and economy.

The East Malaysia region consists of the Sabah, Sarawak, and Labuan regions. The number of stateless persons in East Malaysia is difficult to determine, especially concerning mixed migration in Sabah, it is even more difficult to run a stateless program given the fact that UNHCR has not had an office in Sabah since the 1980s. Most stateless persons live in remote areas so cannot afford to travel to cities where consulates can be found, and often do not even know the procedures. The fact that stateless Malaysians do not have national identity cards puts them at risk of arrest and detention and limits their access to employment, education, and health care.

UNHCR's Mandate in Dealing with Stateless

UNHCR is a representative organization of the United Nations which was formed based on United Nations General Assembly Resolution No. 428 (V), precisely under The Economic and Social Council (ECOSOC). UNHCR is chaired by a High Commissioner who is elected by the UN General Assembly based on a nomination from the UN Secretary-General and has responsibilities to the UN General Assembly and ECOSOC. The High Commissioner assigns UNHCR duties with the assistance of a Deputy High Commissioner and Assistant High Commissioner for protection and operations matters. The current High Commissioner of UNHCR is Filippo Grandi with a term of office from 2016 to 2030 (UNHCR, 2021b). UNHCR has a mandate to regulate international action to protect refugees and solve refugee problems around the world. The main objective of UNHCR is to protect the rights and welfare of refugees. The individual groups that are the focus of UNHCR are Asylum-seekers, Internally Displaced People, Refugees, Stateless Persons, and Returnees (UNHCR, 2021d).

In the beginning, refugees and stateless were not distinguished. This is because both of them get international protection. However, after World War II ended, much of the international community faced the problem of being stateless. Therefore, UNHCR is mandated to assist stateless persons (United Nations, 2013). Given that refugee and stateless issues often overlap, stateless issues require in many ways a similar

approach to dealing with refugees. The UNHCR mandate is the legal basis for UNHCR's activities and the reason for its existence. This mandate informs what UNHCR should do (material scope) and for whom (personal scope) (UNHCR, 2021c). Initially, UNHCR's mandate was limited to dealing with refugee issues, the personal scope was later expanded to address the stateless. UNHCR's mandate is based on a series of General Assembly Resolutions, notably Resolutions 50/152 of 1995 and 61/137 of 2006 which entrusted UNHCR with responsibility for the stateless state.

UNHCR as Information Provider

As information providers, international organizations collect data as well as analyze and then exchange data, disseminate data, disseminate data and inform their point of view. In carrying out this role, UNHCR has an office in Malaysia, precisely in Kuala Lumpur. The current UNHCR representative in Malaysia is Thomas Albrecht. This is to make it easier for UNHCR to provide information about statelessness to beneficiaries such as the Malaysian government, partners, and the community.

The role of UNHCR as a provider of information can be seen in the dissemination of information about UNHCR partners. This information is published digitally through the UNHCR annual report. Supported UNHCR partners to help address stateless issues in Malaysia are Voice of Children, Ideas Academy, Development of Human Resources for Rural Areas (DHRRA), and Chow Kit Foundation. Through this partner, UNHCR can obtain facts about statelessness in Malaysia and data to identify the number of stateless. UNHCR tracks stateless numbers using data and statistics to inform and optimize its role in better protecting, assisting, and providing solutions. This data can predict how many people need help, what kind of help they need, and how many staff to use.

As a provider of information, UNHCR also has a point of view or thoughts on dealing with the stateless. This thought is realized through the #IBelong campaign which also contains ten frameworks for ending the stateless. The Malaysian government chose four frameworks. The implementation of this program is following the role of international organizations as information providers, namely holding forums or conferences where individuals can exchange ideas with each other. UNHCR has organized several forums. The forum is like a discussion about the civic view of stateless children, organizes training and lectures at University College Sedaya International (USCI) on stateless, organizes "Training of Trainers" activities for young paralegals, facilitates paralegal roundtable conferences on management systems for a coalition of NGOs formed in East Sabah in collaboration with Universitas Sains Islam Malaysia (USIM) and the National University of Malaysia (UKM) held a "Workshop for Academics: Researching and Teaching Nationality & Statelessness."

In addition, there is a data collection program where data can be published. UNHCR is conducting a stateless person data collection project in West Malaysia. UNHCR also met with the Malaysian government to discuss statelessness. UNHCR made several specific proposals with the Government of Malaysia. Malaysia has made an important step in the "Malaysian Indian Blueprint" with a national solution for the population of Indian descent. Based on the description above, this means that as an information provider, UNHCR has provided information, collected, analyzed, and published data.

UNHCR as Law Enforcer

As law enforcers, international organizations enforce rules, whether in the form of declarations or statements that can affect the domestic or global environment. This role is not legally binding but is limited to statements that can affect the domestic and international environment. UNHCR has adopted the principles of the regulations and made a statement. The regulations used are the 1954 Convention concerning the status of stateless persons and the 1961 Convention concerning the reduction of stateless persons. The convention is not legally binding in Malaysia, as Malaysia has not ratified it. There are differences in Malaysian law with the content of the convention such as granting citizenship either through *ius soli and ius sanguin*, as well as requiring the state to grant citizenship to children born to stateless persons. UNHCR continues to recommend Malaysia ratify the stateless convention, but Malaysia says it is not ready. UNHCR's statement to recommend Malaysia ratify the convention is not legally binding, but rather to influence Malaysia's domestic policy.

As a law enforcer, UNHCR also provides legal assistance for the stateless. Granting citizenship is the right of the Malaysian Government. UNHCR does not have the legal right to grant citizenship, so the role that can be done is to provide legal assistance through advocates. Legal assistance was provided through hired consultants to address the inconsistent application of the Malaysian citizenship law by the Department of National Registration. UNHCR also organizes and facilitates consultation and training sessions on nationality and stateless circumstances for pro bono lawyers.

UNHCR as Policy Implementer

As policy implementers, international organizations carry out the utilization and operation of all available resources in international organizations to achieve goals. Utilization and operation of resources can be in the form of technical assistance, deployment of resources, funding, and operation of sub-organizations. UNHCR has provided technical assistance to the Development of Human Resources for Rural Areas (DHRRA) to do a mapping project. This project was carried out door to door by UNHCR officers to provide more accurate statistical data and find solutions, especially for the Tamil population originating from India. The mapping and registration project started in June 2014. The project targets a state in West Malaysia.

In 2013 UNHCR estimated that there were around 40,000 stateless among the ethnic Tamil population, of that number 40 percent of them are children. Mapping leverages innovative mobile application technologies and centralized digital databases. The mobile registration team consists of 11 volunteers in each district. This team performs door-to-door identification and registration of stateless persons. They also help overcome language barriers and illiteracy problems. The registration project also guides them through Malaysia's civil registration system. UNHCR has established relationships with key government stakeholders, the Special Implementation Task Force, which has been actively working on the problems faced by the Indian Tamil community in Malaysia. UNHCR also initiated consultations and workshops on citizenship and statelessness in Sabah.

UNHCR also provides funding for stateless programs in Malaysia. These funds are used for the implementation of legal and policy programs, stateless identification, civil status documentation, and greater stateless reduction. The following is

financial data for stateless in Malaysia and the number of stateless persons:

Table 1. Stateless amount and funding for UNHCR in Malaysia

Year	Stateless in Malaysia (UNHCR)	The original budget for Malaysia's stateless program (USD)	Expenditure budget for Malaysia's stateless program (USD)
2014	40,000	1,231,502	378,440
2015	11,689	1,237,815	407,294
2016	10,931	973.049	676,876
2017	10,068	517,314	342.135

Source: (UNHCR, 2014b)

The original budget presents initial budget data for stateless operations broken down at the objective level. The allocation of resources at the objective level may change throughout the year as the operational situation and priorities shift. The Expenditure budget presents final budget data and available funds by final expenditure at the destination level, as reported at the end of the year.

UNHCR and the Challenges in Dealing Stateless

UNHCR is an international organization. According to Pareira, the main roles of international organizations are grouped into three, namely initiators, facilitators, determinants, and mediators (Pareira, 1999). Meanwhile, according to Barkin, the role of international organizations can be seen in terms of humanitarian assistance and human rights (Barkin, 2006). In terms of human assistance, international organizations play a role in finding cases related to phenomena in society, as well as promoting and recognizing human rights. In terms of humanitarian assistance, international organizations have a role to identify and publicize areas in need of assistance. According to Jacobson, the functions of international organizations are categorized into five, namely informative, normative, role-creating, supervisory, and operational roles (Jacobson, 1984).

In the context of this study, the results of the study found that, first, based on the results of the study, findings regarding the role of UNHCR as a provider of information lie in the process of disseminating information. In the current information age, UNHCR creates efficiency because the use of UNHCR information is very important in protecting the stateless. As a provider of information, UNHCR disseminates or publishes information online and offline. UNHCR's online distribution is carried out in the annual report through the official website and social media. Through social media, the latest information can be directly shared by the staff who are directly involved even during operations. Through the online system, the data presented can be accurate, quality, timely and complete. The online method aims to facilitate deployment and expand access to deployment because stateless problems occur all over the world.

Offline distribution is carried out by UNHCR through conferences or forums with the government, partners, and communities. It aims to raise awareness of the importance of stateless problems so that they can be understood and targeted more precisely because they are through direct interaction. UNHCR has three types of data, namely financial, human resources, and operational data. Part of the data processing is done by partners, UNHCR and partners will sign if it has been agreed by both parties. However, not all data from partners is

standardized by UNHCR. Therefore, it is not always combined in global reports. UNHCR has many different data management systems in each region (UNHCR, 2010).

Second, the findings of the researchers are that UNHCR in carrying out its mandate as an international organization that handles statelessness is determined by the Malaysian Political Will. UNHCR has limitations in carrying out its role because Malaysia has not ratified the stateless convention. Malaysia said it was not ready to ratify. The Malaysian government has the assumption that being stateless will disrupt national security and is feared to disturb Malaysian citizens if local integration occurs. The Malaysian government is also afraid that in the future it will need more funding for this problem. If Malaysia ratifies the stateless convention, UNHCR can freely carry out its role.

UNHCR is an international organization part of the United Nations. The United Nations is considered an international organization that is above the states, so there is an assumption that countries will obey to submit a problem to the United Nations. However, this assumption is denied that in acting on a country, UNHCR has the capacity. This capacity is influenced by the existence of Political Will. This shows that the state remains a central actor in international phenomena. So, the role of UNHCR is still determined by a country's domestic policies.

In his opening address for the millennium, Former Secretary-General Kofi Annan spoke about how the challenges of the twenty-first century would not be conquered were it not for international organizations (Crockett, 2012). So that's why it has the UN. It is widely believed that international organizations should be responsible for maintaining international peace and stability, whether economic, social, or political, and that they should act in the interests of the international community (Shamimi et al., 2022; Wiranto et al., 2022). According to critics of these institutions, there should be greater transparency, regulation, and control within these organizations so that they reflect more than just the interests of powerful states.

The increase in the power of the Secretary-General is a matter of great concern, especially showing that the State. In reality, the State is not moving toward global governance, and the United Nations as an international institution is to promote dialogue and discussion within a multilateral framework and not intervene in the sovereign territory. An example is in the Secretary-General's Millennium Report where he assures States that the Secretariat is fully accountable to them and the founding principles of the United Nations as an "Organization dedicated to the interests of its Member States and their peoples". Based on this explanation, the researcher's assumption that the role of international organizations cannot be freed due to the influence of a country's political will is contrary to the assumption that international organizations in this era of globalization are fully responsible to member countries and even control them.

Third, this study found that UNHCR as the policy implementer has several obstacles. As part of the United Nations, UNHCR in carrying out its duties has a responsibility to the United Nations. Barriers to UNHCR are lack of funds and lack of human resources for mapping. The mapping program for stateless persons is located in a remote area so it requires a lot of people. These additional needs are also affected by the lack of funds. This is further complicated that UNHCR does not have the authority to seek its funding because it must comply with the United Nations and is an International Governmental Organizations (IGOs).

Many IGOs use a combination of mandatory and voluntary funding rules so that member states are obligated to provide funding. Voluntary funding rules have no legal obligation to support the institution financially. IGOs including UNDP and UNICEF, have absolutely no mandatory rules (Graham, 2017). This means that UNDP and UNICEF formally have the political authority to set program priorities and allocate resources through their collective decisions, and funding arrangements in such a way that member states are not obligated to accept these multilateral decisions as binding. The absence of a legal obligation for member states to support decisions financially undermines the outcome of multilateral decisions. As a result, IGOs that rely primarily on voluntary core contributions may be vulnerable to underfunding.

International Labor Organization (ILO) also has challenges in countries where funding and staff are short (ILO, 2021). As a result, they cannot do their job to the fullest. In certain developing countries there is an allocation of less than 1 percent of the national budget for labor administration, of which workers receive only a small portion. Other studies have shown that the costs of work-related accidents and illnesses, absenteeism, abuse of workers, and disputes at work can be much higher. Based on the explanation above, the assumption that international organizations often experience underfunding and understaffing is confirmed to be the same as other international organizations, namely UNDP, UNICEF, and the ILO.

CONCLUSION

In carrying out its role to deal with the stateless in Malaysia, UNHCR has three functions, namely informative (provider of information), normative (law enforcement), and operational (implementing policies). Based on this, UNHCR's role in dealing with the stateless in Malaysia has been carried out well. As a provider of information, UNHCR has disseminated information about UNHCR partners. This information is published digitally through the UNHCR annual report. Supported UNHCR partners to help address stateless issues in Malaysia are Voice of Children, Ideas Academy, Development of Human Resources for Rural Areas (DHRRA), and Chow Kit Foundation. Through this partner, UNHCR can obtain facts about statelessness in Malaysia and data to identify the number of stateless. UNHCR also has a thought or framework in dealing with statelessness, realized through the #IBelong campaign which contains ten frameworks for ending statelessness.

As a rule, enforce, UNHCR has adopted the principles of the regulations, namely the 1954 Convention concerning the status of stateless persons and the 1961 Convention concerning the reduction of stateless persons. The convention is not legally binding in Malaysia, as Malaysia has not ratified it. UNHCR continues to recommend Malaysia through joint discussions and sending proposals to ratify the stateless convention, but Malaysia says it is not ready. UNHCR also provides legal assistance for the stateless. Legal assistance was provided through hired consultants to address the inconsistent application of the Malaysian citizenship law by the Department of National Registration. UNHCR also organizes and facilitates consultation and training sessions on nationality and stateless circumstances.

UNHCR has carried out its role as a policy implementer. This role can be seen from UNHCR has provided technical assistance to the Development of Human Resources for Rural Areas (DHRRA) to undertake a mapping project. This project was

carried out door to door by UNHCR officers to provide more accurate statistical data and find solutions, especially for the Tamil population originating from India. In addition, UNHCR also provides funding for stateless programs in Malaysia. These funds are used for the implementation of legal and policy programs, stateless identification, civil status documentation, and greater stateless reduction.

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