



## **Legal Construction of Stateless Person Who Resides in Indonesia in Terrorist Financing**

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### *Abstract*

*This research aims to describe and to analyze Article 2 (2) point g of the Indonesian Terrorism Financing Law and to identify its formal requirements. The approaches used in this paper are statutory and conceptual. As a normative study, this paper exhibits that there is the possibility of Stateless Persons residing in Indonesia as perpetrators of Terrorist Funding in accordance with Article 2 (2) point g of Law No. 9 of 2013. However stateless persons can also be refugees. Thus it is crucial to bear in mind that Article 2 (2) point g of Law No. 9 of 2013 does not regulate the financing of terrorism carried out by refugees. Therefore, proper legal construction is needed to develop adequate provisions to fight terrorism financing. Indonesia must be responsible for providing permanent mechanisms to limit the movement of funds for terrorists involving refugees or asylum seekers.*

*Keywords: Legal Construction, Stateless People, Asylum Seekers, Terrorist Financing, Refugees.*

### *Abstrak*

*Penelitian ini bertujuan untuk mendeskripsikan dan menganalisis Pasal 2 (2) huruf g Undang-Undang Pendanaan Terorisme Indonesia dan memberikan persyaratan formalnya. Jenis pendekatan yang digunakan dalam makalah ini adalah perundang-undangan dan konseptual. Sebagai kajian normatif, makalah ini menunjukkan bahwa adanya kemungkinan Orang Tanpa Kewarganegaraan yang bertempat tinggal di Indonesia sebagai pelaku Pendanaan Teroris sesuai dengan Pasal 2 (2) huruf g Undang-undang No.9 tahun 2013. Orang tanpa kewarganegaraan dapat juga merupakan pengungsi. Mengingat Pasal 2 (2) huruf g Undang-undang No.9 tahun 2013 tidak mengatur terkait dengan pendanaan terorisme yang dilakukan oleh pengungsi. Maka diperlukan konstruksi hukum yang tepat untuk menyusun ketentuan yang memadai untuk melawan pendanaan terorisme. Indonesia harus bertanggung jawab untuk menyediakan mekanisme yang tetap untuk membatasi pergerakan dana bagi teroris yang melibatkan pengungsi atau pencari suaka.*

**Kata kunci: Kontruksi Hukum, Orang Tanpa Kewarganegaraan, Pencari Suaka, Pendanaan Teroris, Pengungsi.**

## Introduction

The same risk exists when terrorist acts are funded. Terrorism cannot flourish without funding. According to the general explanation of Law Number 9 of 2013 on the Prevention and Eradication of Terrorist Financing, it is improbable that terrorism would be carried out without the backing of financial resources. The International Monetary Fund (IMF) emphasized that the global community has prioritized the fight against money laundering and the financing of terrorism in this environment. One of its objectives is to deny terrorists access to resources and make it harder for criminals to profit from their illegal activity.<sup>1</sup> thus, it can be expressed that to end terrorism, it needs to end terrorist financing. Global Terrorism Index reports that the total number of deaths from Terrorism declined in 2021, decreasing by 1.2 per cent to 7,142. However, there has been a 33 per cent reduction since the peak in 2015, when 10,699 people were killed in terrorist attacks. The primary reduction driver in 2021 has been a fall in the intensity of conflict in the Middle East—moreover, the subsequent decline of the Islamic State in Iraq and Syria. However, increases in deaths were recorded in three of the nine regions.<sup>2</sup>

The Indonesian government is highly committed to against Terrorism and Financing Terrorism. Long history where Indonesia started to combat Terrorism in whereby case of the Bali Bombing that happened in 2002. Indonesia started to regulate through Government Regulation in Lieu of Law Number 1 of 2002 on Eradication of Terrorism, then issued Law Number 15 of 2003 on Establishment of Government Regulation in Lieu of Law Number 1 of 2002 concerning eradicating Terrorism into Law. After that period, Indonesia renewed the law, namely Law Number 5 of 2018, an Amendment to Law Number 15 of 2003. Global Terrorism Index classifies on Terrorism Impact measurement, and Indonesia is in 24 places with a score of 5.500, ranking 24 (decreased 4 points from the previous report).<sup>3</sup> Another classification made by the Global Terrorism Index is that among ten countries in Asia-Pacific that improved in 2021, Indonesia and Myanmar were the

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<sup>1</sup> International Monetary Fund (IMF), Anti-Money Laundering/Combating the Financing of Terrorism – Topics, <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>

<sup>2</sup>Institute for Economic & Peace, “Global Terrorism Index 2022” (Sydney, March 2022).

<sup>3</sup>Ibid.

only countries in the region to record a deterioration in the impact of Terrorism over the past year.<sup>4</sup> Likewise, the Free Papua Movement (OPM) and the West Papuan National Liberation Army attacked Indonesia. Both are separatist groups. J. Setiono noted that the criminal act of Terrorism had become a global threat.<sup>5</sup> It is, therefore, no exaggeration to say that the international community agrees to strongly condemn this as an international crime against the common enemy of humanity.

Terrorism is defined as an act that widely uses violence or threats to spread an atmosphere of fear or terror. It inflicts damage or destruction on important strategic objects, the environment, public facilities, international facilities, or both, all for ideological, political, or security reasons (Article 1 number 2 of Law Number 5 of 2018). Terrorism commonly uses violence or threat of violence that spreads fear to people. Some essential elements must be addressed in this definition. The element of an act which uses violence or threat of violence means that the violence or threat is effective in creating fear. Violence or threat of violence can use electronic or non-electronic.

It is a common understanding that financing is the heart of terrorism itself. Indonesia put the specific issues on financing terrorism through the legislation of Law Number 9 of 2013 on the Prevention and Eradication of Financing Terrorism. The Law on Terrorist Financing 2013 stipulates the scope of the law's implementation (via Article 2), distinguishing between two scopes. According to Article 2 sub (1), Financing of Terrorism can be anyone who intends to finance Terrorism in the Territory of Indonesia and the fund connected to terrorist financing in and outside Indonesia. Then, Article 2 Sub (2) focuses on Article 2 Sub (1) but is conducted outside the Indonesian Territory. Primarily, this paper focuses on Article 2 sub (2) letter g, Law on Terrorist Financing will be implemented for any terrorist financing conducted outside of Indonesia if one is conducted by every stateless person who resides in the Territory of Indonesia.

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<sup>4</sup> Institute for Economic and Peace, *Op. Cit*, Global Terrorism Index.

<sup>5</sup> Joko Setiyono, "Regulatory Strategies and Legal Issues for Countering Terrorism in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 1 (2021): 1–9.

Highlighting the letter g of Article 2 sub (2) above shows that it is interesting to be researched to find the possibility of a stateless person who resides in the Indonesian Territory committing financing of Terrorism. According to International Law, the nature of a stateless person is broad and more limited by the sentence of residency in the Indonesian Territory. The hypothesis of this article will need proper construction to make this article possible. The result of the analysis mentions that proper construction must be approached from any existing legal regulation, which leads to the possibility of implementing Article 2 (2) letter g.

Prior to this research conducted, there has been numerous research related to terrorism financing, either internationally or in Indonesia.<sup>6</sup> However, the number of research on financing Terrorism conducted by the stateless person is limited.<sup>7</sup> Generally, the research only mentions the subject involved in financing Terrorism without examining it.<sup>8</sup> The regulation which governs the involvement of a stateless person in financing Terrorism not only exists in Indonesia. Malaysia and Albania<sup>9</sup> are among the countries that governed that issues.<sup>10</sup> However, the research that examines the involvement of the stateless who reside abovementioned in financing Terrorism is not available. Research on the involvement of stateless who reside in Indonesia, which is regulated under Article 2 sub two letter g Law Number 9 of 2013 on Terrorism Financing, is the novelty of this research since it does not only examine the involvement of the stateless but also seeks the possibility of refugee to become an offender in financing terrorism.

### **Problem Formulation**

Based on the explanation above, the question raised in this study is which circumstances can make a stateless person, who might be a refugee, who resides

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<sup>6</sup> Monika Suhayati, "Undang-Undang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme dari Perspektif Hak Asasi Manusia", *Negara Hukum*, Vol.4, No. 2, (2013): 231-249

<sup>7</sup> Ervin Bacaj, "Main Principles and Importance in Combating Terrorism at Nowadays Worldwide Focus Today", *Mediterranean Journal of Social Sciences*, Vol.6, No.4, (2015):54-61

<sup>8</sup> Ziad M. Rabie, "Combating the Crime of Money Laundering to Finance Terrorism Study in International Law", *International Journal of Asian Social Science*, Vol. 8, No.6, (2018): 265-283.

<sup>9</sup> Ervin Bacaj, *Op.cit.*, "Main Principles and Importance in Combating Terrorism at Nowadays Worldwide Focus Today", 54-61.

<sup>10</sup> Zulkifli Hasan and Abd Hamid Abd Murad, "Explanatory Note on Anti Money Laundering (Amendment) Act 2003", *Malaysian Journal of Syariah and Law*, Vol.2 (2010):161-171.

in Indonesia, can be legally constructed to be possible as an offender of terrorist financing?

### **Research Objective**

The purpose of the study is to explain the legal construction related to the provisions of the regulation of criminal acts of financing terrorism committed by a stateless person that can be a refugee in Indonesia's legal system.

### **Research Methodology**

The paper is a viewpoint article that uses a conceptual approach. It addresses the financing of terrorism and stateless persons abroad but has resided in Indonesia as the offender. The legal gap between regulation in terrorist financing, terrorism, and stateless person under International Law must be reconstructed. Stateless people who reside in other countries are limited in conducting something, and for sure, when dealing with criminals, especially financing Terrorism. The methodology of normative legal research that operates the primary legal sources based on the law and regulation in this context is the International Convention on the Suppression of Terrorist Financing; The 1951 Refugee Convention and its 1967 Protocol; The Convention Relating to the Status of Stateless Person (1954); Indonesian Law Number 9 of 2013 regarding Terrorist Financing; Indonesian Law Number 12 of 2006 concerning Citizenship. The secondary legal sources in this paper are based on the doctrine conceptualized in legal scholars' papers as published in a book, journal, and online newspaper.

### **Result and Discussion**

#### **Asylum Seekers and Refugees in an Overview**

Citizens and society are influenced to leave the nation for a better life in another nation by the nation's domestic instability<sup>11</sup> and international conflicts.<sup>12</sup> The main reason asylum seekers seek refugee status in other countries is the fear

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<sup>11</sup> Burcu Savun and Christian Gineste, "From protection to persecution: Threat Environment and Refugee Scapegoating", *Journal of Peace Research*, Vol. 56, Issue.1, (2018): 88-102.

<sup>12</sup> Timothy J. Hatton, "Asylum Migration to Developed World: Persecution, Incentives, and Policy", *Journal of Economic Perspectives*, Vol.34, No.1, (2020): 75-93.

of torture and persecution if they remain in their country.<sup>13</sup> Although asylum seekers and refugees flee their country of origin to avoid persecution and threats to their safety and well-being, the legal definitions of the two terms are distinct.

An asylum seeker is an individual who seeks international protection.<sup>14</sup> Asylum is a right granted to individuals as a form of protection for that fleeing persecution or threats in their home country and seeking refuge in the Territory of another nation. According to Article 1 of the Declaration on Territorial Asylum, "... the right to seek and to enjoy the asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity".<sup>15</sup> By granting asylum, the host state gives the individual permission to reside in its Territory and is obligated to uphold humane treatment standards.<sup>16</sup> If the host country has approved the asylum seeker's request to become a refugee, the asylum seeker's status will change to that of a refugee.

Based on Article 1a (2) 1951 Convention, define that a refugee is any person who "...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his (or her) nationality and is unable or, owing to such fear, is unwilling to avail him (or her) self of the protection of that country; or who, not having a nationality and being outside the country of his (or her) former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".<sup>17</sup> In addition to the 1951 Convention, the Organization of African Union (OAU) defines a refugee. According to the OAU, a refugee is any person who "...owing to external aggression, occupation, foreign domination or events alarming public order in either part or the whole of his country of origin or nationality". Examining the two definitions reveals that the applicant must meet some requirements. Amongst others:<sup>18</sup> the applicant must be outside his/her

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<sup>13</sup> Jane McAdam, "Rethinking the Origins of 'Persecution' in Refugee Law", *International Journal of Refugee Law*, Vol. 25, No.4 (2014): 667-692.

<sup>14</sup> Janet Phillips, "Asylum Seekers and Refugees: What Are the Facts?," 2011.

<sup>15</sup> General Assembly, "Declaration on Territorial Asylum," Pub. L. No. 6716 (1967).

<sup>16</sup> Phillips, "Asylum Seekers and Refugees: What Are the Facts?,"

<sup>17</sup> UNHCR, "Convention Relating to the Status of Refugees" (1951).

<sup>18</sup> UNHCR, "An Introduction to the International Protection of Refugees," in *UNHCR* (Geneva: UNHCR, June 1992).

country of origin; the applicant must have a well-founded fear of persecution; this fear must be based on one of five grounds: race, religion, nationality, membership in a particular social group, or political opinion; the applicant must be unable or unwilling to avail himself of the protection of that country or to return there for fear of persecution. The 1951 Convention also contains provisions on the circumstances under which refugee status cannot be granted and the cessation of a refugee's status, including (i) a person receiving protection or assistance from organs or agencies of the United Nations other than UNHCR, (ii) a person is benefiting from the same rights and obligations as nationals of the country in which he has taken residence, (iii) a person committed crimes against peace, humanity, and stringent law before admission to the country of asylum or acted contrary to the purposes and principles of the United Nations.<sup>19</sup>

The distinction between an asylum seeker and a refugee is that an asylum seeker is someone whose claim for refugee status has not been determined.<sup>20</sup> In contrast, a refugee is a person who has been recognized as a refugee under the 1951 Convention. State and UNHCR are the entities with authority to grant asylum seekers refugee status called Refugee Status Determination.<sup>21</sup> The UNHCR has the authority to grant refugee status to a person whose home country is not a party to the 1951 Convention and 1967 Protocol.

All the rights and provisions stipulated in the 1951 Convention and the 1967 Protocol are entitled to anyone with refugee status. Even though he is a refugee, he has the right to education, housing, employment, and compensation for his work.<sup>22</sup> In addition, the host state, as a recipient country of a refugee, does not have the authority to expel or return refugees who threaten their lives and freedoms without a straightforward legal process. It is known as the principle of non-refoulment.<sup>23</sup>

There are persists in numerous nations in the refoulement practice. In the case of *Ahmed v. Austria*, Ahmed, a Somali national who received refugee status

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<sup>19</sup>UNHCR, "Convention Relating to the Status of Refugee," UNHCR § (1951).

<sup>20</sup>David Owen, "Differentiating Refugees: Asylum, Sanctuary, Refuge," in *The Political Philosophy of Refuge*, ed. Christine Straehle and David Miller (Cambridge: Cambridge University Press, 2019), 19–38.

<sup>21</sup>UNHCR, Convention Relating to the Status of Refugee.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid.

from Austria in 1990, had his refugee status revoked in 1993 due to a theft conviction.<sup>24</sup> He was sentenced to two-and-a-half years in prison for this act. For his actions, the Graz Regional Court revoked his refugee status. The entirety of the procedure is conducted following Austrian law. However, the problem is that Ahmad's crime is not one of the grounds permitted by the 1951 Convention for revoking refugee status. In addition, the cessation of Ahmed's refugee status and his return to Somalia will raise concerns that he will be persecuted in his home country. Therefore, article 33 of the 1951 Convention was violated because the Graz Regional Court failed to consider the persecution Ahmed would face if he returned to his country. Before determining and granting refugee status to a person, the State must be cautious and firm to prevent such an occurrence because it is possible to use refugee status to commit crimes. It is undeniable that using refugee status to commit terrorist acts is possible.

### **Who is a Stateless Person who resides in another country?**

The international legal definition of a stateless person is a person who is not considered a national by any State under the operation of its law.<sup>25</sup> The meaning is that a stateless person has no nationality. Statelessness can be caused by two conditions: (i) since birth, and (ii) they become stateless.<sup>26</sup> There are two kinds of nationality regulation: nationality by birth and marriage. The nationality principles by birth are distinguished from *Ius Sanguinis* and *Ius Soli*. *Ius Sanguinis* called the principle of kinship or descent. To this principle, determining someone's nationality is based on the parents' nationality. Unlike *Ius Sanguinis*, *Ius Soli* implemented the Principle of Citizenship determined by a place of birth. At the same time, nationality by marriage implemented two principles: legal equality and the principle of equality.

In the explanation chapter on Indonesian Law Number 12 of 2006 on Citizenship, there are four principles of Citizenship (mentioned in the general

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<sup>24</sup>Council of Europe: European Court of Human Rights, Ahmed v. Austria (December 1996).

<sup>25</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html> [accessed 10 November 2022]

<sup>26</sup> Amanda R. Cheong and Mary Anne K. Baltazar, "Too precarious to walk: an integrated "three delays" framework for modeling barriers to maternal health care and birth registration among stateless persons and irregular migrants in Malaysia", *Genus*, Vol.77, No.18, (2021):1-26.



elucidation), as also quoted by K.F Siddiq and B. Ardianto, as *The Ius Sanguinis*, *The Ius soli*, The single Citizenship principle, and The limited double citizenship principle determines dual Citizenship for children per the provisions provided by the law.<sup>27</sup> Then, there is no possibility of being a person without nationality under the Indonesian Law on Citizenship. In practice, it is essential to notice that there are two stateless persons: de jure and de facto.<sup>28</sup> People who meet the criteria for statelessness under Article 1 (1) of the 1954 Convention are de jure stateless, although the Convention does not mention or explain this. Due to written law, he has satisfied the article's statelessness requirements. In addition, *de facto* statelessness was introduced at the UNHCR expert meeting in 2010.<sup>29</sup> *De facto* statelessness is defined as the persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Persons with more than one nationality are de facto stateless only if they are outside all the countries of their nationality and are unable, or for valid reasons, are unwilling to avail themselves of the protection of any of those countries.<sup>30</sup> Determining which party has the authority to determine whether a person is a stateless person is closely related to the stateless determination procedure.

The 1954 Convention does not specify which party has the authority to determine whether an individual is stateless or not Stateless. In addition, the 1954 Convention does not regulate specific procedures that a party may use to determine whether a person is stateless. The state is responsible for carrying out statelessness determination procedures (SDPs). It is in the state's best interest to be able to determine whether or not a person is stateless. Few nations, including the United Kingdom, Spain, and Hungary, have implemented SDP policies in their national systems.<sup>31</sup> Part 14 of the Immigration Rules, which came into force on

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<sup>27</sup>Khalid Fadji Siddiq and Budi Ardianto, "Stateless Person dalam Tinjauan Hukum Nasional dan Hukum Internasional di Indonesia," *Uti Possidetis: Journal of International Law* 1, no. 3 (2020): 277–309.

<sup>28</sup>Uliana Ermolaeva, Elisabeth Faltinat, and Darta Tentere, "The Concept of 'Stateless Persons' in European Union Law" (Amsterdam, August 2017).

<sup>29</sup>Volker Turk, *Handbook on Protection of Stateless Persons* (Geneva: UNHCR, 2014).

<sup>30</sup>Ibid.

<sup>31</sup>Katia Bianchini, "Identifying the Stateless in Statelessness Determination Procedures and Immigration Detention in the United Kingdom," *International Journal of Refugee Law* 32, no. 3 (October 2020): 440–71, doi:10.1093/ijrl/eeaa036.

April 6 2013, governs the SDPs policy in the United Kingdom.<sup>32</sup> The UK government uses several methods, including interviews, the burden of proof, the standard of proof, the timetable for making decisions, the review of decisions, and admissibility, to ascertain a person's status as a stateless person following this provision.<sup>33</sup>

Stateless persons risk being denied diplomatic protection rights due to the absence of parties with an obligation to protect them, most notably the state.<sup>34</sup> In addition, stateless persons frequently do not obtain certain civil and social rights, such as access to courts, documentation, employment, and wages. However, the 1954 Convention stipulates that member states must apply the principle of non-discrimination between stateless persons and ordinary citizens. In addition, according to Articles 25 and 27 of the 1954 Convention, stateless persons are entitled to administrative assistance and travel documents.<sup>35</sup> Even though stateless persons have these rights, under Article 2 of the 1954 Convention, they must also be subject to and comply with the local laws and regulations.<sup>36</sup> It should be emphasized that the enjoyment granting of rights guaranteed by the Convention of 1954 is distinct from nationality. Therefore, based on Article 32 of the 1954 Convention, countries are encouraged to provide as many naturalization opportunities as possible to stateless persons.<sup>37</sup>

The 1954 Convention does not require a country to grant nationality to stateless persons, but if the state can facilitate this, it can reduce the number of stateless persons. In 2019, it was estimated that there were at least 4,2 million stateless persons, 40 per cent of whom resided in the Asia-Pacific region, with the majority residing in Southeast Asia.<sup>38</sup> The country where a stateless person resides is not obligated to grant nationality.

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<sup>32</sup>UNHCR, *Statelessness Determination in the UK* (Geneva: UNHCR, 2020).

<sup>33</sup>Ibid.

<sup>34</sup> Hugh Massey, Legal and Protection Policy Research Series UNHCR and *De Facto* Statelessness, *Organisation Research Series*, UNHCR, Geneva, 2010.

<sup>35</sup>United Nations, "Convention Relating to the Status of Stateless Persons," Pub. L. No. 360, United Nations Treaty Series (1954).

<sup>36</sup>Ibid.

<sup>37</sup>Ibid.

<sup>38</sup>Christoph Sperfeldt, "Legal Identity and Statelessness in Southeast Asia," *Asia Pacific*, January 2021.

Article 4 (2) of the 1961 Convention on the Reduction of Statelessness rules that the Contracting State may grant nationality to anyone who has been stateless. Further, Article 4 (2) put all member states' sovereignty to provide concessions and respect in granting nationality status to stateless persons. The use of "may" in this term indicates the imposition of the obligation. The irony, however, is that of the 10 ASEAN member states, only the Philippines is a signatory to the 1954 and 1961 Conventions.

Citizenship is important for people due to the legal protection that a country might give. An asylum seeker is not an unregulated immigrant even though they do not have a proper visa or passport. Some people need to apply for refugee status but have not had the opportunity to obtain the document.<sup>39</sup> Further, the UNHCR give an example if people are born in a stateless place, with a tribe unknown to their government, or they have experienced systematic discrimination, there is a possibility that they will not get a birth certificate or identification document, a passport or visa.<sup>40</sup> Some residents are on the political blocklist and cannot escape their native country using their real names. In this case, the UNHCR Office is responsible for assessing refugee status applications by registered asylum seekers. Indonesia is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, nor does it have a national refugee status determination. Thus, UNHCR will process refugee status claims in Indonesia on the government's behalf.

According to International Law, a person is stateless because any country does not accept them as a citizen. The stateless person might be a refugee, but not all refugees are stateless. These two categories have different legal statuses. The UNHCR assumes both categories as a group that needs special attention. Thus, a stateless person can be in this category. Another category can be started when Citizens live in a conflict area. In this case, citizens burning their passports means releasing their Citizenship. Concerning this paper, those two conditions can be best practices to see the emergence of stateless conditions.

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<sup>39</sup>UNHCR, "UNHCR - Indonesia," *UNHCR*, 2020.

<sup>40</sup>Ibid.

## The Dangerous of Terrorist Financing Criminal Act for Humanity: Indonesian Perspective

Indonesia has enacted a specific law on anti-terrorist financing outside of the Terrorism law itself, namely Law Number 9 of 2013 on Preventing and Eradicating Terrorist Financing (Terrorist Financing Law). Highlight the International Convention on Suppression of Terrorist Financing in its recalling paragraph 3, subparagraph (f) on General Assembly Resolution 51/210 strengthened to process of financing that can be direct or indirect, through organizations, whether for charity or not. There are unlawful activities such as illicit arms trafficking, drugs, racketeering, and the exploitation of persons engaged in funding terrorist activities. It has become a concern of the nations. The movements of funds suspected to be intended for terrorist purposes must be emphasized.

Terrorism acts might constitute a crime against humanity. Black mentioned that pure terrorism<sup>41</sup> has several characteristics: self-help, highly violent, well-organized and quasi-warfare. Thus, it needs to be more concerned because terrorism is dangerous. Efforts to eradicate terrorism have been carried out conventionally by punishing the offender. However, it is necessary to follow other efforts by using systems and mechanisms for tracking the flow of funds as the primary source of terrorism. This regard shows that terrorist activities will not be operated without the availability of funds—the funds obtained from both legitimate and or illegitimate sources. Terrorist financing is cross-border. It must involve Financial Service Providers, law enforcement officers, and international cooperation as an essential characteristic of cross-border crime. The need to suspend the flow of funds to finance terrorist activities must be carried out.

Terrorist financing is a high-risk mode. It consists of several stages:<sup>42</sup> funds collection, movement, and utility. Donations and self-funding through social media can be part of the collection of funds. Cash carry or non-licensed products and services can be used to move funds. Funds utility can be taken through a

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<sup>41</sup>Matheu Deflem, *Terrorism and Counter-Terrorism: Criminological Perspectives (Sociology of Crime Law and Deviance)*, vol. 5 (Bingley: Emerald, 2004).

<sup>42</sup> Tim NRA TPPT Indonesia 2019. The Updated 2015 Indonesia's Risk Assessment on Terrorist Financing Crime Final Report. (Jakarta, 2019), p.xi.

weapon and explosives weapon for terrorist members. ACAMS<sup>43</sup> explains that the stages of terrorist financing are fundraising, movement, storing, and spending. In the financing of terrorism, the funds can be derived from legitimate or illegitimate sources.

### **The Construction of Stateless Person in a Terrorist Financing: Indonesian View**

The UNHCR<sup>44</sup>, as quoted by Aldyan Faizal<sup>45</sup> and Made Nurmawati<sup>46</sup>, mentioned on their website, explains that Indonesia has difficulty identifying the numbers and locations of Stateless people. UNHCR Indonesia then mentions that<sup>47</sup> through desk review and discussion with NGOs, academicians, Government Institutions, and the Stateless population (through participatory assessment) can be understood that the following people can experience statelessness: Chinese Indonesians Ethnicity who do not have documents to prove their Indonesian Citizenship because their citizenship status is incorrectly recorded in their civil registration documents, and those who are not known as Chinese or Indonesian citizens; Arabs and Indians Ethnicities without documents proving their citizenship status are incorrectly recorded in their civil registration documents; Indonesian migrant workers who have lost their Citizenship under the 1958 law on extended residency abroad provisions cannot obtain Citizenship under the 2006 law; A small number of Indonesians were exiled from Indonesia because, at the time, they were related to political conflicts in 1965 and became stateless; and other people have become stateless because they are classified as undocumented migrants from China who have lived in Indonesia for a long time. This group migrated to Indonesia but did not have Indonesian Citizenship because they were not born in Indonesia.

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<sup>43</sup>Dennis M. Lormel, "Terrorist Financing: Visualizing Funding Flows," *ACAMS TODAY*, September 2018.

<sup>44</sup>UNHCR Indonesia. Orang-orang Tanpa Kewarganegaraan. Accessed from <https://www.unhcr.org/id/orang-orang-tanpa-kewarganegaraan>

<sup>45</sup>Aldyan Faizal, "Perlindungan dan Pemenuhan Hak Stateless Person Eks dan Keturunan Warga Negara Indonesia atas Status Kewarganegaraan," *Jurist-Diction* 3, no. 4 (June 2020): 1215, doi:10.20473/jd.v3i4.20203.

<sup>46</sup>Made Nurmawati, "Stateless Person In Indonesia: Consequences and Legal Protection," *Udayana Master Law Journal* 11, no. 1 (2022): 76–88, doi:10.24843/JMHU.2022.v11.i01.p06.

<sup>47</sup> UNHCR Indonesia. Orang-orang Tanpa Kewarganegaraan. accessed from <https://www.unhcr.org/id/orang-orang-tanpa-kewarganegaraan>

It must be careful to understand whether someone is Stateless, a refugee or asylum seeker, or an illegal immigrant. Made Nurmawati<sup>48</sup> emphasized that in understanding the position of refugees and asylum seekers to the Stateless Person, it is well to understand that Stateless people are sometimes refugees. However, not all refugees are stateless, and many stateless people never cross international borders.

The UNHCR carries out a thorough refugee status determination procedure as follows<sup>49</sup>:

1. Asylum-seekers registration data collection such as biodata, photographs, iris scans, and a summary of the individual's reasons why they leave their home country for an International protection
2. Due to the registration process, the UNHCR, accompanied by a qualified interpreter, will conduct detailed interviews with each individual asylum-seeker
3. UNHCR will assess the individual's credibility and decide whether the seekers qualify for refugee status under the UNHCR mandate.
4. The procedure includes an assessment of potential exclusion that determines by the UNHCR whether an individual who is otherwise qualified for refugee status might be undeserving of international protection due to a crime committed.

The Indonesian criminal principles apply to Indonesian criminal provisions, and Article 103 of the existing Indonesian Penal Code remains a speciality. Article 103 mentions that the provisions of the first eight chapters of this book shall also apply to facts on which other statutory provisions impose punishments unless determined otherwise by statute. Each law that prohibits certain criminal acts is interpreted systematically, and in this paper is the Financing of Terrorism law. Article 2 (2) number g refers to a specific term of offender called stateless who reside in Indonesia. The systematized interpretation shows that the Stateless cannot be prosecuted according to Indonesian criminal law principles. It needs to be re-read and interpreted from the terrorist financing law.

Nevertheless, it needs to know the legal construction of statelessness itself. However, a problem regarding the implementation of the Territory principle (Art.

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<sup>48</sup>Nurmawati, "Stateless Person in Indonesia: Consequences and Legal Protection."

<sup>49</sup>UNHCR, "Refugee Status Determination," *UNHCR*, <https://www.unhcr.org/id/en/refugee-status-determination#:~:text=The%20UNHCR%20carries%20out%20a,country%20to%20seek%20international%20protection.>

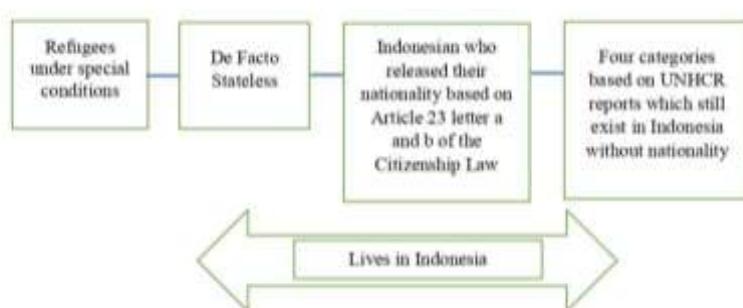
2), Passive Nationality (Art. 4), and Active Nationality (Art. 5) of the Indonesian Criminal Code require the "Nationality" holder of the offender. Thus, the Stateless cannot be prosecuted according to Indonesian criminal law principles. It needs to be re-read and interpreted from the terrorist financing law. It needs to know the legal construction of statelessness itself. Since Indonesia has enacted Law Number 1 of 2023 concerning the Indonesian Criminal Code, Articles 2, 4, and 5 need to synchronize with Articles 4, 5, and 8 of Law Number 1 of 2023).

It becomes clear from the analysis that being stateless has something to do with a person's nationality. Although not all stateless people are refugees, from the standpoint of international law, statelessness may include refugees. The previous sub-chapter explains that a drawn-out process must be followed to be accepted as a refugee. However, the country will need to receive and give them refugee status. There are *de jure* and *de facto* statelessness, as the previous discussion conducted in this paper analysis. *De facto* statelessness is more related to the person residing in another country who is unable or, for valid reasons, unwilling to serve nationality protection. It is defined as the persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. A person with more than one nationality is *de facto* stateless if he resides outside the countries of his nationality and is unwilling to avail of the protection of those countries. *De facto* stateless does not closely relate to the stateless determination procedures. *De jure* was more related to the fullness of the statelessness requirements.

The discussion of a Stateless person who resides in Indonesia and can be an offender of terrorist financing is based on the data given by UNHCR, as mentioned in the previous discussion. Those Chinese Indonesian, Arab and Indian Ethnicities who failed to prove their Indonesian citizenships due to some specific reasons; Indonesian Migrant workers who have lost their nationality under the 1958 law extended residency abroad provisions and are unable to obtain Citizenship under the existing citizenship law (2006), and other people have become stateless who classified as undocumented migrants from China. They have lived in Indonesia for a long time and do not have Indonesian

Citizenship because they were not born in Indonesia. Those four categories of stateless people who reside in Indonesia might be referred to as an offender in Article 2 (2) Letter g of the Terrorist Financing Law.

The activity of funding terrorism can involve collecting, moving, and using the funds to purchase weapons and explosives, terrorist members and network mobility. From the previous discussion and analysis, it is understandable that there are a lot of restricted requirements to implement Article 2 (2) letter g of Law Number 9 of 2013 concerning Terrorist Financing. In a scheme, it can be written as below:



Scheme 1: Legal construction of terrorist financing offender who is stateless and resides in Indonesia

In international law, a state can possess jurisdiction to prosecute a perpetrator of terrorism financing who is stateless, based on Article 7(2)(d) of the International Convention for the Suppression of the Financing of Terrorism.<sup>50</sup> This article stipulates that 'A State Party may also establish its Jurisdiction over any such offence when:... The offence is committed by a stateless person who has his or her habitual residence in the Territory of that State'. This provision provides clarity to a state in enforcing its laws against perpetrators of terrorist financing who lack nationality. Indonesia itself ratified this Convention in 2006 through Law No. 6 of 2006. The Indonesian government's commitment to combatting the criminal act of terrorism financing extends beyond mere ratification of the treaty. As a demonstration of adopting the treaty into Indonesia's national law in 2013, the Indonesian government enacted Law No. 9 of 2013 concerning the Prevention

<sup>50</sup> Lavinia Spieß and Louise Pyne-Jones, "Children at Risk of Statelessness in the Fight against Terrorism," *Statelessness & Citizenship Review* 4, no.2 (2022): 33-65.



and Eradication of Terrorism Financing. Article 2 (1) of the Terrorist Financing Law will be applied to 2 subjects: person and fund.

Further, Article 2 (2) of the Terrorist Financing Law applies this law to criminal acts of financing terrorism outside the territory of Indonesia. In this condition, it is possible to implement the law based on the Passive Nationality principle. The problem is that Article 2 (2) of the Financing of Terrorism Act is occurring outside the Indonesian Territory, and in particular, in the letter g, the Stateless person who resides in Indonesia becomes the offender of that criminal act. Based on Article 2 of the Terrorist Financing Law, Indonesia is implementing the Principle of Omnipresence. The crimes of terrorist financing are mentioned in Articles 4, 5 and 6.

In a condition where the Stateless Person who resides in Indonesia is the offender who is financing terrorism outside Indonesia, according to Article 2 (2) Letter g, the Law on Terrorist Financing will be implemented. Based on Article 1 number 2 of the Convention relating to the Status of Stateless Person, there are requirements to implement the Convention to a Stateless Person (*in contrario*). The requirements are a. The Stateless person does not commit a crime against peace, a war crime, or a crime against humanity; b. The Stateless person does not commit a serious non-political crime outside the country of their residence before their admission to that country; and c. The Stateless person has not been guilty of an act contrary to the purposes and principles of the United Nations.

Since financing terrorism is related to terrorism, it is essential to understand how the Parliamentary Assembly of the Council of Europe in Resolution 1840 (2011) explains that terrorism is a part of crime against humanity. In short, the resolution mentions that terrorists are usually considered crimes against humanity. Terrorists are criminals. Terrorists are not soldiers, and their actions do not constitute acts of war. Then, the Stateless Person cannot commit financing terrorism. Otherwise, a Stateless Person against the Convention Relating to the Status of Stateless Persons (1954) will be excluded from the Stateless Conventions. It means that the offender must be treated as a criminal. Then the national law where he/she resides can be applied. There was a case of a Stateless Person where

The Jakarta Detention Center had one Detainee named Danko Nizaw Slavic. He confesses that he was a Croatian citizen.<sup>51</sup> Slavic could not show his travel documents and the Embassy of his country in Indonesia did not recognize him. So, he was designated as a Stateless Detainee to reside in the Jakarta Detention Centre. On November 29, 2002, Zlavic was transferred to the Jakarta Immigration Detention Center and placed there until Zlavic passed away in 2017. Zlavic's placement as a detainee in 2002 was legal because Zlavic was in Indonesian Territory without having valid travel documents.<sup>52</sup>

Further, the legal process of investigation, prosecutions and examinations in court regulates in Articles 36-40. The process will follow the law and regulations in the existing criminal procedural law unless otherwise provided for in the Law on Financing of Terrorism. Article 37 mentioned that for examination in cases of criminal acts of terrorist financing, investigators, public prosecutors or judges have the authority to request information from a Financial Service Provider (FSP) regarding funds from: people whom Indonesian Financial Intelligence Units have reported to investigators; suspect; or the accused.

A Stateless Person as a criminal of terrorist financing should not have access to a Bank Account or any access to financial institutions. Thus, when a Stateless Person residing in Indonesia commits a crime outside of Indonesia, the process and procedure to be applied to the criminals will be followed by Indonesian Criminal Procedure Law unless the financing of terrorism is governed mainly (vide Article 36 - 40 of Law on Financing of Terrorism Law).

However, what measures and legal frameworks are in place to address the situation of stateless individuals who engage in the offense of terrorism financing within the confines of Indonesia? Regrettably, the extant legislation concerning terrorism financing does not offer remedies to this predicament, consequently engendering a jurisprudential void pertinent to prosecuting terrorism financing

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<sup>51</sup> M A Syahrin, "Penerapan Hukum Deteni Tanpa Kewarganegaraan (Stateless) yang Ditahan Lebih dari 10 (Sepuluh) Tahun di Rumah Detensi Imigrasi Jakarta," *Fiat Justitia* 10, no. January (2017), [https://www.researchgate.net/profile/M\\_Syahrin/publication/330278010\\_Penerapan\\_Hukum\\_Deteni\\_Tanpa\\_Kewarganegaraan\\_Stateless\\_yang\\_Ditahan\\_Lebih\\_Dari\\_10\\_Sepuluh\\_Tahun\\_di\\_Rumah\\_Detensi\\_Imigrasi\\_Jakarta\\_Studi\\_Kasus\\_Danko\\_Nizar\\_Zlavic/links/5c36ce35299bf12be3b](https://www.researchgate.net/profile/M_Syahrin/publication/330278010_Penerapan_Hukum_Deteni_Tanpa_Kewarganegaraan_Stateless_yang_Ditahan_Lebih_Dari_10_Sepuluh_Tahun_di_Rumah_Detensi_Imigrasi_Jakarta_Studi_Kasus_Danko_Nizar_Zlavic/links/5c36ce35299bf12be3b).

<sup>52</sup> M Ryanindityo and A S Purnomo, "Pandangan Hak Asasi Manusia terhadap Pembiaran Orang Dengan Status 'Stateless' di Indonesia (Studi Kasus: Danko Nizar Zlavic)," *Jurnal Ilmiah Kajian Keimigrasian* 2, no. 1 (2019): 93-100.

enacted by stateless entities in Indonesia. Nonetheless, the principle of territoriality can function as a foundational legal tenet in circumventing jurisprudential lacunae inherent to the prosecution of stateless actors implicated in terrorism financing within Indonesia.<sup>53</sup>

For comparison purposes, Indonesia can contemplatively scrutinize the jurisprudential architecture instituted by the United States for addressing the legal disposition of stateless individuals implicated in the offense of terrorism financing within its Jurisdiction. Codified within the Terrorist Bombings Convention Implementation Act of 2002, section 2339c (b) concerning Jurisdiction posits that 'Jurisdiction over offenses outlined in subsection (a) shall be conferred under the following conditions: (1) the offense transpires within the territorial confines of the United States, and (A) the perpetrator is either a national of another sovereign or, indeed, a stateless individual.<sup>54</sup> By imbibing comparable provisions into Indonesia's domestic legal framework, the nation shall prudently avert potential lacunae and ambivalences within the legal process germane to the prosecution of terrorism financing perpetrated by stateless entities within its Jurisdiction, culminating in the concretization of legal certainty.

Due to statelessness, judicial procedures can significantly amplify complexity when a defendant lacks a recognized nationality or legal status.<sup>55</sup> It stems from the intricate intricacies of navigating a legal landscape without a well-defined national affiliation. The treatment of stateless defendants becomes a nuanced endeavour, shaped by the interplay of the specific legal framework and contextual variables.<sup>56</sup> The following comprehensive considerations delineate the multifaceted dimensions inherent to such scenarios:

1. Access to a fair trial. Irrespective of their statelessness, individuals universally possess an inherent entitlement to an equitable trial under the aegis of international human rights law.

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<sup>53</sup> Undang-undang (UU) Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana LN.2023/No.1, TLN No.6842, jdih.setneg.go.id: 229

<sup>54</sup> Terrorist Bombings Convention Implementation Act of 2002 Pub. L. 107-197, title I, June 25, 2002, 116 Stat. 721 ( 18 U.S.C. 2332f).

<sup>55</sup> Betsy L. Fisher, "Discretion in Immigration Law: A Partial Remedy for Stateless People in the United States," *Northeastern University Law Review* 15, no.2 (2023): 1-59.

<sup>56</sup> Betsy L. Fisher, "The Operation of Law' in Statelessness Determinations under the 1954 Statelessness Convention", *Wisconsin International Law Journal* 33, no.2 (2015): 254-289.

2. **Preclusion of Discrimination:** Strictures against discrimination must be unequivocally upheld within the legal domain. The absence of nationality should never furnish grounds for prejudicial treatment. Stateless defendants warrant equal legal protections on par with their counterparts, ensuring an impartial and just trial process.
3. **Detention and Release Dynamics:** In instances of arrest or detainment, applying international human rights standards is imperative. The court's deliberations should encompass a spectrum of factors, encompassing the risk of absconding, the gravity of the charges, and the extent of the individual's community ties.
4. **Consular Amelioration:** Stateless defendants might encounter obstacles in availing customary consular assistance when bereft of effective national representation.
5. **Operational Legal Framework:** The contours of the legal framework governing stateless defendants can exhibit variegated nuances contingent on jurisdictional disparities.
6. **Involvement of International Entities:** In select circumstances, international entities such as non-governmental organizations (NGOs) and organizations focused on statelessness may extend their assistance and advocacy on behalf of the stateless defendant. It could encompass legal representation, heightening awareness about the defendant's predicament, and advocating for safeguarding their rights.
7. **Upholding Human Dignity:** Inherent in the purview of judicial proceedings is the unwavering obligation to uphold all participants' dignity and human rights, irrespective of their nationality.

It is vital to underscore that the specific actions undertaken by a court in addressing a stateless defendant's circumstances can manifest significant heterogeneity contingent on elements such as the host country's legal framework, its adherence to international standards, and the unique particulars of the case. When encountering real-world situations implicating a stateless defendant, it is prudent to enlist the insights of legal experts or organizations well-versed in the intricacies of statelessness and human rights to ensure the unassailable protection of the individual's rights.

## Conclusion

The issue of terrorist financing and stateless offender residing in Indonesia is essential to understand. It needs to carefully understand how to implement the criminal law principles since Indonesia has not recognized that someone is stateless (*apatride*). After using a systematic approach to some Indonesian Law and International law, there is a need to underline a proper legal construction to make Article 2 (2) letter g of the Financing Terrorism Act possibly implemented as one of the offenders of terrorist financing. Though possible, it needs a strict legal construction to understand it. Scheme 1 in the analysis subchapter should be proper enough to make it possible. The legal process and procedure of investigation, prosecution, and court proceedings will follow the Indonesian Criminal Procedural Law (via Article 36 – 40 of the Financing of Terrorism Law).

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