

Citizenship, Statelessness, and the Constitution: A Critical Study of Legal Reform and International Obligations

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ABSTRACT

The phenomenon of statelessness is a serious challenge for national and international legal systems, especially when a country's constitution is unable to guarantee effective protection of the right to nationality. This article aims to explore the tension between constitutional sovereignty and international obligations in addressing statelessness, as well as analyze how domestic legal frameworks can be reformulated to be more inclusive. Using a normative legal method and a comparative approach, this study examines three jurisdictions – Indonesia, Myanmar, and Latvia – and identifies three patterns of state failure: legitimized legal exclusion, transitional ambiguity, and administrative neglect. The findings suggest that constitutions should be positioned as dynamic legal instruments capable of internalizing international human rights principles, rather than mere expressions of state sovereignty. Through a transformative constitutionalism approach, this article emphasizes the importance of citizenship law reform involving the establishment of independent adjudicative mechanisms and the harmonization of legislation with international conventions. The main contribution of this research is the development of a typological model of state failure and the formulation of a multilevel reform agenda as a foundation for the formulation of more just and accountable legal policies for stateless individuals.
Keywords: Constitution, Citizenship, International Law, Legal Reform, Statelessness, Transformative Constitutionalism.

Introduction

Citizenship is a legal status that not only binds individuals administratively but also determines the degree of their participation in national life (Astuti & Nugraha, 2021; Gargiulo, 2023, 2024; Van Den Brink, 2019; Vooglaid & Randma-Liiv, 2022). In the context of modern nation-states, citizenship is a primary prerequisite for accessing human rights protection, public services, and legal recognition of identity (Bloemraad et al., 2008; McCrone & Kiely, 2000; Mezzaroba & Da Silveira, 2018; Stokes-DuPass & Fruja, 2017; Von Rütte, 2022). However, as of 2023, the United Nations High Commissioner for Refugees (UNHCR) reported that there were over 4.4 million stateless persons spread across various regions of the world, including Southeast Asia, the Middle East, and Eastern Europe. They are a group not recognized as citizens by any state, and as a result, they are trapped in a legal limbo that leads to multidimensional vulnerability.

This phenomenon also occurs in Indonesia, despite the fact that Articles 26 and 28D of the 1945 Constitution guarantee the right to citizenship and equal protection of the law for all citizens (Harijanti, 2017; Ibrahim, 2022; Jamaluddin, 2021; Tibaka & Rosdian, 2018). In practice, however, there are a number of groups that face difficulties in obtaining or maintaining their citizenship status. For example, children of mixed-nationality marriages, former Indonesian citizens who have lost their legal documents, and refugee and displaced persons who lack adequate legal protection (Jamaluddin, 2021; Taskarina, 2025; Trisko Darden & Hassan, 2024). The absence of effective and human rights-friendly legal mechanisms to address these issues leaves them vulnerable to social exclusion, exploitation, and denial of access to basic rights.

Therefore, the urgency of this study lies in the importance of analyzing how national legal systems—particularly within the constitutional framework—are able to anticipate statelessness issues. Moreover, amid waves of global migration, ethnic identity conflicts, and increasing transnational mobility, states are required to make legal adjustments that are not only based on the principle of sovereignty but also in line with international standards and obligations. This is particularly crucial given that Indonesia has yet to ratify two key instruments: the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

However, there are still few studies that explicitly link the issue of statelessness with a critical constitutional approach. Most studies emphasize administrative or technical aspects of legislation, while the role of the constitution as a basic norm governing the rights and obligations of citizens has not been widely studied in relation to international law. This is where the scientific gap (research gap) lies, which needs to be filled, especially to understand how constitutional principles can be reformulated to align with international obligations in the context of protecting stateless individuals.

Based on this background, this study aims to examine the relationship between the constitution, citizenship, and international obligations with a focus on statelessness. This study also aims to evaluate the extent to which national legal reforms have—or have not—accommodated international principles on the prevention of statelessness. Using a normative and comparative legal approach, this study is expected to provide conceptual and practical contributions to the formulation of a more inclusive, equitable, and constitutionally and internationally compliant design of citizenship law.

In addressing the complexities of statelessness, there is an urgent need to review national legal frameworks, particularly constitutions, as the primary basis for guaranteeing citizenship rights and protecting individuals from legal exclusion. Although many countries, including Indonesia, normatively recognize the right to citizenship, inconsistencies between constitutional principles and legislative implementation remain significant challenges, particularly in the context of commitments to international law.

This study aims to fill this gap by exploring how constitutions can function not only as basic norms in national legal systems, but also as normative instruments capable of internalizing international obligations related to the prevention and reduction of statelessness. This study departs from the assumption that constitutions are not static documents, but rather political and legal products that can be interpreted progressively to respond to global challenges.

Through a normative-comparative approach and critical constitutional analysis, this study aims to produce a conceptual and normative framework that can serve as a basis for more inclusive and accountable citizenship law reform. Additionally, the findings of this study are expected to strengthen academic discourse on the role of the constitution in supporting the global agenda to end statelessness and contribute to the development of legal policies oriented toward justice and the protection of human rights.

Methods Research

This research is designed as a normative legal study based on a doctrinal approach to legal analysis (Negara, 2023; Robert & Zeckhauser, 2011; Rohman et al., 2024). The main focus is on examining the written legal norms that form the regulatory framework on citizenship and statelessness, both at the national and international levels. This approach is considered most appropriate because citizenship is a field of public law that is closely related to constitutional regulation and state commitments to international agreements. Therefore, legal

norms are analyzed in depth through systematic, historical, and teleological interpretation in order to understand the substantive meaning of the applicable legal provisions.

In approaching this issue, the study also adopts a comparative-constitutional perspective that allows for a critical reading of legal practices in various countries. Indonesia, Myanmar, and Latvia were selected as objects of comparison based on the differences in their legal systems, political configurations, and approaches to citizenship and the recognition of the fundamental rights of stateless individuals. Indonesia represents a developing country with a mixed legal system that has not ratified international conventions related to statelessness, while Myanmar exhibits a pattern of systemic legal exclusion enshrined in its constitution, and Latvia reflects challenges in post-independence legal transition regarding ethnic minorities.

The primary data sources used in this study include the constitutions of each country, legislation on citizenship, and international legal instruments such as the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Additionally, supplementary documents such as UNHCR reports, court rulings, academic journal articles, and policy documents were analyzed to enrich the legal database and support normative interpretation.

Data processing was carried out using content analysis techniques with a normative-qualitative approach. Each legal norm was analyzed in terms of substance, purpose of formation, and correlation with constitutional rights and principles of international law. Furthermore, a comparative analysis among countries is conducted to identify contrasting or parallel regulatory patterns, which are ultimately used to formulate normative findings and more comprehensive legal policy recommendations.

To ensure the accuracy of interpretation and maintain the validity of findings, this study uses a strategy of triangulation of legal sources, namely by matching various legal documents from across jurisdictions and dialoguing them with relevant academic literature and jurisprudence. With this approach, the study is expected to not only provide a descriptive overview but also construct a critical analysis that can serve as a foundation for national legal reform in Indonesia and as an academic contribution to the global discourse on legal protection for stateless individuals.

Results and Discussion

Tension between Constitutional Sovereignty and International Obligations

An in-depth analysis of national and international legal instruments reveals a fundamental structural tension between the principle of constitutional sovereignty of the state in determining its political membership (*demos*) and the binding international obligation to protect the human rights of individuals to nationality and to prevent and reduce cases of statelessness (Oates, 2017; Saunders, 2019; Thornhill, 2020; Vinx, 2020). This fundamental conflict of norms lies at the heart of many contemporary citizenship law issues, particularly in developing countries with complex demographic diversity such as Indonesia.

In Indonesia, this clause of constitutional sovereignty is explicitly embodied in Article 26(1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that "Citizens of the State shall be indigenous Indonesians and other persons recognized by law as citizens (Ilham Azhari et al., 2024; Nugraha, 2023; Pinilih, 2018)." Furthermore, Article 26 Paragraph (2) explicitly delegates further regulation to legislation (*wetgeving*) (Anggraini et al., 2020; Septian & Abdurahman, 2021). Although this delegation of authority essentially provides space for national legislators to formulate a citizenship regime appropriate to Indonesia's socio-historical context, paradoxically, this constitutional framework opens up the

potential for legal exclusion of vulnerable groups (Bakker, 2017; Silalahi et al., 2025; Weinrich, 2021). This potential becomes evident when the organic laws enacted as manifestations of legislative sovereignty fail to fully adopt or effectively implement universal principles of human rights, particularly the principles of non-discrimination, the best interests of the child, and the prevention of statelessness.

This conceptual tension manifests itself concretely in Law No. 12 of 2006 on Citizenship of the Republic of Indonesia (Citizenship Law). The absence of explicit legal recognition and special protection mechanisms for stateless persons in this law is a strong indicator that Indonesia's legal approach to citizenship remains highly administrative-procedural and based on negative logic—that is, defining citizenship primarily through exclusion (who is not/is not a citizen).

This approach contrasts sharply with, and is fundamentally at odds with, the affirmative principles that lie at the heart of the 1961 Convention on the Reduction of Statelessness. The 1961 Convention, which has acquired the status of customary international law, obliges State parties—including Indonesia, which has ratified it—to grant nationality (subsidiary *jus soli*) to children born on their territory who do not acquire another nationality at birth and are therefore at risk of becoming stateless.

Compounding this lack of coherence is the absence of an effective and independent judicial mechanism to review or resolve disputes relating to statelessness in Indonesia. The lack of access to legal remedies means that the determination of citizenship status—or the absence thereof—remains within the realm of absolute discretion of administrative authorities (such as the Ministry of Law and Human Rights/Directorate General of General Legal Administration).

This highly centralized decision-making structure with minimal judicial oversight creates systemic vulnerabilities to arbitrariness, procedural errors, and lack of accountability, particularly in complex cases involving marginalized groups such as refugees, victims of human trafficking, cross-border communities, or children with unclear citizenship status. As a result, this broad administrative discretion not only deepens the divide between national sovereignty and international obligations but also actively contributes to the creation and perpetuation of statelessness in Indonesia.

Consequently, these unresolved tensions have significant legal and human rights implications. Indonesia faces challenges in fully fulfilling its international commitments under the 1961 Convention and other human rights instruments (such as Article 24 of the International Covenant on Civil and Political Rights), while simultaneously seeking to maintain constitutional control over citizenship issues.

The current legal regime fails to provide legal certainty and adequate protection for individuals trapped in situations of statelessness or at high risk of it, thereby placing them in a state of legal limbo that perpetuates violations of their fundamental rights. Harmonizing national laws with internationally recognized norms, including explicit recognition of statelessness and the establishment of fair and effective status determination mechanisms with access to courts, is not only a legal obligation but also a crucial step toward a more just, inclusive, and consistent with the principles of the rule of law (*rechtsstaat*) and substantive justice.

Comparative Study: Myanmar, Latvia, and Indonesia

A comparative analysis of Myanmar and Latvia reinforces the argument that the existence of constitutional norms does not guarantee the protection of citizenship rights if it is not accompanied by inclusive legal policies and compliance with international standards.

In Myanmar, the 2008 Constitution categorizes citizenship into three tiers: citizens, associate citizens, and naturalized citizens, emphasizing descent as the primary basis (Cheesman, 2017; Htun, 2019; Kyed & Gravers, 2017). This system clearly excludes the Rohingya ethnic group, who are not listed in the 135 “recognized nationalities.” Although the constitutional norms appear comprehensive, this exclusive approach has created structural and systemic statelessness that is even legitimized by the country’s highest legal framework. In this case, the constitution not only fails to protect human rights but has become a legal tool for ethnic exclusion.

In contrast, Latvia faced a different dilemma after its independence from the Soviet Union. The country created a category of “non-citizens” for those who had settled before independence but did not automatically obtain citizenship (Kochenov & Dimitrovs, 2016; Kuczyńska-Zonik, 2017). Although “non-citizen” status in Latvia does not completely deny basic rights (such as access to education and health care), they are still excluded from political rights and free mobility within the European Union. Latvia demonstrates a problematic model of constitutional transition, as it tends to prioritize the protection of national identity over principles of transitional justice.

In the Indonesian context, the issue of statelessness is more hidden within a seemingly neutral legal structure. Although the constitution does not explicitly exclude anyone, regulatory policies and the absence of efficient administrative and judicial mechanisms to deal with statelessness create an implicit exclusionary effect. As a result, Indonesia exhibits a pattern of administrative denial rather than legalized exclusion, as seen in Myanmar, or transitional ambiguity, as observed in Latvia.

Constitutional Construction as an Instrument for Implementing International Obligations

The main findings of this study clearly point to the urgent need to reposition the understanding and function of the national constitution—particularly in the context of citizenship law—from merely a symbol of domestic legal supremacy to a strategic instrument for effectively internalizing and operationalizing international obligations.

Consequently, if the constitution is understood narrowly and statically as merely a closed bastion of sovereignty that disregards global legal developments, it will fundamentally fail to fulfill its crucial role as a normative bridge between domestic legal principles and binding international obligations (*pacta sunt servanda*) (Kälin, 2021; Kyrhizova & Maryniv, 2022; Lukashuk, 1989). Therefore, a paradigm shift toward a constitutional harmonization approach is necessary. This approach requires an evolutionary and contextual interpretation of constitutional norms, which proactively considers and aligns itself with dynamic developments in the international human rights regime, particularly those related to the right to nationality and the prevention of statelessness.

Within this framework of constitutional harmonization, the theory of transformative constitutionalism developed by Karl Klare (1998) gains critical relevance (Davis & Klare, 2010, 2024; Klare, 1998). Fundamentally, Klare emphasizes that the constitution should not be reduced to a frozen institutional document, but rather understood as a living socio-political project. This project aims not only to regulate state governance but, more transformatively, to deconstruct deeply rooted structures of injustice and social exclusion, and actively shape a more equitable and inclusive society.

This theoretical convergence is highly significant in the context of citizenship, where legal exclusion often reproduces social and economic marginalization. Indonesia, by adopting an open constitutional system that explicitly recognizes and guarantees respect for universal

human rights – as strongly affirmed in Article 28I Paragraph (4) of the 1945 Constitution ("The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government") – actually has a strong and potential normative foundation (Wicaksono et al., 2023). This foundation opens up interpretative space to understand the right to citizenship not merely as an administrative status (mere legal status), but as a fundamental human right inherent to human dignity, as recognized in international instruments such as the Universal Declaration of Human Rights (Article 15) and the Convention on the Rights of the Child (Article 7). Thus, the Indonesian constitution has the potential to become the primary normative reference in promoting rights-based citizenship reform that is inclusive and responsive to the risk of statelessness.

However, the transformative potential contained in Indonesia's open constitution will not be realized automatically. There is a significant implementation gap between the normative promises of the constitution and the legal reality and institutional practices. This potential will remain untapped without comprehensive and targeted legislative and institutional reforms. In particular, there is a need to create specially designed judicial and administrative mechanisms to effectively identify, prevent, reduce, and resolve cases of statelessness – mechanisms that are currently almost non-existent in Indonesia's legal architecture. This is where the role of a repositioned constitution becomes crucial and strategic. The constitution must not merely function as a passive source of normative legitimacy, but must actively serve as the constitutional bedrock guiding and compelling the reconstruction of state institutions.

This reconstruction must aim to create institutions that are intrinsically responsive to ratified principles of international law, particularly non-discriminatory access to citizenship, legal certainty, and protection of individuals from statelessness. Furthermore, the constitution must serve as the foundation for strengthening the role of the courts – through progressive constitutional interpretation and judicial review – in ensuring that legislation and administrative actions are consistent not only with the text of the constitution but also with its transformative spirit and the state's international obligations.

Overall, the reconstitution of the constitution as an instrument for implementing international obligations requires multiple commitments: an interpretative commitment to read the constitution in harmony with international human rights law, a legislative commitment to adopt organic laws that are in line with international human rights law, and institutional commitment to build administrative and judicial capacity capable of translating these high norms into real protection for individuals, especially those most vulnerable to exclusion from citizenship.

Only through a holistic and transformative approach can tensions between constitutional sovereignty and international obligations be meaningfully reconciled, and the promise of the Indonesian constitution as a constitution that upholds human rights be realized in the context of citizenship law.

Discussion

Empirical and analytical findings in this study indicate that statelessness is not merely a legal-formal issue, but rather a reflection of structural failure in harmonizing the principle of state sovereignty with the principle of universality of human rights. Within a theoretical framework, this can be understood through the approach of constitutional pluralism, which acknowledges the dynamic interaction between national constitutional norms and supranational principles, including international legal obligations.

This approach differs from the dichotomous doctrines of monism or dualism. As Neil Walker (2002) argues, constitutional pluralism provides space for states to interpret their constitutions progressively in response to international norms, without losing their internal authority. In the Indonesian context, this approach can be used to interpret Article 28I of the 1945 Constitution on universal human rights as an entry point for the acceptance of international principles in national law, including in matters of statelessness.

Furthermore, the theory of transformative constitutionalism provides a sharper normative dimension. In the context of South Africa, this theory has been used to transform a previously exclusive legal system into an inclusive one through judicial activism. If applied in the Indonesian context, the constitutional court should not only be a guardian of legal formalities, but also a normative actor capable of reinterpreting the constitution to protect vulnerable groups who have not been granted citizenship.

From a global perspective, the findings of this study are also consistent with previous studies that highlight the weak role of national legislation in responding to international obligations. For example, Blitz and Lynch (2009) in their study on statelessness in Europe noted that even countries with strong constitutional legal systems remain ineffective if they are not complemented by transparent and accountable implementation frameworks. Indonesia, Myanmar, and Latvia, in this context, exhibit three distinct models of failure – legalized exclusion, administrative neglect, and transitional ambiguity – yet all imply the absence of effective interconnection between the constitution and international law.

This confirms that effective citizenship law reform must encompass two dimensions: internal constitutional reconstruction and external adjustment of the national legal structure to international norms. Both dimensions can only be realized through a progressive legal approach that transcends narrow positivism, as well as through the political will to build a legal system oriented toward substantive justice.

Scientific Novelty and Research Contribution

This study presents significant scientific innovation in the study of citizenship and statelessness by making the constitution the meeting point between national legal norms and international obligations. Until now, studies on statelessness have tended to emphasize administrative or technical policy approaches, such as naturalization procedures, identity documents, or transitional provisions in citizenship laws. However, these approaches have failed to address the structural and normative roots of the problem, namely the weak guarantee of citizenship rights within a constitutional framework that prioritizes human rights.

In this context, the main novelty of this research lies in its attempt to bridge two legal regimes that have traditionally been considered separate: the constitution as the national legal foundation, and international conventions as sources of transnational obligations. By utilizing a constitutional pluralism approach, this study demonstrates that the constitution can and should be understood as a document open to universal values, including the principles of non-discrimination and the right to citizenship, which are pillars of modern international law. This broadens the meaning of constitutional norms, which have been narrowly interpreted within the framework of formalistic sovereignty.

In addition, methodologically, this study also contributes by developing a typology model of state failure in responding to statelessness through a comparative analysis of Indonesia, Myanmar, and Latvia. This typology includes patterns of legalized exclusion found in Myanmar, administrative neglect in Indonesia, and transitional ambiguity in Latvia. This approach not only enriches our understanding of the variety of state responses to statelessness

but also provides an analytical framework that can be applied in other jurisdictions, particularly in developing countries facing similar challenges.

Normatively, this study also emphasizes that protection for stateless persons is not an optional policy issue, but rather a constitutional mandate inherent in the principles of human rights guaranteed in Article 28I paragraph (4) of the 1945 Constitution. As such, this study encourages a progressive interpretation of constitutional norms that enables legal transformation toward greater inclusivity, through legislative reform and the establishment of judicial mechanisms that ensure fair and accountable access to citizenship recognition.

In terms of practical contributions, the findings of this study are relevant to encourage the ratification of the 1954 and 1961 Conventions, which have not yet been adopted by Indonesia. In addition, the recommendations of this study support the establishment of an independent citizenship adjudication system in response to the absence of legal mechanisms for handling citizenship claims by individuals at risk of statelessness. Reform of Law No. 12 of 2006 is also part of the recommended agenda for change to align with international minimum standards.

With all these elements, this study provides theoretical, normative, and practical contributions to strengthening the integration between national and international law, and paves the way for the reconstruction of citizenship law that is not only based on state sovereignty but also on respect for the fundamental rights of every individual to have a recognized legal status. Therefore, this article is expected not only to enrich the academic literature in the fields of constitutional law and international law but also to serve as a foundation for advocacy and legislative reform that is more humanistic and responsive to issues of statelessness.

Conclusion

The issue of statelessness is a multidimensional problem that touches on legal, political, and human rights aspects. This study emphasizes that statelessness is not merely the result of administrative vacuum, but rather a reflection of the inconsistency between national constitutional norms and international legal obligations. The constitution, as the supreme source of law, plays a central role in guaranteeing the right to citizenship; however, in practice, it often fails to provide substantive protection for individuals in vulnerable stateless situations.

An analysis of Indonesia, Myanmar, and Latvia reveals three distinct forms of state failure: constitutionally legitimized legal exclusion (Myanmar), prolonged transitional ambiguity (Latvia), and administrative neglect concealed behind neutral constitutional norms (Indonesia). These findings lead to an important conclusion: without progressive reinterpretation of constitutional norms and the integration of international principles, efforts to address statelessness will remain symbolic and ineffective.

Furthermore, this study underscores the importance of a transformative constitutionalism approach that views the constitution not only as a normative document, but also as an instrument of social change that prioritizes the protection of the most vulnerable groups. This concept demands that the constitution not only protect the formal rights of citizens, but also reach those who actually need legal recognition as citizens.

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