

CHAPTER III

UNHCR ROLE TOWARDS PIDs

Eventhough there have already been two countries that try to solve the citizenship status in the case of PIDs, United Nations High Commissioner for Refugees (UNHCR) still came to solve the problem. This condition became a big questionmark in this research. Two big countries such as Indonesia and also the Philippines that basically the relationship between them are close enough still need the third party like UNHCR to solve the citizenship status problem in the case of PIDs. It is not because a bad capability of Indonesian government or the Philippines so that case of citizenship status problem could not be solved yet. It is because the problem of citizenship status in which the stateless problem that basically should fullfil the basic rights for many people is little bit complicated to solve. In this case, complicated means when a country did not want to recognize or take a step forward to give the stateless persons a nationality remembering that a country is the basic administrative unit of global politics (Burke, 2014). Especially this problem involve two countries that have different perspective towards the rights of people to gain their citizenship status. Actually, there are also many descendant of the Philippines lived in Sulawesi, Indonesia. However, their are accepted without serious problem. But little bit difference happened around the descendant of Indonesia living in the Philippines. Most of them confess that to find a job was very difficult there, and when they already got their job, there still some discrimination towards them (Majid, 2016). This condition lead the Indonesian government take a big step and try to solve the problem by facililated them to go back to Indonesia,

give them assistance in term of food, loan of money, education and many more. However, for facilitating them to go back to Indonesia also faced little bit complicated prosedure (Majid, 2016). Especially, when some of them decided to go back to the Philippines because they feel that living in the Philippines is much more easy than in Indonesia. This condition also become a dilema for the Indonesian government. In this case the coming of UNHCR like what have been already done before in solving the stateless problem can at least show and give both Indonesia and the Philippines portion to do towards their citizen.

A. UNHCR Coming to Solve Stateless Problem in the Philippines

Since 30 years ago, United Nations High Commissioner for Refugees (UNHCR) took a place in the Philippines. For the first time UNHCR, UNHCR really concerned in any issue related to refugees especially if the issues head to statelessness. Regarding to statelessness, UNHCR have their special areas to do related to solve their concern which are identification, prevention, reduction, and protection (UNHCR, Ending Statelessness, 2001). And since 2014, UNHCR had a great program to eradicate statelessness named *Global Action Plan to End Statelessness*. UNHCR saw stateless as a problem which had to be solved as soon as possible. UNHCR also saw that some persons could become stateless since they were born, and the others were become stateless in the course of their lives. Many cases in terms of stateless occured because of persons are being refugees for the first time or it can be said as being a “*De Jure* stateless” or “*De Facto* stateless” (UNHCR, 2010) . It means that, because of some condition, persons who firstly have a nationality could become a stateless. Actually, nationality is a right. By

having a right to nationality, persons could have the other right from the state where they stand. Nationality also provides legal connection between persons and the State including grant a diplomatic protection and representation of the individual on international level (Batchelor, 1998). Beside the persons could have assistance from the government where they stand, persons who had nationality also could get another right in their live such as land to live, job to get income, and security to protect their life. Nowadays, the issue of nationality was very important. Crime can arise because of that. For example related the issue of terrorism, human trafficking, or even organ trafficking (Waas, Rijken, Gramatikov, & Brennan, 2015). Persons who do not have nationality means they have no protection from the government of a country to deal with those kind of issues. In this condition, UNHCR tried to take part in this issue so the problem of citizenship status could be solved soon. Since 2011, a serious program had already initiated by the Philippines government, Indonesian government and the mediator as the third party which is UNHCR. The program named *Persons of Indonesian Descent Registration Project* (Majid, 2016). This program has been done in the area of Southern Mindanao. This program was also used to identify and to analyze possible solutions towards the Persons of Indonesian Descent.

A.1 UNHCR in the Philippines

United Nations High Commissioner for Refugees was existed in the Philippines for over 30 years (UNHCR, Philippine Operation, 2014). Regarding the basis field of UNHCR, UNHCR has special concern on it. The persons concerned by UNHCR are Refugees, Internally Displace Persons, Stateless Persons,

Returnees, and also Asylum-Seekers (UNHCR, Persons of Concern to UNHCR, 2014). In its existence, UNHCR had a big role in assisting the refugees, Internally displace persons, stateless persons, returnees and asylum-seekers so they could get clear status, a decent life, and their other rights. Assisted by UNHCR, the government of the Philippines implement their obligations as a signatory in 1951 Refugee Convention (UNHCR, Philippine Operation, 2014). The activity of UNHCR in the Philippines could describe in the following elements. First of all, UNHCR work based on Right-based approach. This approach includes principle of human rights law, international humanitarian law and refugee law. To strengthen their existence in the world, UNHCR ran their obligation based on the law existed and approved by most of countries in this world. And most of the law based on humanitarian issues. And the following is sustainability. UNHCR job is to make sure that all of their program are being sustain. To reach their goals, UNHCR assisted by the government units, local NGOs, and other national stakeholders. The other approach used by UNHCR is community and evidence-based approach. In this approach, UNHCR gathered some information regarding the fact in the society to support their program including the information of age, gender, and diversity-focused. UNHCR has already had persons of concern in ran their job. Another element is partnership, like what already explain above, that UNHCR will run their job assisted by local stakeholders, so the program of UNHCR will run effectively (UNHCR, UNHCR in Philippines, 2014).

The history of the Philippines regarding refugees and the experience of them cooperated with UNHCR is a very long story. Since in the beginning of 20th

century, there are a lot of refugees, persons who ran from violence and persecution in their country went to the land of the Philippines. There are around nine waves of refugees came to the Philippines. The UNHCR Philippines Country Representative admitted that the Philippines gave a big concern towards refugees. Bernard Kerblat also admitted that it was the national pride to accept anyone who need such kind of protection and all the society of the Philippines have to participated in. Beside the Philippines is one of the signatory of the 1951 Convention Relating to the Status of Refugee, the Philippines also the first Southeast Asian country that become party to the 1954 Convention on the Status of Stateless Persons (UNHCR, UNHCR Philippines, 2016).

A.2 Persons of Concern

Firstly about Refugee, Asia-Pasific region is a region with the most existed refugee in this world. Actually, to protect refugee, there are two goals which are protection in law and protection in practice (Barbour, 2012). By protecting the refugee against law, refugee will not suffer exploitation because of illegal existance of them. And then, protection in practice also required so refugee could always be monitored. Brian Barbour explains that there are four fundamental barriers to create effective refugee protection in the host countries: (a.) the lack of legal and procedural foundations, (b.) the lack of compliance with legal standards, (c.) preconceptions and misconceptions about refugees and refugee protection, and (d.) a lack of cooperation and coordination among States and civil society (Barbour, 2012). From the explanation, the cooperation between State and the Refugee are greatly need, and also sometimes the existance of UNHCR as the highest

organization that deal with Refugee and local NGOs to support and assisted the refugee so the victim could get their basic right.

Secondly, like what already happened in Africa, Internally Displacement Persons caused by the situation of a country which encourage this issue, such as armed conflict (Kellenberker, 2009). This condition also similar with already happened towards the Persons of Indonesian Descent which they ran to the Philippines to avoid the condition which is collonialization at that time.

Thirdly, like what already happened in this research about stateless persons. Stateless sometimes caused by naturally means persons born as stateless and stateless could loose their nationality, because there was a conflict, racial discrimination and lack of solution from political side (Grainger, 2012). Stateless actually the worst violation against person's right because it was dealing with nationality.

Fourthly, regarding a returnees, UNHCR also became one organization which facilitate or became the mediator towards the origin country so the returnees could return to their origin country safely without further threat in terms of discrimination, or exploitation (South-East Myanmar Return Monitoring Update, 2014).

Similar to the previous aspect, the fifth one is asylum seekers. Asylum seekers also became one of the focus of concern to UNHCR, because to seek an asylum, the persons whose flee from their origin country have to wait for the process from the destination country (Asylum-Seekers, n.d).

A.3 UNHCR in Mindanao

There were many issues faced by Mindanao in recent years. Some reasons were because of natural disaster, internal conflict, and many more. Because of natural disaster, some societies in Mindanao became displacement. And another issue was because of internal conflict, there were around one million refugees ran towards Sabah, Malaysia (Tokoro, 2013). The conflict emerged because of under American colonial rule in 20th century, massive migration of Christian society from Northern Philippines to Southern Philippines which is majority of Muslim society in Southern Philippines. As a result, the place where the muslim society lived starts to push, and it leads to make the Muslim angry and become rebellion. And then, it leads the conflict to emerge. Started from those phenomena, there were many Muslim refugees ran towards Malaysia, and in 2012, there were around 110,000 persons who ran towards Malaysia because of the conflict (Tokoro, 2013). Because of those situations, UNHCR started to expand its existence to Mindanao region. UNHCR also applied their goals in Mindanao. Starting the establishment in early 2012, UNHCR focus more in its existence in facing the problem of displacement persons. UNHCR also expanded its existence in the region of Iligan (Southern Mindanao) and also Davao City (Eastern Mindanao) (UNHCR, UNHCR operation, 2014). UNHCR expanded its existance was because of some reasons; around year of 2012, the issues of refugee, displacement persons, and also any issues related to refugees, started to appear. Especially, the internal displacement persons in those area, became one the main reason UNHCR expanded its existance in Mindanao.

Related to the issue of internal displacement persons, UNHCR based on the UN Guiding Principles on Internal Displacement started to emerge.

B. UNHCR Program towards PIDs in the Philippines

In the case of PIDs, the government of Indonesia cooperated with the government of the Philippines have already ran their effort to end statelessness. Especially, as a signatory to a program of Refugee Convention, Philippines have a big obligations to end statelessness (Barbour, 2012). There are many ways that both countries have already done to solve the problem of PIDs. Regarding the prolem faced by PIDs, the concern of both countries were not just about giving a training so they can develop themselves and get a better job, not just about giving them enough education, or not just about assisting them when they need help. The most important matter towards them was about nationality. Their citizenship status have to be cleared. Regarding the role of UNHCR in the Philippines, as one of the major power to tackle the issues related to refugee, UNHCR has a big role towards the problem of Persons of Indonesian Descent. As the special body from United Nations (UN), when two countries could not give their citizens basic rights, UNHCR became the one who assist the countries and the citizens, not giving them direct solution and the problem was done. But, UNHCR was giving them a portion, so every actors know what should they do to tackle the citizenship status problem. Starting from data collection towards the stateless in the Philippines. Since 2014 – 2024 UNHCR has a big agenda to tackle stateless in the world. There was named *Global Action Plan to End Statelessness*. This 10 years program from UNHCR gave new hope especially for stateless, refugees, asylum-seekers, internally displacement

persons, and others persons whose faced the problem related to their basic right which is nationality (UNHCR, Global Action Plan to End Statelessness, 2014). Actually, every country in this world has its own way to tackle and to end the statelessness issue. However, every country has different view and different ways to do their job and UNHCR has global view to end statelessness. The other program regarding the role of UNHCR to tackled stateless persons in Mindanao was *Solutions Feedback Mission* for the Persons of Indonesian Descent. In this program, UNHCR plunge into the problem of Persons of Indonesian Descent after the program were not solved since the first coming of PIDs in the Philippines approximately in the year of 1800s. This program was the close program since UNHCR came to Mindanao and tried to figure out the citizenship status problem towards PIDs. Solutions Feedback Mission gave a chance for every citizen who wanted to choose whether they want to be an Indonesian or Philippino. After the program has done, UNHCR hope that every country both Indonesia and the Philippines have their own portion for those who choose to be their citizen and gave them their legal document. So, their basic rights at least fullfil first.

B.1 Global Action Plan to End Statelessness

According to António Guterres, from the United Nations High Commissioner for Refugees, Statelessness is a profound violation of an individual's human rights. It would be deeply unethical to perpetuate the pain it causes when solutions are so clearly within reach. This Global Action Plan sets out a strategy to put a definitive end to this human suffering within 10 years. Guterres counts on the support of the people to help make the ambitious goal a reality. From those

statement, UNHCR tried to explain that statelessness is a disaster towards the human kind. Because, without clear citizenship status, person can not get their basic rights. From that statement, UNHCR tried to invite every support for other actors to eradicate statelessness. UNHCR has 10 years program to end statelessness in this world through *Global Action Plan to End Stateless* program. Assisted by any stakeholders in every country, UNHCR tried to solve the stateless problem by resolving existing major situations of statelessness, prevent new cases, and better identify and protect the stateless populations (UNHCR, *Global Action Plan to End Statelessness*, 2014).

Guiding by 10 actions within 2014 – 2024, UNHCR cooperate with any stakeholders in any states, civil society, and other international organizations tried to solve the problem of statelessness in this world. Those 10 actions are: 1) Resolve existing major situations of statelessness, 2) Ensure that no child is born stateless, 3) Remove gender discrimination from nationality laws, 4) Prevent denial, loss or deprivation of nationality on discriminatory grounds, 5) prevent statelessness in cases of State succession, 6) Grant protection status to stateless migrants and facilitate their naturalization, 7) Ensure birth registration for the prevention of statelessness, 8) Issue nationality documentation to those with entitlement to it, 9) Accede to the UN Statelessness Conventions, and the last 10) Improve quantitative and qualitative data on stateless populations (UNHCR, *Global Action Plan to End Statelessness*, 2014). Those 10 actions are related each others. And then, every action also has a guidance and milestone that have to be done in certain year. Every world has their reasons why there were stateless persons in their country, and by

the existing program, UNHCR will assist the countries to solve or approximately advocate the local policy towards the stateless. In every action of their program, UNHCR based on some treaties and policies which internationally standards that already exist tried to solve the problem of statelessness in this world. The international standards such as Universal Declaration on Human Rights article 15 said that “*everyone has the right to a nationality*”. Meanwhile in International Covenant on Civil and Political Rights article 24 stated that “*every child shall be registered immediately after birth and shall have a name*”, “*every child has the right to acquire a nationality*”, and many more.

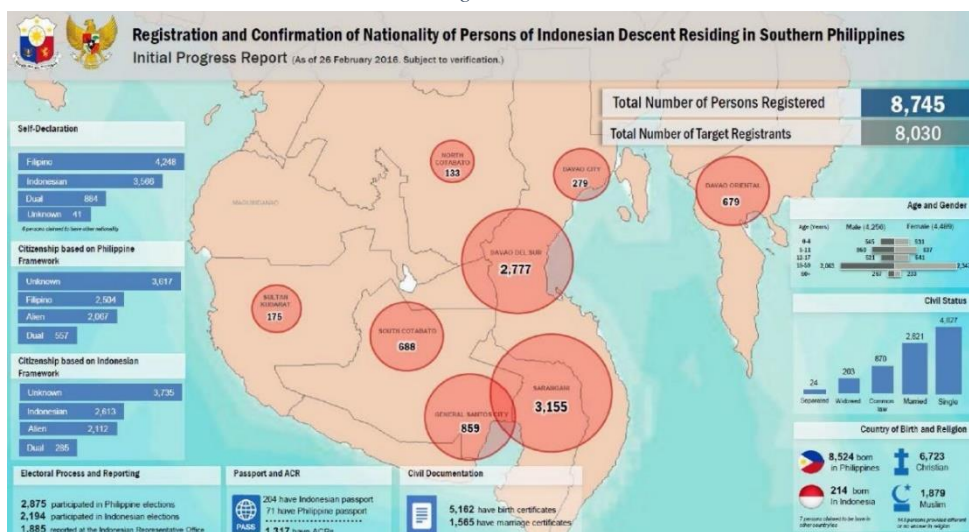
B.2 Solutions Feedback Mission

Since 2014, the starting point of *Global Action Plan to End Statelessness* from UNHCR, the issue of stateless within the society of Persons of Indonesian Descent became one of their focus. Like what already explained above that stateless within the PIDs has already existed since colonialism era. And until 2014 before the program started, stateless within the PIDs persists. One of the program from UNHCR assisted by both Indonesian government and the Philippines government carried out named Solutions Feedback Mission. This program basically to facilitate the PIDs to choose whether they wanted to be Indonesian or Filipinos. From its beginning, UNHCR started to collect some data and facts about PIDs. Actually, every actor in this issue has their own data about PIDs. The data was about the spread of PIDs in Mindanao. One of the important matter was what will be done by every government after the program is completed especially for the government of Indonesia. From the data provided by UNHCR in their data collection towards PIDs,

until June 2014 the finding of the fact that in 10 individuals were detained in General Santos City regarding the violation of the Philippines immigration law. And then from four cases in Glan Sarangani Province, Tupi and South Cotabato, only one case is closed and can be completed with initiatives of the Consulate General of the Republic of Indonesia. There were already happened some cases which involved the PIDs. So, hopefully after the *Solution Feedback Mission* program have been done, every legal document for those who belong to whether Indonesia or the Philippines can get their legal document of nationality as soon as possible.

Until the data collection completed, the number of PIDs which are owned by UNHCR fewer than the data showed by the news. The data from UNHCR showed that 2,039 persons claimed to be Filipinos, 1,738 persons claimed to be Indonesia and 317 persons claimed to be dual citizens. The data from UNHCR that showed the spreadness of PIDs in the Philippines by figure below.

Figure 3.1



Source: (UNHCR, Registration and Confirmation of Nationality of Persons of Indonesian Descent Residing in Southern Philippines (Over All Registration Results), 2016)

From the data of UNHCR, from the first coming in around 1870s, the amount of Indonesian which went to the Philippines are continuously decrease. UNHCR also showed that the second and the fourth generation of Persons of Indonesian Descent were born in the Philippines and majority of them were married in the Philippines. However, regarding documentation, more than half of them have no Alien Certificate of Registration (ACR) which is the one of the important matter to survive to live in the Philippines especially for a long time. It means that there were still many of the Indonesian descents in the Philippines live illegally in another

country outside Indonesia which is the Philippines. And then, between the holder of ACR, only a few of them which had updated ACR. Because of the data collected by UNHCR, the program of Solutions Feedback Mission was initiated.