A LEGAL STUDY ON THE RIGHT TO EDUCATION OF STATELESS CHILDREN IN MALAYSIA

By

Karl Rafiq bin Nadzarin 2008408696
Muhammad Fuzail bin Rahmat 2008408756
Nadia binti Abu Bakar 2008401784
Adam Alexius Kiob 2008408622

Submitted in partial fulfillment of requirement for Bachelor in Legal Studies (Hons)

Faculty of Law
Universiti Teknologi Mara

October 2010

The students/author confirm that the work was submitted on their own and the appropriate credit has been given where reference has been made to the work of others.
ABSTRACT

This paper is a study done on stateless children and their right to education in Malaysia. Statelessness is a very serious issue in the world today and many governments around the world are learning to deal with this issue. The United Nations various bodies, particularly the United Nations High Commissioner for Refugees have been assisting states around the world on this matter and have been extensively campaigning for general awareness on the issue and problems associated with statelessness. According to the Universal Declaration of Human Rights, every child and person deserves the right to a free education. However, many circumstances prevent this from happening. In Malaysia, this is a problem attributed to many minority communities such as the refugees, asylum seekers and the stateless as the state does not legally recognize the existence of any of these communities. Therefore, they cannot enter local public schools and their rights are not protected. How then is this issue dealt with locally? Or is it ignored completely? Does the state have a legal obligation towards these stateless children with respect to the right to education?

This paper will attempt to answer these questions and explore the socio-legal aspects on the subject matter which shall include an analysis of the local and international law, policies and compare it with realities on the ground. Recommendations and suggestions will also be provided to solve this issue with the basic premise of awarding benefit to every party once the right to education is awarded to stateless children in Malaysia.
Acknowledgements

All praise be to Allah S.W.T for the completion of this project paper. The project paper also would not be a success without the core anchors of its authors, a team fully dedicated to its perfection. They consist of Karl Rafiq Nadzarin, Muhammad Fuzail Rahmat, Nadia Abu Bakar and not forgetting Adam Alexius Kiob.

We are heartily thankful to our supervisor, Puan Farizah Bt Isa, Universiti Teknologi Mara Faculty of Law lecturer whose encouragement, guidance and support from the initial to the final level enabled us to develop an understanding of the project paper. More than that, we owe it to her for the patience that she has gave us in completing the tasks that were at hand.

We would also like to show our gratitude to Encik Ahmad Razif bin Mohd Sidek and Encik Muhammad Rushdan bin Mohamed, from the International Affairs Division of the Attorney General's Chambers for sharing their views and opinions with regards to the topic of the project paper. Not forgetting Encik Amer Hamzah, the Senior Associate in Zain & Co for giving his point of view and materials which is essential to this particular research. Without them, our research paper may not be detailed and complete.

Finally, we are indebted to our family and friends who had provided us the moral support that is needed to finish this research paper. Especially to our parents, for their constant prayers for our success in this world and the day hereafter. We dedicate this research paper to the stateless children who are still struggling out there, with hope that they have a better future.
# TABLE OF CONTENTS

**ACKNOWLEDGEMENT** i

**ABSTRACT** ii

**CONTENT** iii

**INDEX OF CASES** v

**INDEX OF STATUTES** vi

**CHAPTER ONE: INTRODUCTION**

1.1 DEFINITION OF STATELESS CHILDREN 1

1.2 BACKGROUND OF STATELESS CHILDREN IN MALAYSIA 2

1.3 PROBLEM STATEMENT 5

1.4 OBJECTIVE OF STUDY 7

1.5 LITERATURE REVIEW 8

1.6 METHODOLOGY 13

1.7 SIGNIFICANCE OF STUDY 13

1.8 SCOPE AND LIMITATION 14

**CHAPTER TWO: THE CURRENT STATUS**

2.1 CURRENT STATUS IN MALAYSIA 16

2.2 INTERNATIONAL POSITION 21

**CHAPTER THREE: RECOMMENDATION AND CONCLUSION**

3.1 RECOMMENDATIONS 30

3.2 CONCLUSION 35
A LEGAL STUDY ON THE RIGHT TO EDUCATION OF STATELESS CHILDREN IN MALAYSIA

CHAPTER ONE: INTRODUCTION

1.1 DEFINITION OF STATELESS CHILDREN

Article 1 of the Convention Relating to the Status of Stateless Persons defines 'stateless person' as a person who is not considered as a national by any State under the operation of its law. Therefore, a person who is stateless is a person who is not considered a citizen of any country.

It is of paramount importance here to note the differences between two types of stateless people. Firstly, being de jure stateless which legally means someone that does not have or has not been conferred a nationality. This form of statelessness comes under the definition of stateless in the Convention Relating to the Status of Stateless Persons. The second kind of statelessness is de facto which is not covered under the Convention's definition of stateless. De facto stateless here basically includes all those who technically have a nationality or the nationality can be traced, but are unable to enjoy national protection and the benefits and rights that come with it.

For the purposes of this paper, both de jure and de facto statelessness shall be accepted as the definition of stateless.