The Production and Maintenance of Protracted Statelessness: An Analysis of the Language and Practice of the Nationality Law in Thailand and Brunei Darussalam

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https://doi.org/10.12982/CMUJASR.2020.009

ABSTRACT

In theory, nationality law that stipulates criteria and requirements for the granting of citizenship should address racial or ethnic division and the distinction between immigrant and indigene status. Instead, modern citizenship contradicts this, and conversely becomes an apparatus for state procedures of exclusion. In this article, I have focused on and assessed the language of seclusion and the practice of division found in the nationality law of Thailand and Brunei. I argue that the phenomenon of protracted statelessness is not happening incidentally, but rather deliberately produced through the language and practice of nationality law. The study concludes by highlighting two main factors that contribute to the increasing number of protracted stateless persons: first, the explicit and implicit language of exclusion in the law that becomes institutionalized practice; second, the opaqueness of the language used can facilitate practices that are not aligned with the law. This study sheds light on the nature of language and practice found in nationality law – a factor that has attracted little attention from relevant scholars, yet it is inherent in the production and maintenance of protracted statelessness in Thailand and Brunei Darussalam.

Keywords: Brunei Darussalam, Language and practice, Nationality law, protracted statelessness, Thailand

INTRODUCTION

Discourse, as articulated by Michel Foucault, emphasizes the power of language in the production of particular knowledge. The key structure of discourse is that language, or ideas expressed in language and practice, can shape and create meaning systems that become dominant and recognized as being the truth. Discourse dominates how to define and organize oneself and the social world at the expense of other discourses. In this theoretical context, discourse as both language (words, saying, textual passages related to writing, speech, arguments, evidence, information, or statements with considerable influence) and practice (an act of doing) constitute a particular authority-in-knowledge, and become the dominant collective ideas of a particular subject matter at a given historical moment (Foucault, 1980). In simple terms, discourse as language is similar to conversing about an idea,

and discourse as practice relates to applying such ideas in practice. Thus, discourse is about the production of knowledge through language, with rules and practices that produce meaningful statements and regulate such knowledge in a particular historical period (Kennedy, 1979). The ways in which such discourse or knowledge/power is perceived depends on the perspectives of subjects involved in the discourse.

This paper explores the discourse of nationality law[1] in Thailand and Brunei as the authority-in-knowledge of governing, conditioning, and regulating conduct related to "alien Others" (Laungaramsri, 2020). By focusing on this "institutionalized discursive practice," the research seeks to unravel the language of seclusion, and the practice of division and exclusion sanctioned by the law. It is this language and practices that have resulted in *protracted statelessness*[2]. As a result of the assignment of the label "alien Others," or "forever guest," (Cheong, 2017) based on essentialist criteria or vague identities, there is a growing phenomenon of global statelessness. This is not caused by fleeing conflict, but due to "eligibility" within a particular nation-state (Flaim, 2017). Following Foucault's ideas, the discourse of nationality law is considered as a group of statements that constitutes a language that governs, regulates and conditions the issue of citizenship. There are two key elements of discourse: the object of knowledge and the practice of knowledge. In this research, the object will be the alien migrants or perceived pendatang (immigrant) in the case of Brunei, and the practice will be the conduct of division, categorization, and exclusion enacted by the state on the bodies of both aliens and citizens.

According to The Convention relating to the Status of Stateless Persons, 1954, stateless persons are defined as "a person who is not considered as a national by any state under the operation of its law" (UNHCR, 2014). There are 4.2 million stateless persons around the world, with 40% or 1.6 million alone in the Asia Pacific, and particularly in Southeast Asia (UNHCR, 2020). Thailand has the largest stateless population in Southeast Asia, standing at 553,969 people as of June 2021 (UNHCR Thailand, 2021). Meanwhile, Brunei has the largest number of stateless persons in proportion to the total population: about 33,700 of a population of approximately 442,948 people (Department of Economic Planning and Statistic, 2021). However, the UNHCR has warned that these numbers may not reflect the true reality and could be higher.

In recent decades, it has been the goal of the United Nations through the UNHCR to ensure that every person has a legal identity, allowing them to access rights and protections as a human being. The UNHCR thus launched the iBelong campaign in November 2014, advocating the eradication of statelessness by 2024. However, the UNHCR and many NGOs driving this initiative recognize that their efforts are being undermined by the fact that it remains state jurisdiction to grant citizenship, and also that nationality remains the only recognized legal identity. Thus, in many respects, citizenship becomes a convenient technology of power by the state to identify, order, categorize and marginalize certain pockets of the

[1]Although nationality law concerns an act or a statute, the paper uses the term act or law interchangeably

[2]Protracted Stateless introduced by Amanda Flaim (2017) refers to the longer than the usual process of getting citizenship experienced by many stateless highlanders in Northern Thailand.

population (Sperfeldt, 2021). The concern of this article is the enduring situation of statelessness as a product of the language and practice of nationality law.

The term "protracted statelessness" was introduced by Amanda Flaim in her work "Problems of Evidence, Evidence of Problems: Expanding Citizenship and Reproduction of Statelessness Among Highlanders in Northern Thailand." Protracted or prolonged statelessness refers to the state of persistent effective statelessness experienced by stateless persons. There are four main factors of protracted statelessness, namely: prolonged and widespread effective statelessness, systemic discrimination against ethnic minorities, bureaucratic failures and incompetency, and a model of radicalized citizenship (Flaim, 2017). These factors can be applied in any context as a standard to pinpoint the existence of protracted statelessness.

Based on a review of the literature, and language analysis of nationality law and the empirical data from the field, it is clear that there is a disjuncture between the language and the practice of the nationality act. While it is true that the UNHCR has made positive comments regarding the commitment of the Thai government to end statelessness within Thailand by 2024, and through a series of reforms and amendments to the law, this has proven insufficient. On average, Thailand has only given less than twenty thousand citizenships per year, leaving it far short of achieving the 2024 target (Ruamsuk, 2020). The UNHCR also reported in their annual Thailand factsheet published in March 2021 that, from 2008 to December 2020, Thailand only managed to grant citizenship[3] to about 100,000 stateless persons (UNHCR, 2021).

In addition, the literature and empirical evidence from scholars such as Sakboon et al (2017), Flaim (2017), and Cheva-Isarakul (2019), along with my own experiences in the field, point towards the problems of disjuncture between the language of the law and practice. Despite the UNHCR applauding Thailand's commitments to resolve the issue of statelessness, these "progressive" efforts contradict practices on the ground. The non-discursive practice of an endless cycle of bureaucratic levels has hampered attempts to resolve effective statelessness. Thus, the situation of protracted statelessness remains.

In Brunei Darussalam, the number of stateless ethnic Chinese who have been granted citizenship has decreased every year for the past 5 years. Since 2019, the government stopped giving citizenship to their category (Article 8, naturalization) altogether. Thus, the situation of protracted statelessness will continue due to the lack of pressure and political will to resolve the issue. Both Thailand and Brunei Darussalam support Flaim's claim that the law, bureaucratic practices and procedures enacted to address statelessness instead lead to its (re)production. (Flaim, 2017). By linking the literature, an analysis of the language of the law, as well as personal empirical experiences on the practice of nationality law, the study investigates how these factors have led to a situation of protracted statelessness.

[3]Under Convention on the Reduction of Statelessness, 1961

[4]Waraporn Wongyai, the Secretary of the Tai Lue Association.

Stateless Tai Lue in Chiang Kham, Thailand

There are over 13,000 Tai Lue in 32 villages of Chiang Kham District, Phayao Province, Thailand (Wongyai, April 6, 2021)[4]. Moerman spoke of the Lue as "a community of people who called themselves Lue," and this is also reflected in their language and what their neighbors call them (Moerman, 1965). Charles Keyes, for his part, has highlighted the way that the Tai Lue reinforce their identity through legends that originated from a *Mueang* in Sipsongpanna, and by showcasing their textiles in Tai Lue museums and temples (Keyes, 1995).

The Tai Lue are known to have lived in Chiang Kham for more than 100 years. According to Moerman,[5] who was researching the village in 1965, Baan P was founded by the Tai Lue from Sipsongpanna about 100 years ago (Moerman, 1966). Keyes claimed that the area of southern Yunnan, northeast of Myanmar, Laos, and Thailand (and to a certain extent Vietnam) was an interstitial zone between core areas of the lowland: Tai–speaking group namely the Tai Lue of Sipsongpanna in Yunnan, Khyn/Khun/Shan of Chiang Tung in Burma, Phu Tai of Mueang Thaeng in Vietnam, Yuan of Lanna Thai in Northern Thailand and Lao of Lanchang in Lao PDR (Keyes, 1995). The Tai Lue in Sipsongpanna and Chiang Kham are two groups of people who have a narrative of originating from one of the Mueangs and migrating due to conflict (Hsieh, 1995). Although these pre-modern kingdoms no longer exist, there is strong nostalgia among the Tai speaking group in these areas for their respective home country. This nostalgia is what is believed to be a critical function of their self and other identities.

Moerman gives an insight into the traditional economic activities of the Tai Lue in his work "Kinship and Commerce in a Tai Lue Village." In the past, the Tai Lue were known as active caravan traders, making stops at the different Mueangs under the political sphere of the different Tai speaking groups mentioned (Chang, 2009)[6]. Inter-trade exchanges and resettlement were common among these premodern kingdoms. Thus, Chiang Kham is always referred to by the locals in terms of resettlement after the chaos which happened in Sipsongpanna.

However, with the creation of the modern nation-state, the delimitation of national borders, and the establishment of modern non-discursive practices such as the bureaucracy in managing the border—along with the categorization of aliens, and the bureaucratic tools to determine one's personhood—, the free flowing movement and migration was made more difficult (Laungaramsri, 2020). The migration of Tai Lue from Sipsongpanna or other former kingdoms into Thailand became difficult especially after the enactment of the Thailand Nationality Act B.E. 2508 (1965). According to Boonrach, the Tai Lue is considered to be one of the 19 ethnic groups recognized as ethnic minorities in Thailand,[7] and it is targeted by the

[5]who shares the same site of the study which is Baan P. Indeed, the earliest study about the Tai Lue in Chiang Kham attributed to Michael Moerman as the pioneer of the area studies on the Tai Lue ethnicity.

[6]They sell rice, dried fish, sweetened meat, and textile cloth, of which the latter is a known product of the Tai-speaking group and often resembles their identity (Burapajatan & Vongsingthong, 2015). They exchanged these commodities with salt and imported goods from Mueang Phrae of Lanna Thai, cotton from Luang Prabang kingdom (formerly part of Lanchang) and gold from Chiang Tung of Burma, Chiang Mai and Chiang Rai of Lanna Thai, and lastly, Mueang Phuan of Lanchang (Moerman, 1966)

[7] Thay are (1)

government for legal status and a statelessness solution. In total, there are about 488,105 stateless persons of different ethnic minorities currently waiting for the determination of their status (Boonrach, 2017). A recent study by the TSRI put the number of stateless Tai Lue migrating from Lao, after the victory of Pathet Lao, at more than 1,000 individuals. These stateless Tai Lue are scattered around Chiang Rai, Nan, Lampang, and Chiang Kham (TSRI, 2021). As stated by the officials in Chiang Kham District Office, about one quarter of them are in Chiang Kham (Hongnan, April 7, 2021).

Due to poverty and the need to help their parents to make a living, the Tai Lue have been unable to get any education. However, their existence is more than *bare life* (Agamben, 1998). Most of their basic necessities, for example healthcare or access to financial services, are either easily accessed due to certain amendments to the law or through direct help from the district office. Based on the analysis of the data, there is a misunderstanding of the procedures and regulations, and confusion in making their applications. This is due to low literacy rates, and to the bureaucratic power effects, which impinge on their chance of getting citizenship (Foucault, 1997; Laungaramsri, 2020).

Stateless Ethnic Chinese in Brunei Darussalam

There are over 46,400 ethnic Chinese in Brunei, accounting for 10.2% of the total population, awhich stood at 453,600 persons in mid-2020 (Department of Economic Planning and Statistic, 2021). The biggest dialect group is the Hokkien, residing mostly in the Brunei Muara district, and who migrated in the 1910s from Quemoy Kinmen[8]. The other dialect groups are the Hakka, Cantonese, Hainanese, and Fuzhou, who mostly reside in the Belait district. These people claimed to originate from Guangdong and Fujian, migrating first to neighboring Sarawak before moving to Brunei in the '60s. Their main religions are Taoism, Buddhism, and Christianity. They speak Chinese, English, and have varying degrees of proficiency in Malay (Ho & Ho, 2021).

There are 33,700 stateless persons in Brunei, or 7.4% of the total population; 3,600 of them are ethnic Chinese (Department of Economic Planning and Statistic, 2021). The case of the stateless ethnic Chinese is unique compared to other stateless ethnic groups whose ethnicity is not recognized by the state, such as the indigenous groups of Ibans and the Penans, and likewise those who become stateless due to parents' mixed marriages, for instance, a local mother and a foreign father. In the case of the ethnic Chinese, they have already lived in Brunei for at least three generations (Mr. YC, August 18, 2021). Marie Sybille, for example, claimed that the Chinese community has existed in Brunei since the 16th Century at the settlement of Tanjung Batu. In the 19th Century, it was estimated that 10,000 ethnic Chinese resided along the Brunei River (de Vienne, 2011)[9].

The ethnic Chinese are said to be a declining minority due to two factors: the

[8]Today groups of islands called Xiamen, Fujian Province, People's Republic of China.

[9] The descendants of ethnic Chinese at the present can be traced back to the first wave of migration from mid-19th CE until early 20th CE. The second wave started when Brunei started its oil production in the 1930s and the last migration took place in the 1960s to 1980s. Ethnic Chinese as near as Sarawak and Singapore and as far as Hong Kong and the Southern Provinces migrated to Brunei to work in the oil industry.

first of these is the enactment of the Brunei Nationality Act 1969, and the second is the low birth rate within the community. The issue of statelessness emerged leading up to the independence of Brunei from Britain[10], and in accordance with which the nationality law was amended to make it more difficult to apply for citizenship. On the eve of Independence Day, only 9,000 ethnic Chinese were able to process their citizenship in time, while 20,000 others lost their status as British registered subjects (Zhao, 2013). On top of that, His Majesty the Sultan inaugurated the national philosophy of *Melayu Islam Beraja* (Malay Muslim Monarchy or MIB), which quickly evolved to become a universal discourse touching all matters related to Brunei. In marrying Islamic values, reifying Malay culture, and upholding the importance of the monarchy, Bruneian identity and the implicit criteria for citizenship follow these attachments to culture, Islam, and loyalty to the monarchy (Talib, 2002).

For almost 40 years of independence, the number of stateless persons in Brunei has continued to grow. From the interviews carried out, one can see that there are many discrepancies in the process of getting citizenship. Issues such as an opaque process, arbitrary consideration to grant and revoke citizenship, human inefficiency in handling the process, and indiscriminate waiting times, have all made the stateless ethnic Chinese think of citizenship as a deliberate attempt by the government to exclude and segregate them (Cheong, 2017). As Torpey argued, to categorize, legitimize, control, monitor, and identify those belonging to the nation through the non-discursive practice of documentation make it a common *technology* of the state (Foucault, 1997; Torpey, 1999). Thus, De Vienne concluded that the ethnic Chinese in Brunei are dispensable and their worth is measured not through their dignity as a fellow human being, but rather through their utility to the state (de Vienne, 2011).

METHODOLOGY

In-depth interviews and participant observations involving eight respondents from Thailand were carried out in Baan P in April 2021, while interviews with another 7 participants from Brunei were carried out in June and August 2021.

Study Participants in Thailand

Altogether, there are six Tai Lue participants, who have lived in Thailand for about 30 years, and two Thai participants. All of the Tai Lue participants are stateless, except one who got citizenship four years ago. They came to Thailand from Lao PDR at different times, around the years 1992 – 1994. Unfortunately, all of the stateless persons are uneducated except one, who received education in Lao PDR before moving to Thailand at the age of 17. Out of the 6 Tai Lue participants four are in their 60s – 70s, and the last two are in their 50s.

All of the Tai Lue participants speak the Tai Lue dialect, which is part of the Tai-Kadai language family and originated from Sipsongpanna, now known as Xishuangbanna in Yunnan Province of the People's Republic of China. However, during the interview, the interpreter used Kham Mueang, another dialect from the Tai-Kadai language family most commonly used in the North of Thailand. The use

[10] in 1984

of Kham Mueang allows us to communicate with the Tai Lue participants, as unfortunately, they are not fluent in the Thai language[11]. One of them is a businesswoman who owns a small construction company and a longan plantation, while another works in the construction industry and tends their own plantation. The rest are elderly who make cloth in their free time. Fortunately, all of their children have already got their citizenship and entered the workforce in different professions both in Bangkok and Chiang Mai.

Study Participants in Brunei Darussalam

In total, there are seven participants, only two of whom were granted citizenship in Brunei. They attended local government or private schools, and thus have been exposed to the national curriculum and discourse of national philosophy. All of them speak three languages – Mandarin, English, and varying degrees of proficiency in Malay. Five stateless ethnic Chinese participants took their citizenship test about a decade ago and are still waiting for the result. None of them can speak their respective ethnic Chinese dialect. One managed to land a high-paying job in one of the most sought-after private companies in Brunei, another is working at a higher educational institution, and one of them is in the process of applying for Singaporean citizenship.

This study employed qualitative research methods for data collection, being mainly semi-structured interviews (in groups and individual interviews) and participant observation. In total, there are nine individual interviews, mostly with the Bruneian participants, and two group interviews conducted at different locations. The semi-structured interview questions were drawn from possible topics for discussion based on secondary data analysis acquired from both countries. After the potential topics were identified for discussion, the conversations were mostly informal so as not to disrupt the flow. Each interview session lasted for 45 to 60 minutes. Through the consent of the participants, the interviews were audiotaped to facilitate analysis. Each interview was transcribed, and in the case of the stateless Tai Lue, the interview was first translated and the transcript was arranged according to themes.

RESULTS

The study found many similarities and one difference in the institutionalized discursive practices of nationality law in Thailand and Brunei. The language of exclusion and discrimination can be identified immediately, and it is explicit in both laws. Meanwhile, the implicit part can be found in the real practice that is partly enabled by the vague language of the law. Another result is the paradox between the Nationality Act, on the one hand, and the actual practices on the other. This paradox emerges from both the data taken from the participants and the literature. These contradictions are found to be key factors to explain protracted statelessness in both countries.

The law that is in focus in Thailand is the Nationality Act B.E. 2508 (1965 AD),

[11] In contrast to the commonly held perception that ethnic minorities living in Thailand, and who share common languages, are integrating well in order to be assimilated, it is not the same case with the stateless Tai Lue in Chiang Kham. They don't outwardly show their preferences to become Thai, or pride in their bloodline in Lao PDR. In this study, all the informants identified themselves as Tai Lue rather than Thai.

which has four chapters and 29 sections. The sections that deal directly with stateless persons are Sections 7, 9, 10, 11, 12, and 17. In Brunei, it is the Nationality Act 1961 that is in question, and which was compiled and enacted in preparation for the election of 1962 (Hickling, 2011). There are 18 sections in total, with Sections 8, 9, 11, 12, 13, 15, 16, and 18 being directly related to the stateless permanent residents in the country. The following is a summary of the research findings.

Similarities in the Institutionalized Discursive Practices of the Nationality Law of Thailand and Brunei Darussalam

Interpretative language of the alien others as not belonging

In both laws, the alien others are interpreted as not being part of the national community, and to a certain extent, they are considered illegal migrants. In Thailand for example, it is stated in Section 7 bis Paragraph (2):

> "The person born in the Kingdom of Thailand, who does not have Thai nationality…, resides in the Kingdom of Thailand in certain status and under conditions of the Ministerial regulations, based on the principles of national security and human rights… that person shall be deemed to have entered and resided in the Kingdom without permission under the law on immigration" (Thailand Nationality Act, 1965).

This sense of illegality and illegibility can be seen from the practice of the Ministry of Interior in not allowing those concerned to move residence, and the repeated cabinet resolution for the extension of temporary residence in Thailand (Boonrach, 2017). For example, all the Tai Lue informants shared their frustrations at not being seen as part of the larger Thai family despite language family similarity. For example, the Kra Dai. Mae N shared, "this makes us not feel 100% Thai. I feel 'sia jai' (sad and neglected) that I cannot be Thai" (Mae N, April 7, 2021).

Due to the internalization of the state perception towards them as an alien, it is natural for the Tai Lue to revert to their ethnicity. They have lived among the local Tai Lue, who settled in Thailand about 160 years ago and are Thai citizens at present. It is thus better for the stateless Tai Lue to carry on with life without worrying too much about their status. Lung K conceptualized this fittingly: "as a Tai Lue, I feel like I come from the same house, same parents, same ancestors. All are equal, similar to those who are born here" (Lung K, April 7, 2021). However, they are still reminded of their status when they come across other segments of the community, or access services such as banks or hospitals. This issue of "alien others" as not belonging has come up repeatedly in an interview with the registrar head in Chiang Kham district office.

In the case of Brunei, stateless persons are placed in an *in-between* category of permanent residents, to differentiate them from the citizens and a large number of foreign workers or expatriates called temporary residents. Thus, in the context of Brunei, the existence of stateless persons located at the interstices of existence in the national community is conveniently veiled and rendered invisible (Cheong, 2014; Tolman, 2016). Yet, when the issue of status clashed with the sense of belonging, all the informants displayed resentment. Ms. A raised the issue of double standards, which occurs just because someone's ethnicity happens to not be indigenous. It is not taken into account whether the person was born in Brunei, or has been there for

generations; the person will always be perceived by the state as a "forever guest" until they receive their citizenship (Cheong, 2017). Ms. A reiterated: "even when we passed (the citizenship test), it doesn't mean we have all the rights to get the Yellow IC" (Ms. A, August 16, 2021).

Human discretion can never be neutral

Both laws have generated enormous discretionary power for determining or arbitrating contentious citizenship. In Thailand, this discretion extended all the way to the bottom of the organizational structure (Cheva-Isarakul, 2019). This means that the law empowers the use of human discretion for the low-level officials of related agencies, including the head of the village. This provision facilitates the creation of *extra state industries* such as extortion, bribery, and brokerage (Laungaramsri, 2020). This issue was admitted by one of the informants, Lung O, who worked in border patrol in the north of the country (Lung O, April 7, 2021).

In the case of Brunei, rather than potential corruption, the clause "discretion" has been abused by officials at all levels. The study discovered that the language board arbitrarily chooses those who display apparent Malay characteristics in their personality, aside from being proficient in Malay as stipulated in Section 5 (a) and Section 8 (e). Mr. YC said, "(the citizenship test) is very difficult. The test asked about His Majesty's birthday, Malay language grammar, the *Bahasa Dalam* (palace language) and the Malay wedding culture" (Mr. YC, August 16, 2021). Out of five respondents applying for citizenship, only Mr. YC obtained it within two years, which is rare. He is the only respondent who can speak fluent Malay thanks to his large circle of Malay friends. Thus, the selection of new citizens not only follows the law (Section 8 (1, 2, 3), but it is also subject to human discretion exercised by the officials in considering the degree of *malayness* among the applicants (Cheong, 2017).

Arbitrary revocation of citizenship

In the Thai Nationality Act, the loss of status is mentioned directly for foreign spouses (Section 13 & 16), children with alien parents (Section 14 & 15), and naturalized persons (Section 17, 18, and 19). The causes that trigger revocation are, for example: having lived abroad for more than five years, using other nationalities, acting disloyally to the state, and any act that is against public order and morals. As for naturalized persons, issues such as the concealment of facts, making false statements, the usage of a former nationality, and retaining nationality with a country at war with Thailand, are all issues that may lead to the revocation of citizenship. An example of this was found by Cheva-Isarakul in a rather remote village outside of Chiang Mai city. In 2004, the Department of Special Investigation (DSI) claimed that the villagers of a settlement outside of Chiang Mai were granted citizenship without following the specified procedures. The DSI argued that in this case, fast-track citizenship facilitated transnational drug activities, and that this scandal involved the concealment of facts and making false statements on top of the transnational crimes. These acts were understood to be against the public order, thus permitting the revocation of citizenship status. As a result, a blanket revocation of citizenship was effectuated by the government, affecting some 500 villagers (Cheva-Isarakul, 2019).

In the context of Brunei, like in Thailand, the revocation of citizenship involves double standards. There are four specific causes of revocation, namely: disloyalty to

His Majesty; having another nationality; engaging with the enemy during war; and criminal sentences from other countries (Section 11, (3)(a), (b), (c), (d)). The main point is that while subjects born in Brunei may not be affected by this provision,[12] those who become subjects through registration and naturalization can be targeted. Having said that, there is no publicly administered revocation of these subjects as this is normally done through the discretion of the monarch. Still, one such implicit example can be found. Shahiran Sheriffuddin, who was a civil servant in the Ministry of Health, made an online critique against the religious establishment that was interpreted as "seditious," and the sentence passed was 18 months in prison. One month before the court sentencing, he fled to Canada. The court reviewed his intent as "to bring about hatred or contempt or excite disaffection against His Majesty the Sultan," thus justifying a revocation of his citizenship (Bandial, 2019).

For all that, in both countries, the revocation of status affects the naturalized alien other, or persons with alien background in the case of Thailand. The fact that it is clearly indicated in both laws means that it can easily be used as a technology of power against naturalized persons so as to preserve the state's interests.

Second grade citizenship

Citizens through naturalization must not be mistaken as equal, in terms of rights, with citizens by birth. In Thailand for example, naturalized persons do not completely escape from the surveillance of the state. Moreover, a minor crime can seriously jeopardize their citizenship (Hongnan, April 7, 2021). In a politically polarized Thailand, the law does not allow for an alternative discourse to that of the state, as this can be interpreted as having views or interests that are contradictory to that of the state (Section 16 (2), 17 (3), 18 & 19 (3)). This can be read as an attempt by the state to make naturalized persons in Thailand politically handicapped. As for Brunei, naturalized persons feel like second-class citizens due to incongruity with a national identity that emphasizes the Malay culture, and memories of the structural violence they have experienced for decades leading up to the citizenship processes (Cheong, 2017; Ho & Ho, 2021; Hoon & Sahrifulhafiz, 2021).

Differences in Institutionalized Discursive Practice in the Nationality Act of Thailand and Brunei Darussalam

Thailand

While both laws have shared a framework of systemic discrimination and exclusion of ethnic minorities, they diverge on the discursive basis of the law. In the context of Thailand's Nationality Act, it is noticeable that the law is based upon the principles of national security. According to Grisada Boonrach[13], national security is tied to statelessness due to the promise and prospects of a livelihood in Thailand – especially when compared to the rest of its neighbors since the Second World War. Furthermore, it is difficult to control the movement of people into Thailand across 513,120 km^2 of border in different geographical landscapes (Grisada Boonrach, 2016). Thus, the Committee on Recognition of the Displaced Thai (Section 9/1) and the Review Committee on Nationality (Section 25) have been mostly filled with security agencies such as the Ministry of Defense, the Office of National Intelligence Agency,

[12] Unless ruled by His Majesty in his discretion

[13]The former Permanent Secretary of the Ministry of Interior

the Royal Thai Police, and the Office of National Security Council. Furthermore, the language of security can be found in Sections 16 (2), 17 (3), & 19 (3), which deal with acts against the state, the state's interest, or even insults directed at the state. In addition, Section 18 has empowered the related agencies to revoke citizenship for the "protection of national security and interests of the State" (Thailand Nationality Act, 1965). It is also important to point out that, since 2005, the National Security Council has been tasked with taking over the control of state policies regarding ethnic minorities from the Ministry of Interior. The result of this handover is that the former prioritizes the issue of illegal immigrants over the issue of statelessness. In turn this leads to greater delays in applications for citizenship and other legal status inquiries (Sakboon et al., 2017).

The policy of citizenship towards ethnic minorities is always changing, depending on the social, economic, political and administrative considerations of a particular period of time. For example, in the 50s to 60s, due to the fear of communist infiltration, the state introduced a policy for the integration of the ethnic minorities at the borderlands into the nation-state. In 1972, through Revolutionary Council Order number 337, an amendment was made to change eligibility of citizenship from jus soli to jus sanguinis – or the right of blood of the parents (Sakboon et al., 2017). Fear stemmed from the possibility that the second-generation refugees may be eligible for Thai citizenship as their place of birth was in Thailand.

In the 1990s, Thailand's border control was relaxed resulting in greater cross-border trade and economic opportunities. However, the state found new problems with this trend; namely, the difficulty in distinguishing ethnic minorities from illegal migrants or refugees. Thailand responded by tightening both the border and those citizenship applications related to the border areas. In the 2000s and beyond, Thailand has been more concerned about transnational issues such as drugs or human trafficking, piracy, arms smuggling, and so forth. These activities are carried out mostly by organized transnational gangs, which may jeopardize national and societal security. Thailand is even more concerned with the possibility of illegal migrants & stateless persons coming from outside of Thailand and trying to gain citizenship through illegal means (Pesses, 2007).

Thus, the cabinet approved "the Strategy on the Resolution of the Right & Personal status" in 2005, which provides guidelines on the six-groups identified with a distinct legal status. These are (a) Alien with Permission to Stay Permanently; (b) Alien with Permission to Stay Temporarily; (c) Ethnic Minorities & Former Undocumented/Unregistered Stateless Persons; (d) Children to Alien Parents Born in Thailand; (e) Migrant Workers from Neighbouring Countries; and (f) Refugees from Myanmar (Boonrach, 2017). The stateless Tai Lue can be identified as belonging to the category of "Alien with Permission to Stay Permanently." According to the data from the Ministry of Interior, the number of these people stands at 65,599 as of 2017[14]. When falling into this category, the status of the stateless Tai Lue is once again put under the category of alien. Although they are permitted to stay in Thailand, there is no further determination of their status until they can prove that they came from Laos (Hongnan, April 8, 2021). Unless they can obtain "specific" documents that prove they are in fact formerly a Lao national, then the stateless Tai Lue can be categorized under Ethnic Minorities/Unregistered Stateless Persons.

[14] ibid.

As their application is pending indefinitely and cannot be naturalized, the stateless Tai Lue have been told to apply for an Alien Visa or Bat Tang Daw, which may allow them more freedom. Lung S mentioned, "The Government offered us another visa. They asked us to pay 15,000 Baht. But I don't have the money. In Mae Sai (immigration), the first application is 5,000 Baht. When I get it, I have to pay 10,000 Baht and the renewal cost is 200 Baht" (Lung S, April 7, 2021). The change to the status "Bat Tang Daw" provides them with benefits such as no longer being restricted to their own residence; hence, they can move anywhere with the freedom to get a loan, buy property, apply for services such as a driving license, and so on. Unfortunately, they may also lose all the assistance extended to them by the government, for example, healthcare.

There are issues with the evidentiary approach and the long duration of the investigation into historical connections to the land. Thailand has been cautious in giving citizenship at the borderlands due to national security reasons. From the 1960s to the 1990s, the state conducted survey projects to "count and see" the population at the margins. This survey document can be used together with household registration, the "pink" ID card, and the certificate of birth or birthplace to apply for citizenship. Although the criteria for eligibility of citizenship seems to be explicitly articulated in the law, the practice in reality has shown that facts and document checking are more important. This practice takes place on top of the layers of bureaucracies and human factors (Sakboon et al., 2017).

Sakboon et al (2017) pinpointed factors that can hamper the applications made by ethnic minorities: a tedious documentation and application process, inefficient human factors such as mistakes in writing, corruption, the unsympathetic attitude of officials, and environmental factors such as proximity to the border. In the case of the stateless Tai Lue in Chiang Kham, an officer at the District Office confirmed the difficulty in granting citizenship due to the proximity to Lao PDR.

Brunei Darussalam

The basis of the Brunei Nationality Act is the security of the ethnic Brunei Malay in its dominant and newly constructed form of national identity[15]. The experience of Japanese occupation motivated a national consciousness among the Malays as the indigenous ethnic group linked to the land (Brown, 1970; King, 1994). Two dominant groups were vying for power: the first was the monarchy and the Malay elites led by His Highness the Sultan, and the second was the socialist-leaning PRB party led by AM Azahari. Both had their own visions on the revival of Brunei from being a former kingdom and into a new nation-state (Al-Sufri, 2003). The main divergence between the two was the openness to other ethnic groups living within the territory. The Malay elites wanted to keep the ethnic boundary as small as possible to retain the privileges of the Malay people, while the PRB sought an open society to revive the old glories of Brunei by incorporating Sarawak and North Borneo into a unitary state (B.A. Hussainmiya, 1996; Majid, 2007).

The 1959 constitution granted enormous executive power to His Highness the Sultan, and the proposed nationality act underwent a series of revisions until it was enacted in early 1962, which was months away from the election. Eligibility to be a

[15] Also called societal or community security, which is part of the human security studies (Collins, 2003)

subject of the state and the rights to vote were based on the concept of indigeneity (Bacha A. Hussainmiya, 2000; Maxwell, 2001). Many aspiring politicians could not claim to be Bruneian citizens due to their ethnicity or place of birth not being included in the new law (Ahmad, 1987). Despite the struggle, the PRB won the election in August 1962, and according to Harun Abdul Majid the key trigger was the issue of the merger with Malaysia. However, continued disagreements between the opposing sides led to the PRB's armed insurrection in December 1962, which would be crushed within a week. As a result, the monarchy and the Brunei Malay elite emerged as the only dominant socio-political force up, and this has remained the case until the present. Under the regime of the monarchy, the nation- building process was further reinforced by the national philosophy of Melayu Islam Beraja or MIB. As a consequence, MIB became the dominant instrument of legitimacy that consolidated the Malay identity, Islamic values, and loyalty to the monarchy into a powerful discourse (Talib, 2002).

Elucidating the discursive framework of the Brunei Nationality Act provides the important context to explain why other ethnic groups have been excluded from the national community. A fast-track citizenship is possible if the stateless applicants portray apparent Malayness. Otherwise, applicants are subject to a practice of alienation[16]. The sense of incongruence to the dominant national identity is a common feeling shared by many stateless ethnic Chinese in Brunei (Cheong, 2017; Tolman, 2016). This notion aligns with Ms. A's claim of a contradiction: "it feels different, I'm born and bred here, but I don't belong. I'm confused" (Ms. A, August 16, 2021).

The Paradox of Nationality Law

In theory, nationality law is enacted to address racial or ethnic division, as well as the distinction between the status of immigrant and indigenous (Lian, 2013). Nevertheless, there are observable contradictions in modern citizenship (Faulks, 2000). The creation of nationality law, with its opaqueness, bias, and exclusionary features, turns citizenship into an apparatus of social enclosure. This section illustrates the diverging aspects of language and practice in the interpretation and application of nationality law through the experiences of the participants.

The Paradox in Thailand Nationality Act B.E. 2508 (1965)

1. Language (criteria) versus practice (registration)

The law stipulates in Section 7 bis that children of alien parents are allowed to temporarily stay in Thailand and are eligible to apply for Thai nationality. This section is directly related to the stateless Tai Lue in Baan P, who migrated with their parents 30 to 40 years ago. As the second generation, they should be able to access this pathway to citizenship. Apart from what is stipulated in the law, there are other criteria made under Ministerial regulation. For example, they should be part of "Groups of Aliens or Non-Thai who are Residing in Thailand." The stateless Tai Lue fall into the category of *rootless persons* whose parents are unknown (in their case, they do not have any documentation from their parents to suggest they were coming from Lao) (Grisada Boonrach, 2017).

[16] As is customary with alienation, the citizenship tests intentionally made the questions difficult to discourage people from trying their luck

In 1995, the cabinet agreed to grant alien status, or in other words, to enlist those concerned in the state registration. This came with ten conditions, namely: (a) having an identification card and house registration; (b) staying continuously for 15 years; (c) respecting Thai laws and regulations; (d) intending to practice the Thai language; (e) respecting the Thai nation and King; (f) cooperating with the state; (g) having legal employment; (h) not producing drugs; (i) not becoming involved in illegal logging; and finally, (j) having three guarantors (Pesses, 2007). From the interviews, the stateless Tai Lue easily fulfilled all of these conditions. Despite these clear-cut requirements, the real hurdles lie when making application for citizenship.

The nationality law states that each applicant undergoes the same application process regardless of their ethnic background and their place of origin. In reality, this language does not align with the practice in so far as it also depends on the availability of documents, the attitude of the headman, and the attitude of the officials at the district office. The evidentiary procedures comprising a technology of identification, monitoring, and enforcement of identity—in themselves a complex, time-consuming, and arduous process—are related to the nation-building efforts (Flaim, 2017) (Lung K, April 6, 2021). The evidentiary approach focuses on evidence of a link to Thailand, for example, through a birth certificate and/or household registration. Sometimes their links to Thailand are proven by blood, birth, or residence. For instance, Mae I managed to track her late father's documents to Chiang Rai, which led to her being granted citizenship four years ago. "Luckily, I found my father's documents in Chiang Rai. Then, I quickly submitted these documents to the District Office. It wasn't long, I was given the good news" (Mae I, April 6, 2021).

The Head of Registration in the District Office of Chiang Kham agreed that the nationality law must be interpreted "case by case." He said, "it depends, my worries are the Lao mother giving birth here (in Chiang Kham)[17]. Sometimes, they stay longer, hoping to get citizenship here. That is why we need the DNA test" (Hongnan, April 7, 2021). Sometimes, the documents needed may not be sufficient, and a DNA test has to be taken to a laboratory in Chiang Mai. At any rate, in the case of the stateless Tai Lue in Baan P, the document is out of their hands. Lung K said, "we were fleeing from the socialist Lao, we left everything behind" (Lung K, April 6, 2021). On the issue of DNA, it is a recent requirement introduced about a decade ago (Cheva-Isarakul, 2019). Thus, they rely on their interpretations of any possible documents that can substantiate their claim of birth, legal residence, and family relationship to Thailand. It is worth pointing out that they do have the identification card, and the house registration, yet due to no proof of living previously in Lao PDR or Thailand (during an earlier period with their parents), their application is put on hold indefinitely.

There are two levels of procedures for registration: one for the village level, and another for the District level, each with its own set of hurdles that need to be overcome. For example, applicants are faced with different forms of potential corruption and extortion at each level (Flaim, 2017; Laungaramsri, 2020). The head of the village is empowered by the Ministerial regulation to be one of the three guarantors, and they can make it difficult if no favors are forthcoming. In the case of

[17] Proximity from Chiang Kham to the Lao border is about 31 KM.

the stateless Tai Lue, the head of the village of Baan P is a person that they described as indifferent to their struggle. At the District Office, the chances of their application being accepted and investigated depends on the working attitude of the officials. Their moods and/or professionalism can vary from being encouraging and sympathetic to hostile, discriminatory and distrustful towards them. This is the power of "discretion" afforded by the law and highly impacts the process of registration. Lung K vented his frustration by saying: "We did go to an NGO but did not get anything. The NGO helps us to submit our application yet the government never replies. It is very difficult. This is why it is better to remain as Tai Lue" (Lung K, April 6, 2021).

The stateless Tai Lue have been repeatedly cheated by irresponsible individuals who took advantage of their desperation to get citizenship. For example, someone offered them citizenship in exchange for their purchase of a longan plantation. "Someone tricked them into buying a longan plantation to get citizenship. When discussing this with the District Office, they were told that this is not how to get citizenship. Others bought land with the promise of getting citizenship" (Waraporn, April 5, 2021).

Thus, there are contradictions between nationality law and the evidentiary approach inherent in the practice of awarding citizenship. To put it simply, protracted statelessness experienced by the stateless Tai Lue in Baan P is due to the arbitrariness and discrimination enabled by the unproductive and inefficient system of evidentiary documentation. In the end, the unclear nature of the language in nationality law, along with bureaucratic failures, have produced a large number of protracted stateless persons, all of whom searching to establish the *missing link* with Thailand.

The Paradox in Brunei Nationality Act 1961 Ad

1. The problems of citizenship based on indigeneity

The Nationality Act 1961 stipulated 3 categories of subjects: the first category is the subject by the operation of law (*undang-undang mutlak*) (Section 4)—similar to citizenship by birth—; the second is the subject by registration (*kerakyatan melalui pendaftaran*) (Section 5 & 6) for foreigners and mixed children; and lastly, it is the subject by naturalization (*kerakyatan melalui penuangan*) (Section 8) for other ethnic groups not recognized by the law. Each level constitutes a higher status than the other, thus reflecting a stratification in Bruneian society based on social status, which itself has been revived from more traditional systems (King, 1994). Therefore, the real citizen of Brunei, by operation of the law, is a person belonging to an indigenous group recognized in the law as part of the Brunei Malay race (Kershaw, 2001). In Section 4 (1) (a), the law states:

> "any person born in Brunei Darussalam …, who is commonly accepted as belonging to one of the following indigenous group of the Malay race, namely Belait, Bisaya, Brunei, Dusun, Kedayan, Murut or Tutong…, shall be subject of His Majesty the Sultan by operation of Law" (Brunei Nationality Act 1961, 2000).

However, as discovered by King, these seven *puak jati* or ethnic groups are not all inherently Malay. Except from the Brunei and the Kedayan, which are culturally and linguistically Malay, all the other ethnic groups have their own distinct

language and culture (King, 1994). Thus, what is the main reason to explain why the nationality law incorporates the non-Malay ethnic groups as part of the Brunei Malay race?

The answer to this can be found in the emerging interests and the importance of the Malays. Maxwell, who studies the census in Brunei, has written that a census is used to change the definitions of ethnic group categories and demarcate the majority/minority in a particular country (Maxwell, 2001). With increasing national consciousness amongst the Malays, the Nationality Act 1961 has thus consolidated two distinctly Malay groups with five other non-Malay groups to make up a sizable majority and sanctioned this by affirming these ethnic groups as the *puak jati,* or indigenous to Brunei. As such, the indirect assimilation of these newly integrated ethnic groups into the Malay culture has been ongoing until the present (Hoon & Sahrifulhafiz, 2021; Trigger & Norkhalbi, 2011). There are incentives for self-identification as Brunei Malays rather than with one's own ethnicity; for instance, there is the perception of higher status, and there is also access to many benefits. Thus, the ethnic Belait, Bisaya, and Murut risk extinction due to low interest among the younger generation in embracing their ethnic identity and culture (Coluzzi, 2010; Haji-Othman et al., 2019).

The stateless ethnic Chinese participants also point out this problem of equating citizenship with ethnicity. For example, Mr. D pinpointed the need to swallow this fact when growing up. He said, "race and religion matter in Brunei. Brunei is committed to MIB and is concerned about giving too much citizenship to other races…" (Mr. D, August 17, 2021). He believed that the issue of linking ethnicity to citizenship eligibility can be explained by the commonly held perception that the government is worried about the population and the social security of the Malays. Another participant shared his confusion at the emphasis given to ethnicity over the fact that generations had lived in Brunei for many years. Mr. W lamented,

> "Being born in Brunei, lived here my whole life, so does my father, we consider Brunei as home more than anywhere else… I'm proud to say, I'm from Brunei, I've always seen myself as patriotic to the country and I will always stand for Brunei" (Mr. W, August 17, 2021).

As can be seen, in comparison to Thailand, Brunei does not need proof of a link; rather, it is more based on ethnicity and willingness to adopt the Brunei Malay culture. Ms. A questioned: "Why are other ethnicities not being considered in this country? We share the country. We lived all our life here. In this age (referring to globalization), ethnicity should not cause stress" (Ms. A, August 16, 2021). According to Ms. A, of mixed heritage herself, ethnic boundaries are fluid. Moreover, many of her colleagues are foreigners. Thus, she feels that ethnicity and indigeneity should not be emphasized as the key factors in receiving citizenship.

2. Inconsiderate criteria in applying for naturalization

Section 8 of the Nationality Act 1961 stipulates six criteria to be eligible to apply for naturalization. The criteria are: first, to have stayed in the country for the past 25 years[18]; second, to have resided in Brunei continuously for two years before applying; third, to have a good character; fourth, to not become a burden to Brunei;

[18] The amendments after independence increase the period of residence from 20 to 25 years

fifth, to be proficient in the Malay language; and lastly, to declare the intention of settling permanently in Brunei (Section 8 (1) (a), (b), (c), (d), (e), (f)). Apart from the problems caused by ethnicity-based citizenship, the stateless face a bias of imbalanced criteria between applying through registration (foreigners), to that of naturalization and the disparities between the language of the law and practice. In contrast to the six criteria required to be met by the stateless for naturalization, foreigners (Sect. 5), foreign wives (Sect. 5 (6)), and mixed children (Sect. 6) only needed three simple requirements: 15 years of residence in Brunei; a continuous stay in Brunei for two years preceding application; and being proficient in Malay (Section 5 (1) & (5))[19]. The law also makes it clear in Section 5 (7) that anyone "who has been renounced or has been deprived of the status of subject…, shall not be eligible to be registered as a subject." This is especially relevant to the case with the stateless ethnic Chinese[20].

Moreover, there is a special clause in Section 5 (6) for women who have married a Bruneian. They are able to get Brunei citizenship within five years, in contradistinction to the fifteen years required by the law (Tolman, 2016; Zhao, 2013). There are reports of different methods of examination by the Language Board; for instance, foreign people applying through registration could be asked easier questions in the interview or citizenship test than those undergoing naturalization (Ms. A, August 16, 2021). This practice is clearly exposed by participants of Cheong's studies on the experiences of former stateless ethnic Chinese from Brunei. They stated that the difficulty in sitting the citizenship test was mostly concerned with aspects of the Malay language and culture that even a Bruneian Malay may not be able to answer, for example, the name for flora and fauna in Brunei Malay (Cheong, 2017; Singh, 1984).

All of my respondents view the test as difficult, and are reluctant to sit through it again. Ms. A stated: "the (citizenship) test is almost similar to the Malay language exam (in primary and secondary schools), but I was asked to sing the national anthem, which feels weird. I will not sit the test again. Period!" She also commented on the criteria imposed on stateless persons. "I read somewhere, it stated that even if we were to pass the test, it does not mean that we have all the rights to get the Yellow IC[21]. It hurts. So, for me, their criteria are somewhat ridiculous" (Ms. A, August 16, 2021). For Mr. YC, he said: "It was difficult, that is all I can say." This can be interpreted as an indication of the distress caused by the pressure of answering correctly to get citizenship (Mr. YC, August 16, 2021).

This inconsiderate language and practice of citizenship are what Cheong claims to be a legal deterrent to naturalization (Cheong, 2017). This means the language of the law is intentionally made difficult and opaque so that the nationality law can act as a natural exclusionary procedure. Ultimately, the language and practice of nationality law in the Brunei context works to normalize the exclusion of "forever guests" while making them invisible from the national community.

[19]Section 5 (2), (3) & (4) only concern counting the period of residence.

[20]The stateless ethnic Chinese were once registered British subjects; they lost this status when Brunei gained independence from Great Britain in 1984.

[21] Brunei categorized its identification of a person status based on the colour of their identification card: Yellow identification is for citizens, Green identification for foreigners, and Red identification for a permanent resident or stateless

3. Language versus practice (interpretation)

The last paradox concerns the practice of the interpretation of the nationality act in accordance with the discretion provided by the law itself. As mentioned before, the element of human discretion to interpret the law is abused by all levels of officials, especially those directly engaged with stateless persons, such as for instance the Language Board. In Section 15 (b), the law states that "it shall be the duty of a Language Board to advise His Majesty in accordance with such regulations as may be prescribed whether any person applying for registration or naturalization under the Act" is proficient in the Malay language. Furthermore, there is a provision to establish the Language Board and empower its members to make decisions based on the majority of the members thereof (Section 15, (a)).

In reality, the real power to process, grant, postpone or reject an application can be traced back to the agencies dealing directly with the stateless persons. Thus, the study found that apart from proficiency in the Malay language as prescribed by law, and the practice of citizenship tests, it is up to the individual preferences of the officials[22] to see whether the applicants have met their own standard of Malayness. This discovery is based on the finding that all of the respondents are able to speak above average Malay, thus meeting the criteria required. However, only Mr. YC, who portrayed a strong Malay character in his personality, got citizenship. Similarly, as mentioned earlier, Ms. A was suddenly asked to sing the national anthem out of the blue, which shows the subjective methods used in testing the applicant's knowledge.

There is also a widely held perception that the government may be reviewing its capacity to grant exclusive social welfare to new citizens. From the period of 2009 to 2012, Brunei granted a total of 2,420 citizenships in that period or on average of 605 citizenships per year. However, the number of citizenships granted between 2013 to 2018 declined tremendously to just 1,275 -or on average 212 persons per year (Government of Brunei Darussalam, 2019). This speculation makes sense if we take into account that Brunei revenues, of which the majority comes from the oil and gas industry, were declining steadily. This happened due to: first, the rejuvenation projects of the old oil and gas facilities in 2013-2014; and then, subsequently, a drastic decrease in global oil prices in 2015 (Oxford Business Group, 2016). The pattern of low numbers of citizenship continues with 222 persons granted in 2019, 226 persons in 2020, and 389 persons in 2021 (Pelita Brunei, 2021)[23]. Furthermore, among the list of recipients in 2021, all of the recipients were either minors or wives of Bruneians, but they are not stateless persons (Idris, 2019; Mohamad, 2021).

For all that, the process of granting citizenship has slowed down, and all of the participants highlight this. Mr. J said, "I sat the exam in 2011 with my sister. Then, she got her Yellow IC in 2014. About one year before my award (of citizenship), the

[22]includes officials that are tasked to come up with the questions, the examiner/interviewer and the invigilator of the citizenship test. These officials can be from various relevant agencies such as the National Office of Royal Customs (JAIN), Language and Literature Bureau (DBP), Academy of Brunei Studies, University of Brunei Darussalam; Department of Immigration and National Registration, Ministry of Home Affairs; the Attorney Office and National Council of MIB.

[23]Although it seems the number is increasing, the Article 8 (naturalisation) category where the stateless ethnic Chinese are not been granted

process stopped, for unknown reasons." (Mr. J, August 16, 2021). Ms. A also agreed, saying: "When a (cabinet) minister reshuffle happened, the process got slower. I took the (citizenship) test with my aunt in 2011. Afterwards, she was called to take the oath in 2012. Then, the minister reshuffle happened (in 2015)" (Ms. A, August 16, 2021). The event that they are referring to is the cabinet minister reshuffle of October 2015 by His Majesty intending to get rid of high-level corruption while increasing the government's productivity against the backdrop of declining national revenues (The Economist, 2015). Indeed, the current Minister of Home Affairs, Pehin Abu Bakar bin Apong, is one of the longest bureaucrats in the government, and is known for his strong opinions on the issue of Malays as seen in his comments and replies in the Legislative Councils (Department of Legislative Council, 2021).

Therefore, in comparison to Thailand, the creation and maintenance of protracted statelessness in Brunei is due to human factors and the use of citizenship as a tool to maintain the boundary between indigenous and non-indigenous people. Thus, it can be viewed as systemic violence (Flaim, 2017), institutionalized marginalization, and a symbolic denial of belonging in the context of Brunei (Cheong, 2014, 2017).

It can be argued that, in the case of Thailand, the evidentiary approach to citizenship becomes a paradox of an inefficient and non-productive way to process an application (Cheva-Isarakul, 2019; Flaim, 2017). On the other hand, in Brunei, there are multiple pieces of evidence suggesting that citizenship has become an effective tool and technology of the state to *filter* stateless ethnic Chinese based on their degree of assimilation to the Malay culture and usefulness to the state (Cheong, 2017; Ho & Ho, 2021; Hoon & Sahrifulhafiz, 2021). Thus, both states arbitrarily prolong the stateless ethnic individuals from getting citizenship based on discrimination and the non-sustainable approaches mentioned above.

DISCUSSION AND CONCLUSION

Impacts of the language of the Nationality Act and its practice in the production and maintenance of protracted statelessness

Coming back to Flaim's conception of protracted citizenship, we can say that the existence of protracted statelessness in both countries is deliberate. Firstly, this is because of the implicit language of domestic—or the ethnic majority's—security. Secondly, this is due to the interpretation of indifferent and discriminate language in the law, together with practices that are not oriented towards solving the situation of stateless persons in both countries. As mentioned before, the fact that alien others are being seen as new immigrants does not entitle them to citizenship. Moreover, by empowering ground level officers with a certain amount of discretion, issues arise such as the arbitrary revocation of citizenship, and the perception of the newly naturalized or newly granted citizenship person as second grade citizens. All of these are real experiences of the stateless informants in their struggle to get citizenship.

Therefore, it is worth comparing the issue of stateless persons in Thailand and Brunei with the criteria on protracted statelessness elaborated by Amanda Flaim. She has identified four factors, which define protracted statelessness, namely: a prolonged and widespread effective statelessness; systemic discrimination against

ethnic minorities; bureaucratic failures and incompetency; and lastly, a model of radicalized citizenship. All four of these factors can be observed in the results obtained in this study. First, prolonged and widespread statelessness exists in both countries and continues to be (re) produced as years pass. Despite progressive reforms, the backlog in processing citizenship applications means there cannot be much change expected in the situation. In Brunei, the government is satisfied that both the language and practice of citizenship work to delimit the number of ethnic Chinese and that this preserves the state's interests. Second, systemic discrimination against ethnic minorities can clearly be seen when both states immediately perceive the ethnic minorities as alien others who do not have any legitimate rights to be members of the national community.

Third, according to Flaim, bureaucratic failures and incompetency can be most fatal in resolving the issue of statelessness. In her study of Thailand's citizenship application process, it is not only the disjuncture between language and practice that can create a bureaucratic mess, but also that the complex, non-standardized and non-sustainable evidence-based fact-finding procedures have left many applications hanging – not to mention also generated claims of corruption (Flaim, 2017; Sakboon et al., 2017). The same issue exists in Brunei, whereby non-standardized and challenging questions in citizenship tests have led to discouragement in pursuing naturalization. Last but not least, it is clear that Thailand and Brunei's citizenship regimes are based upon the concept of race. Pinkaew stated this succinctly: "differentiation of alien versus Thai is integral to the process of nation building." Moreover, this is supported by Sakboon et al in so far as national security takes center stage in the consideration of citizenship in order not to "disrupt the ongoing nation building process" (Laungaramsri, 2014; Sakboon et al., 2017). In the case of Brunei, the political construction of nationality based on the claims of seven indigenous groups has left many other ethnic groups marginalized and stateless for many decades.

In international law, it remains to be seen if there is another alternative way to give full status to a person without going through the state. Consequently, the state remains a salient factor in enabling a person to have a place in the international community, with the full status of rights and being. Indeed, in the UNHCR's Convention on the Reduction of Stateless 1961, the state (in this case, contracting parties) has been recognized as the sole authority that would be able to give national status to a person. It stated in Article 1.1 that "a Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless." This is something that must be done at birth or through application with an appropriate authority (UNHCR, 1961). Thus, with such recognition of the state as the authority over the determination of respective nationality law, there is no effective and strong opposition—or discouragement—to producing a racialized model of citizenship (Laungaramsri, 2014). On top of that, the two conventions on statelessness only recommend that states align their citizenship with the Convention. Unfortunately, neither Thailand nor Brunei Darussalam has acceded to either of the two Conventions, and thus the two countries are unwilling to yield to such recommendations. Yet, as both countries are members of ASEAN, Thailand and Brunei cannot escape their responsibility in granting citizenship towards the stateless; that is, in accordance with Article 18 of the ASEAN Human Rights

Declaration which stipulates that "every person has the right to a nationality" (Sperfeldt, 2021).

Considering all the above, the phenomenon of protracted statelessness occurring in Thailand and Brunei is indeed enabled by the institutionalized discursive and non-discursive practice found in the discourse of nationality law. Rather than providing an avenue for the solution of statelessness through the granting of citizenship, the law and, to a certain extent, the accompanying non-discursive practice has created an overblown community of protracted stateless persons in both countries. The language and practice of the discourse of nationality law has created meaning systems that have become dominant and accepted by stateless persons as the authority-in-knowledge of their status. Thus, the nationality law governs the actions or approach towards the stateless, regulates the definition, criteria, and requirements of them, and organizes the practice that seems to provide pathways to citizenship; yet, in reality, the nationality law has in fact systematically marginalized stateless persons and conditioned their struggle as something the law cannot fix.

At the same time, citizenship should be understood as a political construct that is based on the respective countries interests, albeit being modified through innovation to meet with international pressure or to hide its discriminatory nature. As such, it becomes an effective tool to objectify and reify social categories created by the state (Laungaramsri, 2014). Both the language and the practice have been used as a potent and effective technology of state that (re)produces and maintains the situation of protracted statelessness. The continued presence of a large community of effective stateless persons is a damning testament to the state's projects in identifying, categorizing, segregating, controlling and monitoring populations under the guise of nation building (Torpey, 1999).

ACKNOWLEDGEMENTS

Md Zaidul Anwar Hj Md Kasim is a PhD student in Ph.D Program in Social Science (International), Faculty of Social Sciences, Chiang Mai University, under the Chiang Mai University Presidential Scholarship

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