CHAPTER II

LITERATURE REVIEW

2.1   Introduction

This chapter aims to provide a literature review of the problems of statelessness in persons. It is divided into five sections. The first section provides a theoretical and conceptual overview regarding the problems of statelessness in persons. The second section reviews the problems of statelessness at the global level. Then the general causes and impacts of statelessness in persons will be examined in the third section. The fourth section elaborates on the problems of statelessness as a human rights problem. The last section reviews the problems in obtaining Thai nationality in general.

2.2   Theoretical and conceptual overview

This section examines the concepts that are related to the problems of statelessness in persons, namely nationality, citizenship and statelessness, and general principles in acquiring nationality. Firstly, the definitions and conceptual debates on the concepts of nationality, citizenship and their root concepts 'nation', 'state', and 'nation-state' will be reviewed. Then, an overview of the development of the concept of nationality in Thailand will be provided. After that, definitions of 'statelessness' and 'stateless person' will be explored. Lastly, an overview of general principles in acquiring nationality will be provided.

2.2.1   'Nation', 'state' and 'nation-state': Definitions and conceptual debates

To truly understand the problem of statelessness, it is necessary to examine the root concepts of 'nationality' and 'citizenship', namely 'nation', 'state', and 'nation-state'. It is almost impossible to discuss one of the terms 'nation', 'state', and 'nation-state' without referring to the other two. These three concepts are related and

may seem similar, however they are not actually the same. In this section, the concepts will first be discussed one by one, after which they will be compared and discussed together.

2.2.1.1 'Nation'

'Nation' is generally defined as a group of 'people' as well as a 'country'. Below are definitions of 'nation' as a group of 'people':

> "**2** [S] a large group of **people** of the **same race** who share **the same language, traditions and history**, but who <u>might not all live in one area</u>" (Cambridge Advanced Learner's Dictionary, 2008).

> "**2** a large number of **people who share the same history, ancestors, culture** etc <u>(whether or not they all live in the same country)</u>" (Kernerman English Learner's Dictionary , 2008).

From the above mentioned definitions, it shall be noted that the same area of living is not included as an essential character of a nation. It is possible that a nation may not have a state or even live in the same area of the same country as long as the nation recognizes itself as one nation. Many nations live in different places, such as Albanians who do not all live in Albania (Columbia Encyclopedia, 2008). What binds a nation of people together is not a geographical area of living but a psychological bond or feeling that they belong to the same nation. The psychological recognition of a nation as such is explained further in the definitions of 'nation' below:

> "**People** whose **common identity** creates a **psychological bond** and a **political community**. Their political identity usually comprises such characteristics as a **common language, culture, ethnicity, and history**." (Encyclopedia Britannica, 2006)

Benedict Anderson (cited in Zuelow, 2007) also stated that the bond between people in a nation only exists in their mind. He stated that 'nation' it is not based on regular face-to-face interaction between members but on the feeling that they belong

to the same community. According to Anderson, even in the smallest nations, the members of a nation do not know, meet, talk or associate in person with most of the members. However, in their minds, all the members are living together in a community. For Anderson, 'nation' is just *"an imagined community"*.

Due to this sense of common belonging, a nation might seek out its own territory in order to govern itself independently (Ibid.). Whenever this happens, a 'nation' may be recognized as a 'country'. See below a definition of 'nation':

> "**a country**, especially when thought of as a large group of people living in **one area** with their own government, language, traditions, etc." (Cambridge Advanced Learner's Dictionary, 2008).

In sum, the term 'nation' can be defined as a large group of people that share common descent (as it is believed by the people), culture, language, and history, as well as a sense of identity. 'Nation' can also be defined as a 'country' whenever a nation governs itself in a particular territory.

2.2.1.2 'State"

The most concise definition of a 'state' is "a self-governing political entity" (Rosenberg, 2004). It is said that a state can be distinguished by four characteristics: 1) permanent population; 2) defined territory; 3) sovereignty; and 4) external recognition (Shearer cited in Rosenberg, 2004). In *Politics as a Vocation*, Max Weber (1918) has also provided three aspects of a modern state: 1) territoriality; 2) monopoly of the means of physical violence; and 3) legitimacy. (Weber cited in The Concise Oxford Dictionary of Politics, 2003). This kind of state is also referred to as a *'modern state'* (Saisoonthorn, 2005: 49). More definitions of 'state' that clarify the characteristics of a state are as follows:

> "…distinct set of **political institutions** whose specific concern is with the **organization of domination**, in the name of the **common interest**, within a **delimited territory**" (Concise Oxford Dictionary of Politics, 2003).

"A **territorial unit** with clearly defined and **internationally accepted boundaries**, having an **independent existence** and being **responsible for its own legal system**" (Dictionary of Geography, 2004).

In accordance with the definitions and characteristics above, it can be said that a 'state' is *a self-governed political entity that has a permanent population, defined territory, sovereignty, and external recognition.* This definition implies that a state in this sense can be: 1) *an independent country that governs itself as one state* or 2) *a state under the central government of a federal State* (a country consisted by states, e.g. the United States of America) (Encyclopedia Britannica, 2006). It is suggested that apart from the four essential characteristics of a state previously mentioned, a 'state' as *an independent country* might possess other qualifications such as a transportation system, economic activity and an organized economy, power of social engineering and a government which provides public services and police power. It is not necessary that a state must have all the qualifications but most states try to have as many as possible, for according to Rosenberg, "the more powerful and established states can put checkmarks next to every item on the list" (2004.).

It should be noted that *'population'* or *'people'*, one of the essential elements of a state, are not necessarily homogenous. As long as there is a population regardless of which nation they are from and how many nations there are, along with other characteristics, a political entity may be recognized as a state. Therefore, the population of a state may be the combination of various nations or may be a homogenous nation. Most states are comprised of a variety of nations (United Nations Educational, Scientific, and Cultural Organization [UNESCO], 2005). Whenever a nation has a state of its own, that particular state becomes a nation-state.

2.2.1.3 'Nation-state'

The idea of 'Nation-state' merges the two concepts of 'nation' and 'state'. Thus, 'nation-state' is the combination of 'nation' and 'state', literally and conceptually. Below are definitions of a 'nation-state':

"The ideal of 'nation-state' is **that the state incorporates people of a single ethnic stock and cultural traditions**" (Kazancigil and Dogan cited in UNESCO, 2005).

"A **political unit** consisting of an autonomous state inhabited predominantly by a **people sharing a common history, culture, and language**" (The American Heritage Dictionary of the English Language, 2004).

Based on the above definitions, the term 'nation-state' encompasses both the wording and the ideas of 'nation' and 'state'. While the definition of a nation in short is "a large homogeneous group of people" and the definition of a state in short is "a political entity that has defined territory, sovereignty, population and external recognition", a 'nation-state' may in short be defined as *"a state which is governed by only people in one nation"*. Examples of countries that are recognized as nation-states include France, Egypt, Germany, Japan, and New Zealand (Rosenberg, 2004).

It should be noted that a nation-state is still a *'state'*, but a more specific type of state. The additional qualification of a nation-state that distinguishes it from a normal state is that the majority or the whole population in a nation-state must be homogenous, or in other words, must belong to the same nation.

2.2.1.4 Conceptual debates on 'nation', 'state' and 'nation-state'

The concepts 'nation', 'state' and 'nation-state' are often used interchangeably. This section aims to provide a conceptual debate among the three terms by arguing that they should be regarded as separate concepts because they have different emphases. Secondly, it will discuss the problems in using and conceptualizing the concepts, including how and why they are misused.

In line with the given definitions of 'nation', 'state' and 'nation-state' defined in the previous sections, it is clear that while 'nation' is more regarded as *'cultural'*, the other two concepts, 'state' and 'nation-state', are more *'political'*. Referring to

the definition of 'nation' in 2.1.1, a 'nation' is a large group of people who share a common culture that leads them to have the same sense of identity. The concept of 'nation' places an emphasis on the "*people*" and "*their similarities in cultures*." On the other hand, the concept of 'state' defined in 2.1.2 emphasizes more *political factors* such as people, territory, government authority, sovereignty, external recognition, etc. Finally, if 'nation' is regarded as cultural and 'state' is political, the term 'nation-state', defined in 2.1.3 as the combination of the two previous mentioned terms, shall be where "*cultural boundaries match up with the political boundaries*" (UNESCO, 2005). In comparing their definitions, it can be argued that 'nation', 'state' and 'nation-state' are distinguishable and shall not be used in the same sense.

However, these three terms are often used as synonyms. In particular, the United Nations (UN) tends to misuse the term 'nation'. With respect to the definitions provided in 2.1.1-2.1.3, members of the UN are **not** *nations* but the *governments that represent states* (Rasmussen, 2001). Misuse of the concept of 'nation' occurs because the meaning of 'nation' and 'state' overlap - they are related to each other by the implication that they both share *a country*, which means they are both used in a *political sense*.

Some meanings of 'country' provided in Collins Discovery Encyclopedia (2005) are: "1) **a territory** distinguished by its people, culture, language, geography, etc.; 2) **an area of land** distinguished by its **political autonomy;** 3) the people of **a territory or state;** and 4) one's **native land or nation** of citizenship". The definitions reveal the use of 'country' as a synonym of 'nation' and 'state'. The definitions also imply 'country' is a political entity since **'territory' is** a political feature used as the main factor to define 'country'.

However, when the people have their own territory, that territory does not need to become a country. It is said that the territory governed by a group of people would become a country only when it is independent. This is argued by Rosenberg (2004) who defines a country as **an independent state.** Such territories like Hong

Kong, Bermuda, Greenland, Puerto Rico, and most notably the constituent parts of the United Kingdom (Northern Ireland, Wales, Scotland, and England) and states in the United States of America are not considered countries (Rosenberg, 2004). Thus far, 'country' is a genuine political term since it is used to identify a political territory – a state only, not a nation or a national group without territory of its own. It is tricky when such a clear meaning of 'country' is shared by separate terms like 'nation', 'state' and 'nation-state'.

'Country' is an intersecting meaning of the three concepts. The concept of 'nation' becomes problematic at the point when there is a possibility that a particular nation lives in the same area. When the people of a nation happen to live in the same area, they are potentially recognized as **a country**. Whenever a nation lives in a defined territory, governs itself, and is recognized, this territory becomes a country-an independent state. In other words, in becoming a country, a nation is becoming a state and also a nation-state at the same time. This is when the concept of 'nation' meets 'state' and becomes 'nation-state' which leads to conceptual overlap among the three concepts. Therefore, the use of the three concepts of 'nation', 'state' and 'nation-state' becomes interchangeable.

Similarly, it is stated clearly in 2.1.1.2 that 'state' has two implications: 1) a state under a federal state and 2) a state which is absolutely independent in terms of government. Used in the sense of the latter implication, a state is absolutely recognized as **a country**. At the same time, a nation-state, which is actually a type of state, can also be **a country** when it possesses highest authority in governing itself.

Furthermore, the three terms become more problematic because they do not only share the same meaning as 'country', but under particular conditions, they might be recognized as the other two concepts (see Figure 2.1).

Figure 2.1: The conceptual overlap of 'Nation', 'State' and 'Nation-state'
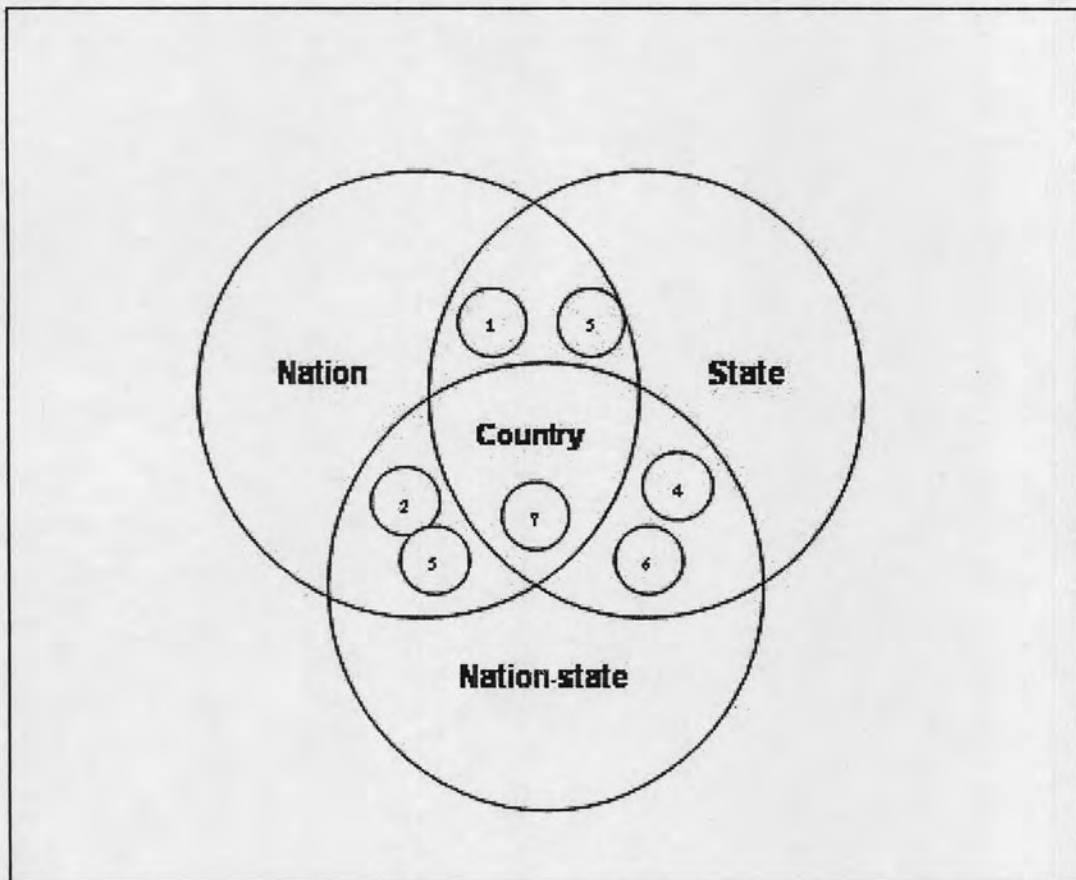
1) **A nation** can be recognized as **a state** when the homogenous people live in a defined territory, have their own government and territory, and their government is recognized by other states.

2) **A nation** can also be identified as **a nation-state** when the homogeneous people have their own state.

3) **A state** can be called **a nation** when the majority or the whole population belongs to the same nation. The people might possibly call themselves a nation.

4) **A state** can be recognized as **a nation-state** when the population is homogeneous.

5) **A nation-state** can be called **a nation** since its population belongs to only one nation. The people might possibly call themselves a nation.

6) **A nation-state** can also be recognized as **a state** since a nation is a type of state.

7) The concept of **'country'** is where all the three concepts meet. *A country can be called a nation, a state or a nation-state.* At the same time, *a nation, a state or a nation-state can be recognized as a country.*

In sum, it can be seen that the concepts of 'nation' and 'state' are completely different. The concept of 'nation' emphasizes the "people" and "their commonness" in terms of culture, language, beliefs, traditions, history, etc., that creates a feeling of belonging among the people that they are in the same nation. Thus, 'nation' is regarded as a **cultural term** . It should be noted that having a government and same area of living are not factors that determine a nation. In contrast, 'state' is regarded as a **political term**. A 'state' includes political qualifications such as the geographical area of living, external recognition, government and population. Although population is one of the essential qualifications of a state, the people who belong to the same state do not need to have similarity in traditions, languages or culture. Confusion in usage of these terms occurred when the two concepts were merged into the concept of 'nation-state', in which a state shall contain only one nation (Rasmussen, 2001). Since then, the three concepts 'nation', state' and 'nation-state' have been related and conceptually tied to each other like a web. Their meanings overlap under the concept of a 'country', which is a term with political implications. All three concepts also become **political.** As a result, they are used interchangeably and are thus easily misused. Lastly, it can be argued that 'nation', 'state' and 'nation-state' are such vague concepts that their unclear definitions create problems in terms of conceptualization and usage.

2.2.2   'Nationality' and 'citizenship': definitions and conceptual debates

When 'population' is one of the essential characteristics of a 'state', the concept of 'nationality' and 'citizenship' are adopted in order to specify the relationship between a state and its population. This section explores the definitions

and concepts of 'nationality' and 'citizenship' as well as discusses the conceptual debates between these two terms.

2.2.2.1 'Nationality'

Since the word 'nationality' is derived from 'nation', its definitions are usually based on the definition of 'nation' as seen below:

> 1) "The **status** of belonging to a particular nation": "distinctive national or **ethnic character**": "**patriotic sentiment**"; "nationalism", and 2) "an **ethnic group** forming a part of one or more political nations" (The Oxford Pocket Dictionary of Current English, 2008)"
>
> 2) "Nationality in *political theory*, **the quality of belonging** to a nation, in the sense of a group united by various strong ties. Among the usual ties are membership in the **same general community, common customs, culture, tradition, history, and language**. While no one of these factors is essential, some must be present for cohesion to be strong enough to justify the term nationality" (Columbia Encyclopedia, 2008).

From the above mentioned definitions, it is possible to say that 'nationality' is the bond of a person to a 'nation', which means a large group of people that share a common culture, as defined in the previous section. 'Nationality' can be a status of being a nation or bound to a nation, the feeling of being a nation or belonging to a nation, the people in the nation or even the characters of a nation. It can be seen that 'nationality' in this sense does not involve the idea of 'rights and duties to the nation'.

2.2.2.2 'Citizenship'

'Citizenship' is derived from the term 'citizen', which originated to serve the idea of 'state' (Columbia Encyclopedia, 2008). Below are some definitions of 'citizen':

> "1. A native or naturalized **member of a state or nation;** 2. An inhabitant of **a city or town**" (Collins Essential English Dictionary, 2006)

"Member of **a state**, native or naturalized, who owes allegiance **to the government of the state** and is **entitled to certain rights**" (Columbia Encyclopedia, 2008)

Below are definitions of 'citizenship':

1) "**The state of being a member of a particular country and having rights because of it**; 2) The state of living in a particular area or town and behaving in a way that other people who live there expect of you" (Cambridge Advanced Learner's Dictionary, 2008).

"Relationship between an individual and **a state in which the individual owes allegiance to the state and in turn is entitled to its protection**. In general, **full political rights**, including the right to vote and to hold public office, are predicated on citizenship. Citizenship entails **obligations**, usually including allegiance, payment of taxes, and military service" (Britannica Concise Encyclopedia, 2006).

It can be seen that 'citizenship' is the bond between a person and a country or state, which grants the person full political rights. 'Citizenship' ensures the state's protection and services while it bonds the person duties to the state, e.g. paying taxes and military service. It should be noted that people granted citizenship by a state do not need to be homogenous or belong to the same nation.

2.2.2.3 Conceptual debates on 'nationality' and 'citizenship'

Both the wording and concept of the term 'nationality' obviously derived from the term 'nation'. At the same time, the term 'citizenship' derived from the word 'citizen' that served the idea of 'state'. Similar to their root concepts, 'nationality' and 'citizenship' are also problematic in conceptualization and usage. Their meanings overlap and they are used as synonyms even though they are not the same conceptually.

According to the definitions of 'nationality' and 'citizenship' provided in 2.2.2.1 and 2.2.2.2, the concepts of 'nationality' and 'citizenship' are not the same. Nationality only emphasizes the bond between people to a nation, which is not necessary a state or a country. In contrast, 'citizenship' emphasizes the bond between people to a state. While 'nationality' does not include political elements or the idea of rights and duties, 'citizenship' does include such elements:

> "**Nationality is inferior to citizenship**, insofar as the **latter implies a full set of political privileges** and the former does not. Countries have limited rights to determine which of their inhabitants will be their nationals ...**Nationality does not necessarily denote membership within a specific political state**. There are many examples of nations divided between several states and of states composed of several nations and parts of nations" (Britannica Concise Encyclopedia, 2006).

However, on a practical level, the terms 'nationality' and 'citizenship' are used as synonyms. Mostly, 'nationality' is used in the same sense as 'citizenship'. Similar to 'nation' and 'state', the overlap of meaning between the two terms occurs when 'country', 'nationality' and 'citizenship' are used synonymously in the context that they refer to the legal connection of people to a 'country'- an independent state, not a national group of people. Therefore, nationality is less used in its original sense but instead as a synonym of 'citizenship':

> "The word nationality (membership in a nation) is often, although not always, used synonymously with citizenship (member of a state). They are categories states use to define **membership**. They also provide **a *legal* connection between an individual and a state**, serving as a basis for certain rights, including the state's right to grant diplomatic protection and representation on the international level" (Lynch, 2005: 8).

> "The term 'nationality' is a legal term meaning 'legal relationship between an individual and a State'. The individual is under the particular State's personal sovereignty. Therefore, nationality is a legal bond between the State and an individual that creates the status of 'national' to the individual" (Saisoonthorn, 2005: 23).

'Nationality' in this sense is equal to citizenship since it identifies an "attachment to a state by a tie of allegiance" and used to distinguish nationals from aliens (Columbia Encyclopedia, 2008). In other words, 'nationality' is an instrument used by a state to certify a person's citizenship.

In sum, 'nationality' and 'citizenship' are conceptually overlapping and are similar in terms of usage. The proper meaning of nationality seems to be less used. Usually, the two terms are used in the political sense as "a legal bond between a person and a country" or the genuine meaning of 'citizenship'. This kind of relationship binds the country to responsibilities to protect the person under its laws as well as to provide the person rights to access public welfare, state services and many other rights. At the same time, 'citizenship' binds the person to duties to the country such as paying tax and military service.

2.2.3 'Statelessness' and stateless persons

In regards to the term 'statelessness', its meaning is clearly a 'lack of state', not a 'lack of nation'. Therefore, 'statelessness' shall be used to identify the status of a person who 'lacks citizenship' only. However, since 'citizenship' and 'nationality' are often used as synonyms, 'statelessness' is also used to identify the status of a person who 'lacks nationality'.

The definition of "stateless person" given by the Convention Relating to the Status of Stateless Persons as "a person who is not considered as a national by any State **under the operation of its law**" (UN, 1954) is a good example that a person who lacks nationality might also be called 'stateless'. However, a stateless person identified here by the UN only lacks **the bond with a state under its law**, which means that the person actually **lacks citizenship**. This is because only citizenship requires laws to assure a person's bond to the state, while 'nationality' does not need any laws to certify a relationship as such between a person and a nation. In sum, a stateless person is a person who lacks citizenship. The person, then, might not be recognized as a national (lacks nationality) of a particular state.

'Nationality-lessness' is the status of a person who does not have a nationality of any country in the world. By law, the person's status is 'migrant or alien' in every country. The problem of 'nationality-lessness' is exacerbated if the person is not granted the right to residence in any state of the world. Legal status of the person who falls into this kind of condition is 'illegal migrant' in every country. The person, by all means, becomes stateless (Saisoonthorn, 2004:1).

Therefore, nationality-less persons are those who do not have a state of nationality. In spite of this, if a nationality-less person is given the right to reside in a country, it implies that the particular country accepts to be a "State of Domicile" for that person. The person is able to legally reside in that country as a citizen, which means he/she will no longer be stateless (Saisoonthorn, 2002). For example, the 10,000 stateless individuals that have been chosen to be resettled in the U.S. under the U.S. Department of State's Bureau of Population, Refugees and Migration's (PRM) Resettlement Program now become U.S. residents (PRM, 2007, 2). These people may still be nationality-less, but they are not stateless anymore.

On the other hand, if the nationality-less person is not granted the right to reside in any county, he/she is surely stateless. Being nationality-less but a resident in a country, a person will be able to access state services and legal protection at some levels, and in some cases, at the same level of citizens. In contrast, a stateless person is not only unable to access any kind of state services or legal protection but is also an "illegal alien" of every territory (Saisoonthorn, 2002). Thus, stateless people have to encounter a great deal of difficulties and insecurity in life.

In sum, statelessness is not only the problem of not having nationality in the genuine sense, but it is actually also the problem of not having citizenship in any country. Yet, there is less of a chance for a person who lacks nationality to become a state's citizen. There are still a lot of nationality-less persons who remain stateless. To avoid confusion, "stateless person" in this paper will be used to refer to everyone who lacks both nationality and citizenship.

2.2.4 General principles of acquiring nationality

It is said that 'nationality' emerged along with the idea of modern states. It is the principle each modern state used to distinguish its population from others (Saisoonthorn, 2005: 49). Written nationality laws were developed during the end of the eighteen century due to two reasons. Firstly, the emergence of the concept 'nation-state' initiated the idea of rights and duties of the state's nationals. Thus, states needed to distinguish its population from others. Secondly, nationality is the condition used for an individual to request the state's protection (Ibid.).

International laws agree that it is the absolute authority of states in determining their nationality law. Each state usually determines its nationality by the evidence that proves a person's genuine link with the 'State of nationality' (Saisoonthorn, 2005: 37). There are generally three ways that a person can acquire a nationality: 1) "by birth within a particular country's territory"; 2) "by inheritance from one or both parents"; or 3) by "naturalization" (Britannica Concise Encyclopedia, 2006). The first two principles will be discussed together as the principles of acquiring nationality 'by birth' while the last one is discussed as the principle of acquiring nationality 'after birth'.

2.2.4.1 Acquiring nationality 'by birth'

The principle of acquiring nationality by birth within a particular country is known as the principle of '**Jus Soli**' while the principle of acquiring nationality by inheritance from parents is called the principle of '**Jus Sanguinis**'. The principle of Jus Soli determines nationality and citizenship by the **places of birth** while the principle of Jus Sanguinis determines nationality and citizenship by **blood ties** (Saisoonthorn, 2005: 38). However, the principle that is legally accepted depends on the nationality law in each country. Some countries accept both principles while some accept only either one of the principles or the other (Ibid.).

Goldston has noted that nationality is primarily conferred on a Jus Sanguinis basis in Asia and the Middle East (2006: 7). Thailand is one of the countries that uses the principle of Jus Sanguinis as the main standard for a person in acquiring for Thai nationality. The principle of Jus Soli is also accepted but with several conditions in details.

2.2.4.2 Acquiring nationality 'after birth'

Some situations in which a person might acquire nationality include: 1) when a person resides permanently in a state; 2) when a person has a family relationship with a national of a state; 3) when a person serves as an official in a state; and 4) when a person requests for naturalization (Saisoonthorn, 2005: 40-46). Again, acquiring nationality after birth also depends on each state's nationality law.

2.3 Problems of statelessness at the global level

Statelessness was recognized as a global problem around the first half of the 20th century and the problem of statelessness in persons has been increasing since the last decade (Goldston, 2004: 2).Stateless people are categorized as one of various groups of non-citizens of the world. They are an "extremely vulnerable population" in the world (Ibid.). Stateless people have received less global attention than other groups of non-citizens, while refugees and migrants have received growing attention (Ibid.).

In accordance with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the definitive statistics on the number of stateless people worldwide is not known. It is officially reported that there are 5.8 million stateless people in 49 countries in 2006. Apart from the 49 countries mentioned, other countries in the world are not able to provide reliable figures. Nevertheless, it is estimated by the office that there are around 15 million stateless people worldwide (OHCHR, 2007: 13-14). Stateless people in the world are found among minority people:

"Individuals from the former Soviet bloc, some of **Thailand's ethnic groups**, the Bhutanese in Nepal, Muslim minorities in Burma and Sri Lanka, Palestinians, Europe's Roma, the Bidoon in Kuwait, Bahrain, Saudi Arabia, and United Arab Emirates, specific cases in the Horn of Africa, ethnic minorities such as the Batwa 'Pygmy' and Banyarwanda of the Great Lakes Region of Africa, Bihari and Rohingya in Bangladesh, Kurdish populations, numbers of Arab Shiites, some Meskhetian Turks, and Zimbabweans of Indian descent or with links to Malawi and Mozambique (Lynch, 2005: 2).

2.4 General causes of statelessness in a person

In the literature, it is found that there are various conditions that cause statelessness in person. The U.S. Department of State's Bureau of Population, Refugees and Migration (PRM) has listed the general conditions that create statelessness in a person as follows:

1) "Failure of hospitals and other places of birth to properly register newborns;
2) Political change and transfer of territory which may alter the nationality status of citizens of the former state(s);
3) Targeted discrimination against minority;
4) Administrative oversights, procedural problems, or conflict of law'
5) Laws restricting citizenship, e.g. refugees;
6) Lack of financial ability to cover the cost of registration and birth certificates'
7) Customs and traditional attitudes about birth registration;
8) Destruction of official records;
9) Laws restricting the rights of mothers to pass on their nationality to their children;
10) Laws relating to children born out of wedlock and during transit;
11) Alteration of nationality during marriage or the dissolution of marriage between couples from different countries; and
12) Voluntarily renouncing one's nationality without first acquiring another" (PRM, 2007:2).

According to PRM the causes of statelessness as mentioned above involve various factors such as the laws, policies, implementation of laws or policies,

attitudes and knowledge of the people involved (both the officials and the stateless persons themselves), financial status of the stateless person, uncontrollable circumstances such as political change including transfer of territory, etc. Among the various possible causes of statelessness, Goldston (2004) stated that there are three main causes: 1) denial of access to citizenship; 2) law or discriminatory administrative practices; and 3) state succession (Goldston, 2004: 2-4).

Denial of access to citizenship is usually done in two ways: direct exclusion of some particular groups from access to citizenship by law or indirect exclusion by establishing onerous requirements in obtaining citizenship. The Muslim Rohingya ethnic minority in Myanmar and the Bodin in Kuwait are examples of groups of people denied access to citizenship because they are excluded from countries' nationality law. This means that they have no rights to acquire nationality at all. At the same time, nationality law in some countries provides channels for ethnic groups to acquire citizenship, however, the law sets up onerous requirements. Hill tribe people in Thailand and Palestinians in many Arab states are examples of people who cannot access the right to citizenship because they cannot meet the requirements and the conditions in obtaining citizenship set by the laws of the particular countries (Ibid.).

In addition to denial of access to citizenship, minorities in some countries have encountered legal or discriminatory governmental practices that have deprived them of citizenship. It is reported that there were more than 100,000 Bhutanese refugees of ethnic Nepali origin who were deprived of citizenship by Bhutan's citizenship acts (Ibid.). In the same way, the Banyamulenge people in Democratic Republic of Congo were stripped of citizenship by the country's citizenship law (Ibid.).

Finally, ethnic minority groups have also been deprived of citizenship because of state succession. This kind of situation is found in several countries. After the succession of Eritrea from Ethiopia in 1993, Eritreans living in Ethiopia and Ethiopians living in Eritrea were deprived of citizenship. Similarly, the Serbs

living in Croatia were deprived of citizenship after the country's independence (Ibid).

According to Goldston, stateless persons also tend to be members of ethnic minority groups. There has been a growing trend for governments to use the denial or deprivation of nationality as a tool to exclude and marginalize unpopular racial and ethnic minority groups. People deprived of citizenship are potentially expelled from the country or detained in a refugee camp (Ibid.). Such people are stateless because they are not granted the right to legally reside in any country (Ibid.).

2.5 Impacts of statelessness: human rights dilemma

International human rights principles declare that human rights shall be enjoyed by all members in the human community equally. However, citizenship as a universal human right is limited for a large group of stateless people in the world. Moreover, lack of citizenship is the root cause of other human right problems. Literature review sources agree that statelessness is a critical human rights problem:

> "When taken together, the powers to deny citizenship and treat noncitizens differently can—particularly when employed arbitrarily—result in the denial of fundamental human rights: entire groups of native-born residents may be excluded from access to public benefits; citizens suddenly stripped of their status may be physically expelled; long-term residents may be fearful of deportation and denied the vote; and acts of violence and discrimination against noncitizens may be abetted or allowed to go unpunished....Governments often manipulate citizenship access and mistreat noncitizens without incurring political costs from other states or their own citizens. As a result, citizenship creates a giant loophole in the international human rights framework (Goldston, 2006: 4).

Statelessness can affect a person's life as a whole. Stateless status causes unlimited negative impacts on a person's life because stateless people in the world are restricted from basic human rights that are important to their livelihoods. The hardship of being stateless is beyond the imagination of someone who has never been stateless. The problems of a stateless person are not likely to be seen, since they have

not been recorded as a person anywhere in the world. The below statement describes the sufferings of stateless people well:

> "Stateless people are among the **least visible** but **most vulnerable** populations in the world. Sometimes described as **"legal ghost"** or **"the ultimate forgotten people,"** they are not recognized as citizens by any government." (PRM, 2007: 1)

The Vital Voice on Global Partnership has stated that statelessness results in the inability to access state benefits such as health care and education. Stateless people are also not permitted to travel freely in Thailand. This restriction is a great barrier for stateless persons to apply for a job or study outside their village of residence. Their lack of opportunities also makes them more vulnerable to human trafficking. Moreover, if they are trafficked, they will receive "limited protection, little assistance and may be denied re-entry into Thailand (Vital Voice on Global Partnership, 2007: 3).

Boonwanno (2007) pointed out that the stateless people are also marginalized due to denial of basic human rights which are crucial for their livelihoods in three aspects: the right to occupation, the right to education, and the right to basic health care. The right to occupation is restricted by law as well as knowledge and ability of the stateless people. The right to health care is severely restricted among stateless people. They have to pay for their own medical care in full. Nationality cards are needed to access health care services from public health volunteers. While the right to education is not restricted by Thai government regulations, stateless persons still face problems in access to scholarships because of conflicting regulations.

2.6 Problems in obtaining Thai nationality

Some of the literature mentions problems in obtaining Thai nationality from different perspectives. Vital Voices Global Partnership states that obstacles in obtaining citizenship in Thailand can be grouped into legal obstacles, practical obstacles and regulatory obstacles (Vital Voices, 2007: 16-26). Meanwhile, Rungruangsaphakul (cited in Pinyowattanacheap, 2005: 33-35) states that problems

in obtaining Thai nationality appear in three related parties in the process: stateless persons, authorized officials and organizations, and people who provide assistance to stateless people in obtaining nationality.

According to Vital Voices, citizenship is acquired by birth and descent, or by naturalization. However, problems take place when people are not able to present evidence to prove that they have the right to citizenship according to the methods provided, and the application process is difficult (Vital Voices, 2007: 16-26). It is found that a birth certificate, the most important documentary evidence, is not granted to everyone born in Thailand due to many factors. At the same time, naturalization is hard to achieve since there are qualifications that minority people do not meet such as a regular occupation and Thai language ability (Ibid.).

Problems in obtaining nationality are also found at the practical level. Firstly, corruption is widespread at the village level because of absolute authority. The application process is also slow and dull. Officials lack knowledge and understanding about the laws and regulations. Secondly, there are not enough officials responsible for processing citizenship applications. Third of all, there is no database of persons and linkage of data for verification purposes. Other obstacles result from translation issues, lack of information, lack of communication, and risk-adverse local officials. Finally, obstacles at the regulatory level include misunderstandings of officials caused by unclear regulations regarding the status of minorities (Ibid.).

Problems in obtaining Thai nationality indicated by Rungruangsaphakul (cited in Pinyowattanacheap, 2005: 33-35) are similar to those mentioned by Vital Voices. These problems are related to stateless persons; authorized officials; and organizations and people who provide assistance to stateless people in obtaining nationality, as follows:

Problems of stateless people
1) Stateless people do not submit documents to request for citizenship;

2) Stateless people do not follow up on their case after submitting the documents;

3) Stateless people miss the civil census; and

4) Stateless people lack of knowledge of the process and the law.

Problems of the officials

1) Slow operation through the process;

2) Officials do not provide necessary documents to the people;

3) Conflicts in official documents made by the officers;

4) Conflicts between official documents and information from the stateless people;

5) Negative attitudes of officials and lack of knowledge of law; and

6) Corruption.

Problems of assistance organizations and people

1) Lack of expertise in the problems;

2) Lack of continuation;

3) Lack of knowledge of the law; and

4) Lack of budget (Ibid.)

In addition, Somboon's research on the information-seeking process for obtaining Thai nationality of minority people found that uncertainties or unstable situations occurs among minority people in obtaining Thai nationality appeared in three stages: before entering the process, during the process, and after the process - in other words, from the beginning to the end of the process (2005). These uncertainties are mainly caused by the *change of the state's policies on personal legal status of minorities and the minorities' misunderstanding or lack of knowledge.* Information-seeking is used to find a solution to uncertainties. Most minorities search for information through passive, active and interactive strategies. Crucial factors in seeking for information on obtaining Thai nationality are education level, psychological factors and communication with other people, especially the village

chiefs who play significant roles in providing the main source of information and assistance (Ibid.).

2.7   Conclusion

The literatures related to the problems of statelessness in people are divided into two groups - literature on concepts and theories related to the problems of statelessness, and literature on the problems of statelessness. Concepts related to the problems of statelessness in people are mainly nationality, citizenship, statelessness, and the principles of acquiring nationality. The concepts of 'nationality' and 'citizenship' are tied together with the concept of 'nation-states', which merges the idea of a homogeneous group of people with the idea independent states. 'Citizenship' and 'nationality' are then used as synonyms in the sense of political concepts that present the legal relationship of a person to an independent state or a country. Statelessness, therefore, refers to the status of people who lack citizenship or nationality in that sense. It does not include nationality-less people who have citizenship or the right to reside permanently in a country. Meanwhile, principles in acquiring nationality in general can be divided into principles of acquiring nationality by birth and after birth. The principles of acquiring nationality by birth include principles of Jus Soli and Jus Sanguinis, which mean 'according to blood ties' and 'according to 'place of birth' respectively.

The global trend of the problem of statelessness in people is increasing, while the problem is not paid as much as attention as the problems of other groups of non-citizens such as refugees and 'illegal' migrants. The general causes of statelessness in persons are denial of access to citizenship, law or discriminatory administrative practices and state succession. Furthermore, of the status of statelessness limits a person's protection of basic human rights, which can lead to other human rights problems such as human trafficking. Therefore, statelessness is also a human rights problem.

Finally, the literature shows that problems in obtaining Thai nationality occur at the legal level, practical level and regulatory level and can be grouped into problems related to stateless persons, authorized officials, and assistance organizations and people. Regardless of ineffective policy and regulations to solve the problem of statelessness, the common obstacles in obtaining nationality are lack of knowledge and communication among stakeholders, namely the stateless people, officials and assistance organizations and people such as the village headman. Corruption is also found at the district and village level. The specific obstacles in regards to the district offices are lack of professional staff and an effective database, while further problems in regards to assistance organizations are lack of budget and continuation.

Although the general problems in obtaining Thai nationality have already been identified, there is a lack of an in-depth research on the problems at each step of obtaining nationality, particularly in relation to stateless people and their needs regarding obtaining nationality.