

CHAPTER III

STATELESSNESS IN THAILAND

3.1 Introduction

This chapter aims to provide an overview of the problems of statelessness in Thailand. It firstly examines the concept of ‘nationality’ used in Thailand. Then it elaborates on the conditions that create statelessness in Thailand. After that, it discusses the evolution of Thai nationality laws and the problems of statelessness in Thailand in each era. Finally, it provides an overview of policies on stateless persons as well as types of stateless people in Thailand.

3.2 ‘Nationality’ in the context of Thailand: human rights dilemma

Since sovereignty, territory and permanent population are elements of modern states, it can be said that the term ‘nationality’ appeared together with the emergence of concept of ‘modern states’. In the first era of the modern state, principles of nationality were accepted as customary law. Written law regarding nationality was firstly created at the end of 18 century in France (The Inter Mountain Peoples Education and Culture in Thailand [IMPECT] et al, 2005: Appendix E).

In the ancient history of Thailand, before the first nationality law of Thailand was created, ‘Thainess’ was the term used to describe the qualification of being Thai or Thai nationality as used nowadays. ‘Thainess’ as described in the “Thai Customary Law¹” (*Moon-la-niti-tham-pra-phe-nee*) was based on three principles: 1) Blood of the father 2) Blood of the mother and 3) according to the King’s command (Saisoonthorn, 2007). The political system of Thailand was absolute monarchy, which the King has an absolute power to govern the country and the people until 1931. The term ‘Thai nationality’ was firstly appeared in the first Thai Nationality Act signed by King Vajiravudh (King Rama VI) on April 10th, 1913. It is said that

¹ The ancient law used in Thailand. Customary laws were usually general norms of the society at the particular time.

nationality is an ‘imported western product’ to Thailand since it initially emerged in the western world and came to Thailand exactly when the country was influenced by western ideas, especially, modernization (Ibid.).

However, the law was not really in force in practice because being Thai or not did not affect a person’s life much in the old days. It was because the Thai territory at that time was not clear. There were no immigrant laws, so people could travel across the border freely (Preechasilpakul cited in Boonwanno, 2007: 53). Moreover, all the people in the Thai kingdom at that time, regardless of where they were from or what ethnicity they were, were taken care of by the Thai government at the same level as Thai people (Saisoonthorn, 2007). It was not unpredictable that the people in Thailand belonged to various ethnicities (Preechasilpakul cited in Boonwanno, 2007: 53). At that time, “*Ethnic diversity did not affect the existence of the state. On the contrary, it was the symbol of the greatness of the leader*” (Ibid.).

Before 1972, Thailand generously granted Thai nationality to every person born in the country. ‘Thai nationality’ was a tool used by the Thai government to unite the people from various ethnicities in Thailand (Ibid.). However, the concepts of Thai nationality have changed throughout time. Due to global political change, the Thai government became more and more aware of national security. In 1972, the State began to seriously restrict the right to Thai nationality to prevent migrants from dominating the country by issuing the Revolution Decree No. 337². This was the beginning of the problem of statelessness in Thailand. The decree widely affected numbers of people. It ripped Thai nationality from all migrants who had been previously granted Thai nationality by the previous law as well as restricted their children from the right to Thai nationality. Restriction of the right to Thai nationality does not cause problems of statelessness only in migrants and indigenous but also in indigenous Thai people who are unable to find evidence to prove their right to Thai nationality according to the law. These people are mostly minorities.³

² See more explanation of Thai nationality law in Section 3.4 **Error! Reference source not found.**, page 38 **Error! Bookmark not defined.**

³ See more explanation on minorities and their rights to that nationality as well as types of stateless people in Thailand in Section 3.5.1, page 7.

It can be said that the concept of ‘nationality’ used in the context of Thailand is rather based on national security. It is not based on human rights principles or human security because stateless people are obviously ripped of and restricted of such basic human rights as nationality. They became non-citizens who lack other basic human rights and became extremely vulnerable to all forms of exploitation.

3.3 Conditions that create statelessness in Thailand

Similarly, the causes of statelessness in Thailand are also varied. Statelessness usually affected people in four situations: the person’s birth is not registered; 2) the person missed the civil census; 3) the person’s nationality is withdrawn by the real “State of Nationality”; and 4) the person’s background is unknown.

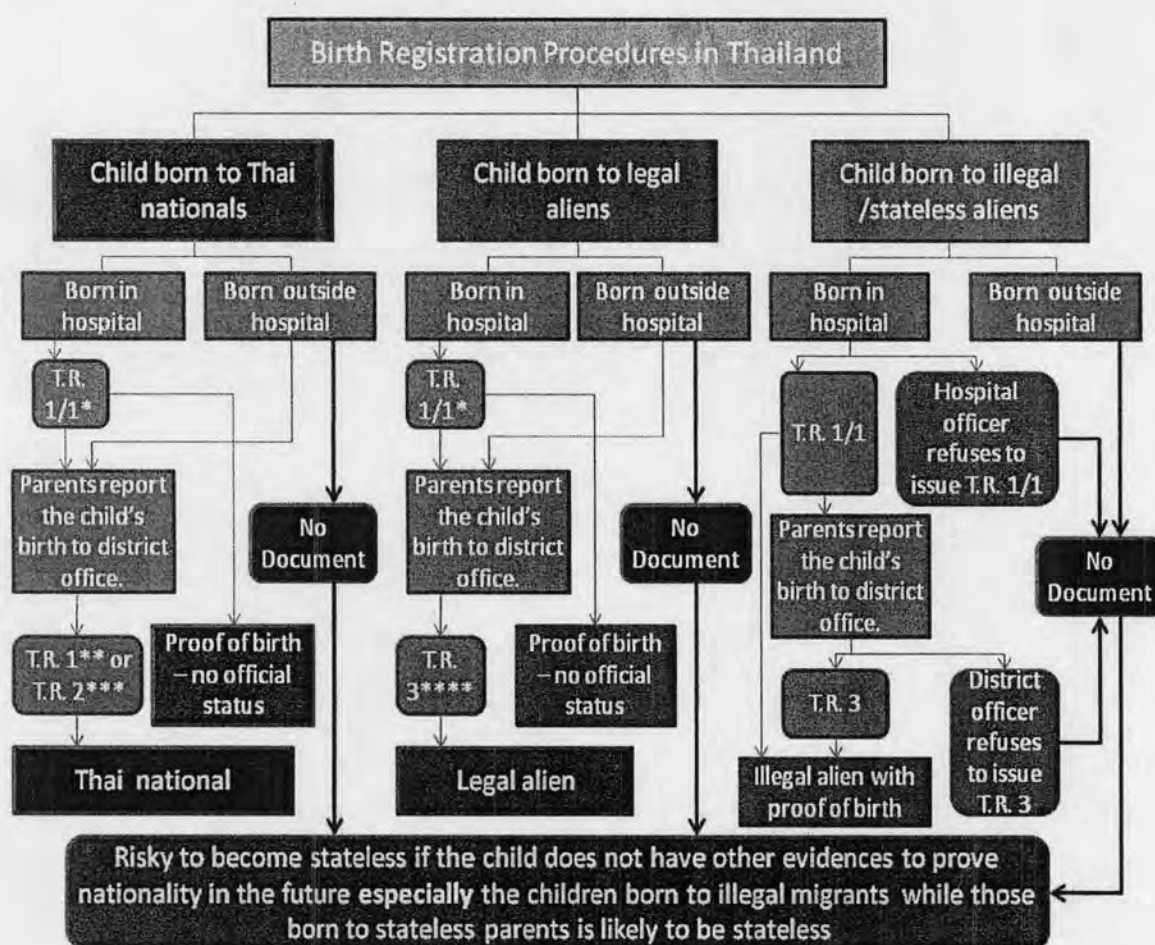
3.3.1 Problems of birth registration

It is said that birth registration is not only the “first legal acknowledgement of a child’s existence” but also fundamental to “the realization of a number of rights and practical needs” (United Nations Children’s Fund [UNICEF], 2006: 13). In Thailand, after a child’s birth is registered, the parents will receive a birth certification document which is to be kept until the child is at age 15. It is when the birth certificate will be used as required document for the child to be fully registered as an adult citizen of the country. (Jiamwiriya, 2003: 46-54) Thus, it can be said that for a child, a birth certificate is as important as an adult’s identity card. A child without birth registration will not be able to claim for nationality later in any country. Basically, their legal status is non-citizen of any country or temporarily stateless until they can prove their existence and their linkage to a country. When time comes and they fail to prove such, they will become stateless. Hence, the problem of birth registration is closely linked to problems of statelessness.

Reasons of not having a child’s birth registered are varied. Mostly it is because related people, namely parents and officers who are in charge of birth

registration, lacks knowledge. It is possible that the parents do not know the regulations or are not aware of the importance of birth certificates. This usually happens with people living in remote areas (UNICEF, 2006: 13). Illegal migrant parents or stateless parents are likely not to register their child's birth because they usually avoid contacting government officers for fear of being arrested. In some cases, government officers refuse to register the child's birth if the child was born to stateless or illegal migrant parents (Saisoonthorn, 2003: 49-51).

Figure 3.1: Problems of birth registration as the cause of statelessness



T.R. 1/1 = Tor Ror 1/1 - Birth Certificate for every child born in Thailand issued by hospital officers

T.R. 1 = Tor Ror 1 - Official Birth Registration Certificate for Thai Nationals issued by *district officer*

T.R. 2 = Tor Ror 2 - Official Birth Registration Certificate for Thai Nationals (when register later than the specific time) issued by *district officer*

T.R. 3 = Tor Ror 3 - Official Birth Registration Certificate for **Non-Thai**
issued by *district officer*

Source: adapted from “Flowchart of Birth Registration of Children Born in Thailand” (Office of Welfare Promotion, Protection, and Empowerment of Vulnerable Groups [OPPEV] et. all, 2004: 87-88)

According to Figure 3.1, even though Thai laws allow birth registration for every child born in the country regardless their parents’ legal status, it is often found that the officers, who are responsible in issuing a baby born to stateless or illegal migrant parents birth certificate (Tor Ror 1/1)⁴ and/or an official birth registration certificate (Tor Ror 3)⁵, refuse to issue the certificate. There is a misunderstanding among the officers that any kinds of birth certification means the child could acquire Thai nationality (OPPEV et. all, 2004: 12-25). In fact, birth certificate (Tor Ror 1/1) is just used to recognize the child’s existence. Likewise, Tor Ror 3 or the official birth registration certificate is clearly for non-Thai citizens. Although they are essential documents in acquiring for nationality, it is not the only evidence that will result the child’s Thai nationality. There is a lot more evidence required to prove the child’s right to Thai nationality⁶ (Ibid: 82-84).

In conclude, it can be said that children whose births are not registered, regardless their parent’s legal statuses, risk statelessness. However, there are more possibilities that the officials refuse to register the birth of children born to illegal migrants and stateless persons, which results them severely risk statelessness.

3.3.2 Lack of civil census

It can be said that the issuance of the first Civil Registration Act and the first census in Thailand’s history in 1956 is the starting point of problems of statelessness in Thailand. It is clear that the census marked the difference between “Thai nationals” and “non-Thais”. (Charoenwong cited in Somboon, 2007: 3). Those who

⁴ See sample in Appendix H, page 197.

⁵ See sample in Appendix I and J, pages 198-199.

⁶ See explanation of evidence required in obtaining Thai nationality in Section 4.4.2, page 67.

were not registered as Thai nationals then later became “migrants” if they could not provide any evidence to prove that they were Thais. Besides, if they could not prove that they were one of nationals in the world, they became eventually “stateless”.

Lack of civil census mostly occurs to hill people or minorities whose residences are in remote areas of the country. These people became stateless because they missed the census for several reasons. Firstly, their remote area of living made it difficult for the census takers to travel to the area as well as for the people to travel to the local registration office⁷ to register themselves. Secondly, it was hard for the census takers to find them. Hill people usually moved very often to find a place to stay and make living. They did not attach to any area in particular. At the same time, minority people living along the Thai border in the old days were closely bound to people in the other side of the border aka neighboring country. They spoke the same language, celebrated the same cultures and even got married. So, they usually traveled across the border or moved in and out between Thailand and neighboring country. The reasons of moving include; to visit with relatives, to find a good place to make living, to flee from drought. To them, border was not recognized. Therefore, there were a lot of possibilities that hill people and minorities missed the census (Archawanitchakul and Kerdsawang, 1998: 34-41).

3.3.3 Withdrawal of nationality

People who risk withdrawal of Thai nationality are those with alien characteristics, such as people who are naturalized Thais and those born of alien parents. People whose Thai nationality might be withdrawn by the State under some conditions are:

1. Thai women who gained Thai nationality by marriage
2. Naturalized Thai nationals
3. People who obtained Thai nationality according to Section 7 *bis.*, Thai Nationality Act 1965 as amended in 1992

⁷ Usually district administration offices are functioning as local registration offices.

4. People who obtained Thai nationality according to Section 23, Thai Nationality Act 1965 as amended in 2008
5. People who gained Thai nationality by birth according to the principle of Jus Soli (Saisoonthorn, 1998)

There are various situations and conditions used to withdraw a person's Thai nationality. The Thai government usually considers withdrawing Thai nationality from its citizens with alien characteristics when:

- 1) the person is dangerous to the Thai state, or
- 2) the person is dangerous to Thai society, or
- 3) the person ignores the country, or
- 4) the person ignores the Thai nationality, or
- 5) the person was naturalized illegally, or
- 6) the person gained Thai nationality illegally or
- 7) the person aligns with rival countries, or
- 8) Thai nationality was withdrawn from the person's parent (^ASaisoonthorn, 2003).

Looking at the reasons of nationality withdrawal above, it can be seen that the main purpose of withdrawing nationality is more concerned with national security than an individual's benefit. Nationality withdrawal causes statelessness in a person whose nationality was withdrawn by the actual state of nationality. This means that the person loses nationality of the only state that has the genuine link with him/her. If the person does not have a link with other states, he/she will become stateless. A good example of statelessness in people caused by nationality withdrawal was clearly seen in Mae Ai, Chiang Mai when Thai officials withdrew Thai nationality from more than 1,243 people in 2002. The reason for withdrawal was that the people gained Thai nationality illegally. The withdrawal was done without investigation or advance notice. The people's nationality was withdrawn and their children became stateless (Pinkaw, 2005: 1-5).

3.3.4 Unknown background

Rootless people are those whose backgrounds are unknown. There is no evidence to specify neither their place of birth nor their parents' place of birth. When the birthplace is unknown, the person cannot claim the right to nationality according to the principle of Jus Soli. In the same way, when the parents' birthplaces are unknown, it is impossible to know the parents' nationality. Then the person is unable to claim the right to nationality according to the principle of Jus Sanguinis (^BSaisoonthorn 2003, 45-58). This is a *legal* problem that excludes rootless people from the right to nationality.

3.4 Thai nationality laws and statelessness in Thailand

This section reviews the development of Thai nationality law in relation to problems of statelessness in Thailand. Thai nationality law development has been divided into 4 periods. In each period, people who were granted the rights to Thai nationality were slightly different (Saisoonthorn, 2007).

3.4.1 The first period: From ancient history – 9 April 1909

Laws into force: 1) Thai Customary Law

2) Naturalization Act B.E. 2454 (1911 C.E.)

In the first period of Thai nationality law development, there was no such word as 'nationality' in Thailand. 'Thainess' was used to define a Thai national by Thai Customary Law. The law regarding Thai nationality directly was Naturalization Act B.E. 2454 (1911 C.E.). This law was in force until 17 May 1911. In this period, 'Thainess' was passed through blood tie. It was accepted that children born to a Thai father or a Thai mother were Thai. Besides, migrants who might be granted 'Thainess' by the King's command were those fell under 6 situations;

- 1) Adult migrants who had been assimilated to Thai society, or
- 2) Adult migrants who had served Thai state great benefits, or

- 3) Adult migrants who used to have Thai nationality, or
- 4) Adult migrant whose parents were naturalized Thais'
- 5) Adult female migrants whose husband was a naturalized Thai, or
- 6) Young migrant whose father was a naturalized Thai (Ibid.).

It can be said that Thainess by birth in this period was according to the principle of Jus Sanguinis only, while naturalization by the King's approval was used to acquire Thainess after birth.

In this period, the idea of identification card or document to certify Thai nationality was not adopted. There was not either a regulation regarding migrants entering the Thai territory or a law that grant benefit to Thai nationals over migrants. So problems of discrimination and national jurisdiction were not found in this period. Although there might me people fell onto situation of statelessness, it was not a problem (Ibid.).

3.4.2 The second period: 10 April 1913 – 12 February 1952

Laws into force: 1) Naturalization Act B.E. 2454 (1911 C.E.) (until 17 May 1911)
2) Nationality Act B.E. 2456 (1913 C.E.) (10 April 1913 – 12 February 1952)

The written law that has been influencing the rights to Thai nationality in Thailand from the past to present is the Thai Nationality Act began in 1913. The second period of Thai nationality law started when the Nationality Act B.E. 2456 (1913 C.E.) came into force. In this period, Naturalization Act B.E. 2454 (1911 C.E.) was still in used. The term 'nationality' was used to identify Thainess in this period. The law ensured Thai nationality by birth to people in 3 situations; 1) born to a **lawful** Thai father, or 2) born to a Thai mother or 3) born in Thai territory (Ibid.). In this period, conditions in naturalization was the same as of in the first period. However, a female migrant who legally married to a Thai man were granted Thai nationality automatically by law (Ibid.).

It can be seen that the pure concept of principle of Jus Soli was adopted into Thai nationality law for the first time in this period. It meant that everyone born in Thailand at that time regardless their parents' nationality became Thai national. The purpose of this law is to avoid conflicts among various ethnic groups in Thailand (Ibid.). With this privileged law, statelessness situation was almost impossible to happen. Even though the person was a stateless migrant, the Thai State allowed them as well as their wives and children to acquire Thai nationality through naturalization. Moreover, their children born later in Thai territory were Thai nationals automatically (Ibid.). However, there are a lot of people born the Nationality Act B.E. 2456 (1913 C.E.) found themselves stateless until now. Statelessness in this group of people mainly cause by the first issuance of Civil Registration Act in 1956. A lot of Thai born people missed the civil census due to carious reasons and became stateless. Most of the cases were found in northern Thailand (Ibid.).

3.4.3 The third period: 13 February 1952 – 4 August 1965

Laws into force: 1) Nationality Acts B.E. 2495 (1952 C.E.), revised in B.E. 2496 (1953 C.E.), B.E. 2499 (1956 C.E.) and B.E. 2503 (1960 C.E.)

Nationality Acts B.E. 2495 (1958 C.E.) replaced Nationality Act B.E. 2456 (1913 C.E.), however, maintained the same conditions in acquiring Thai nationality. This act was revised in 1959, 1962, and 1966. Ideas of nationalism were found in this period. The Thai State began to restrict Thai nationality according to the principles of Jus Soli, ex. only people **born in Thai territory of a Thai mother** would be Thai nationals or the naturalized Thai nationals who accepted migrant identity card would lost Thai nationality right away. However, these kinds of discriminated policies were finally repealed. The law still opened for migrants to acquire Thai nationality by naturalization. Thus, there were not many problems of statelessness.

3.4.4 The fourth period: 1965 - present

Laws into force: 1) Nationality Act 2508 (1965 C.E.), as amended by Acts B.E. 2535 (1992 C.E.) No. 2, Acts B.E. 2535 (1992 C.E.) No. 3⁸, and Acts B.E. 2551 (2007 C.E.)⁹ (1965 – present)¹⁰
2) Revolution Decree No. 337 (14 December 1972 – 25 February 1992)

The Nationality Act 2508 (1927 C.E.) maintained the same conditions of the previous ones. However, during the use of the act, there was a law called the Revolution Decree No. 337 (R.D. 337) came into force. It has caused a tremendous change in nationality situations in Thailand.

Statelessness in Thailand significantly increased because of R.D. 337. This decree was in force during 14 December 1972 – 25 February 1992. It is said that the main purpose of the decree was to prevent people migrating from communist countries and their offspring from obtaining Thai nationality during the spreading of communism in Southeast Asia. However, it affects all migrants who might not be related to communism (Saisoonthorn cited in Boonwanno, 2007: 56). It even affected people born from Thai parents in some situations. The main content of the decree was;

1. to revoke Thai nationality from people born in Thai territory before 14 December 1972 of migrant parents who temporarily entered Thailand and
2. to reserve Thai nationality from people born in Thai territory during 14 December 1972 and 25 February 1992 of migrant parents who temporarily entered Thailand (Saisoonthorn, 2004).

Under this law, a person's right to Thai nationality was based on legal status of his/her lawful father¹¹ before of mother. Only when a lawful father was not found,

⁸ See unofficial translation in Appendix E, page 172.

⁹ Act B.E. 2551 (2007 C.E.) was added by the writer.

¹⁰ See unofficial translation in Appendix F, page 177.

¹¹ A lawful father means the father who had married the person's mother and their marriage had been officially registered.

mother's nationality would then be taken to consideration of the child's nationality (Saisoonthorn, 1997: 89). Therefore, the person who was born of a Thai lawful father would be Thai even though his/her mother was illegal migrant. However, the same person would become illegal migrant, just like his/her mother, if the parent's marriage was not officially registered. Under this law, there were situations that people born of illegal migrant mothers were Thais if Thai fathers or Thai mothers were revoked of Thai nationality or not granted Thai nationality as seen in Table 3.1.

Table 3.1: Legal status of a child *born in Thailand* according to the Revolution Decree No. 337 Comparing to Nationality Act 2508 (1965 C.E.), as amended by Acts B.E. 2535 (1992 C.E.)

Father's Nationality	Legal Marital Status	Mother's Nationality	Children's status by R.D. 337	Children's status by Nationality Act 1965
Thai	Married	Thai	Thai	Thai
Thai	Not Married	Thai	Thai	Thai
Thai	Married	Migrant1	Thai	Thai
Thai	Not Married	Migrant1	Thai	Thai
Thai	Married	Migrant2	Thai	Thai
Thai	Not Married	Migrant2	Migrant2	Thai
Migrant1	Married	Thai	Thai	Thai
Migrant1	Not Married	Thai	Thai	Thai
Migrant1	Married	Migrant1	Thai	Thai
Migrant1	Not Married	Migrant1	Thai	Thai
Migrant1	Married	Migrant2	Thai	Migrant 2
Migrant1	Not Married	Migrant2	Migrant2	Migrant2
Migrant2	Married	Thai	Migrant2	Thai
Migrant2	Not Married	Thai	Thai	Thai
Migrant2	Married	Migrant1	Migrant2	Migrant2
Migrant2	Not Married	Migrant1	Thai	Migrant 2
Migrant2	Married	Migrant2	Migrant2	Migrant2
Migrant2	Not Married	Migrant2	Migrant2	Migrant2

Remarks:

1. Migrant 1 = Migrants entered Thailand who were granted the rights to reside in the country permanently

2. Migrant 2 = Migrant entered Thailand who were granted the rights to reside in the country temporarily **OR Illegal Migrant**

Source: Drawn from the explanation of Revolution Decree 337 and Section 7 bis. of Nationality Act 1965 as amended in 1992 by Saisoonthorn (2007)

However, R.D. 337 also stated that the person born in Thailand and was revoked of Thai nationality or was not granted Thai nationality according to this decree might request to have Thai nationality. The request must be approved by the Minister of Interior. However, it completely depends on the consideration of the Minister, the rules prescribed by the cabinet on a case-by-case basis.

The amendments of the Nationality Act B.E. 2508 (1971 C.E) in 1992 has repealed Revolution Decree No. 337 and the 1971 Act. These amendments clearly maintained the principle of Jus Sanguinis by saying people born to a Thai father or mother, either inside or outside the country, shall be granted Thai nationality. However, they have kept concepts of the R.D. 337 on restriction of Thai nationality according to the principle of Jus Soli to people born of migrant parents in Sect. 7 *bis*.

It is said that people who were born in the Thai kingdom of are not able to acquire Thai nationality if at the time born, the person's father, regardless legal marriage to the mother, or the mother was;

- 1) having been permitted to stay in the Thai Kingdom temporarily as a special case, or
- 2) having been permitted to stay in the Thai Kingdom temporarily, or
- 3) having entered and resided in the Thai kingdom without a permission concerning the law of immigration.

Similar to the person who lost Thai nationality according to the R.D. 337, the person fell into the situation in Sect. 7 *bis*. may request for approval from the Minister of Interior to have Thai nationality on a case-by-case basis. Those who have not yet acquired Thai nationality or later failed to acquire Thai nationality according to the Minister's approval will become illegal migrants (Boonwanno, 2007: 57).

From table 3.2, it can be seen that the Nationality Act 2508 (1965 C.E.), as amended by Acts B.E. 2535 (1992 C.E.) also restrict the right to Thai nationality according to Jus Sanguinis if the person was born outside Thailand. If a child born

outside Thailand of a Thai father and a mother of other nationality and the parents do not register their marriage, the child does not have the right to Thai nationality.

Table 3.2: Legal status of a child born outside Thailand according to Nationality Act 2508 (1965 C.E.), as amended by Acts B.E. 2535 (1992 C.E.)

Father's Nationality	Legal Marital Status	Mother's Nationality	Children's Nationality (born in Thailand)
Thai	Married	Thai	Thai
Thai	Not Married	Thai	Thai
Thai	Married	Other	Thai
Thai	Not Married	Other	Other
Other	Married	Thai	Thai
Other	Not Married	Thai	Thai

It can be seen that nationality law in the fourth period has discriminatorily restricted Thai nationality according to Jus Soli from children born in the Thai kingdom of temporary and illegal migrants. According to Table 3.2, these amendments have solved the problems of statelessness occurred to people born of an illegal or temporary migrant and Thai father or mother (Saisoonthorn, 2001: 93). However, it caused problems of statelessness to people born of a legal migrant and an illegal or temporary migrant instead. This law does not heal the all problems of statelessness caused by R.D. 337.

Nevertheless, there was another amendment in the Thai Nationality Act 1965 in 2008. This amendment was passed in 28 February 2008. Its main purpose is to solve the problems of statelessness caused by the R.D. 337. Section 23 in the Thai Nationality Act 1965 as amended in 2008 (Sect. 23) assures Thai nationality to the people who were affected by Revolution Decree 337. There are three groups of people benefit from this law; 1) people born in Thailand but was revoked of Thai nationality by R.D. 337, 2) those born in Thailand and rejected by R.D. 337 to acquire Thai nationality, and 3) children born in Thailand of the first two groups until 27 February 2008. In other words, they are everyone born in Thailand of illegal or temporary migrants until 25 February 1992, the last day that the decree was effective, and their children born before 28 February 2008, the day Sect. 23 became in force. The children of people in these three groups born after 28 February 2008

will be a Thai national by birth. However, it should be noticed that this law does not solve the problem of statelessness in people born in Thailand to illegal or temporary migrants after 25 February 1992.

In conclude, Thai nationality law in the fourth period has caused problems of statelessness in a large group of the people who were born in Thailand from the past to present. There were times that the Thai government tried to issue new laws and policies as well as regulations as remedies for statelessness resulted by the previous laws. However, the problems still exist since the cure does not cover the whole problem.

3.5 Stateless people in Thailand and Thailand's policies on their personal legal status

Thailand is reported to have more than 2 millions of stateless people among 11 millions stateless people in the world (UNHCR, 2007: 6). It is shown in the literatures that most of stateless people in Thailand are minorities. It is also found that there are efforts from government agencies to solve problems concerning statelessness in hill tribes and ethnic groups. This section will provide the overall picture of problems of statelessness in Thailand by identifying categories of stateless people in Thailand as well as their personal legal status according to the Thai policies will be discussed.

3.5.1 Policies on legal status of minorities in Thailand

There were efforts from the government to solve the problems of statelessness in people. The government general practice in solving the problem started from its efforts to collect data on numbers, habitats as well as personal data of minorities including hill populations in Thailand in order to categorize them into groups. The data collected in each surveys will be put into agendas of ministerial meetings to design the policy to grant the people in each category personal legal status. The four major surveys are;

1. The survey conducted by Department of Government (DG), the Ministry of Interior (MOI) in 1969-1970,
2. The survey conducted during 1985 – 1988 by Social Welfare Department (SWD) at that time under MOI and other agencies according to the ministerial resolution dated April 24, 1984,
3. The survey conducted in 1990-1991 by DG under MOI, and
4. The survey conducted in 1999 by officers from District Offices under the project of Secretariat Office of the Sub-Committee of National Security Regarding Community, Environment and Narcotic Control on Highland and the Civil Registration Division, Registration Administration Bureau (Kitprayoon and Ngam-au-rulert, 2001: 37-39).

From the surveys, minorities in Thailand were categorized into groups. However, it is found that many the data collected in the surveys are not reliable because there is a problem in defining the categories of minorities (Archawanitchakul and Kerdsawang, 1998: 1).

“When we talk about hill tribes and ethnics groups in Thailand, we might have to start with confusion. Even the terms “hill tribes” and “minority groups” are hardly defined or interpreted in the same way. Governmental and non-governmental organizations, government officers, ordinary people have their own way to define the terms. Somebody views that hill tribes are minority groups and ethnic groups are hill tribes while somebody defines hill tribes separately from minority groups. Moreover, somebody is still baffled who the minority groups in Thailand really are” (Ibid.).

The problem of defining ‘minorities in Thailand’ can be seen in the different definitions and categories of minorities provided by DPW, the Ministry of Labor and Social Welfare (MOL) and the ones provided by DG, (Ibid.). While the DG categorized hill tribes as a group of various groups of minorities, DPW has separated hill tribes from other minority groups. DG also categorized people by using the date of their arrivals but DPW focus on their ethnicity. Moreover, DG has included migrant people as groups of minorities while DPW has not. Therefore, new hill tribe arrivals sometimes categorized as displaced Burmese migrants by DG. The unclear

definitions of each group of minorities had caused confusion among data takers, which related to problems of unreliable data (Ibid.). However, categories of minorities by DG are mainly used in policy making to determine the minorities' personal legal status including granting them Thai nationality. Eighteen groups of minorities according to DG mainly based on the survey in 1990-1991 and the one in 1999 and resolutions on their personal legal status (DG, 2001) are presented in Table 3.3.

Table 3.3 Minorities in Thailand according to policies on their personal legal status

No.	Minorities	Law	Personal Legal Status	Personal Legal status of Children born in Thailand
1	Vietnamese refugees (1945-1946 Vietnamese arrivals)	Ministerial resolution (M.R.) on 17 March 1992	Legal migrants allowed to reside in the country permanently	Thai nationals
2	Former soldiers of the Chinese National Army (1950-1954 arrivals)	M.R. in 1984	Legal migrants allowed to reside in the country permanently	Thai nationals
3	Chinese who first joined the group of former soldiers of Chinese National Army (1954-1961 arrivals)	M.R. in 1984	Legal migrants allowed to reside in the country permanently	Thai nationals
4	Independent Chinese arrivals (1962-1989 arrivals)	M.R. on 27 December 1988	Legal migrants allowed to stay in Thailand temporarily	Same as parents
		M.R. on 29 August 2000	Those who arrived Thailand before 3 October 1985 are allowed to reside in the country permanently as legal migrants.	Children born during 14 December 1972-25 February 1992 of parents who arrived Thailand before 3 October 1985 are Thai nationals.
5	Malayan communists from Malaysia (pre-1987 arrivals)	M.R. in 1988	Legal migrants granted the right to reside in the country permanently	Thai nationals
6	Thai Lue	M.R. on 17 March 1992	Legal migrants granted the right to reside in the country permanently	Thai nationals
7	Laotian refugees (post-1974 arrivals) (non-camp populations)		Illegal migrants allowed to stay in Thailand temporarily	According to Thai nationality law that was effective at the time the person was born

Table 3.3 Minorities in Thailand according to policies on their personal legal status (Contd. 1)

No.	Minorities	Law	Personal Legal Status	Personal Legal status of Children born in Thailand
8	Nepali who fled from Burma along with the pre-March 1976 Burmese arrivals	M.R. on 29 August 2000	Those who arrived Thailand before 3 October 1985 are allowed to reside in the country permanently as legal migrants.	Children born during 14 December 1972-25 February 1992 of parents who arrived Thailand before 3 October 1985 are Thai nationals.
9	Pre-March 1976 Burmese arrivals (displaced Burmese)	M.R. on 29 August 2000	Those who arrived Thailand before 3 October 1985 are allowed to reside in the country permanently as legal migrants.	Children born during 14 December 1972-25 February 1992 of parents who arrived Thailand before 3 October 1985 are Thai nationals.
10	Post-March 1976 Burmese arrivals (Burmese refugees)	M.R. on 17 March 1992	Those who arrived Thailand since 3 October 1985 are allowed to reside in the country temporarily	Depended on Thai Nationality Act at the time of birth
11	Pre-March 1976 Burmese - Thai ethnic arrivals	M.R. on 29 August 2000	Those who arrived Thailand before 3 October 1985 are allowed to reside in the country permanently as legal migrants.	Children born during 14 December 1972-25 February 1992 of parents who arrived Thailand before 3 October 1985 are Thai nationals.
12	Highlanders	M.R. on 3 October 1995	Those who arrived Thailand before 3 August 1985 are allowed to reside in the country permanently as legal migrants.	Children born during 14 December 1972-25 February 1992 of parents who arrived Thailand before 3 August 1985 are granted the right to acquire Thai nationality
		Reg. 1999 and Reg. 2000	Indigenous people needed to prove their status and acquire Thai nationality	Same as parents
13	Thai ethnic from Koh Kong province of Cambodia (1974- 20 November 1977 arrivals)	M.R. on 19 February 1991	Those arrived Thailand before 20 November 1977 are granted the right to acquire Thai nationality by naturalization.	Depended on Thai Nationality Act at the time of birth
15	Post-1977 Cambodian arrivals (Cambodian migrants)		Those arrived Thailand after 20 November 1977 are illegal migrants	Depended on Thai Nationality Act at the time of birth

Table 3.3 Minorities in Thailand according to policies on their personal legal status (Contd. 2)

No.	Minorities	Law	Personal Legal Status	Personal Legal status of Children born in Thailand
16	Tong Lueng - a primitive tribe in Northern Thailand	Same as of highlanders	Same as of highlanders	Same as of parents
17	Highland Communities	M.R. on 29 August 2000	Indigenous people needed to prove their legal status according to Thai Nationality Act effective at the time of birth	Same as parents
18	Illegal migrant workers from Myanmar, Laos and Cambodia	M.R. on 29 August 2000	Allowed to stay temporarily in Thailand to work for 1 year.	Same as parents

Source: Adapted from explanations and tables showing categories of minorities according to related policies and regulations (Kitprayoon, and Ngam-au-rulert, 2001: 144-166)

To summarize table 3.3, the Thai government's policies on granting Thai nationality to minorities rely on the link between the people and the Thai state. If it is proved that the people are indigenous minorities, they are granted the right to acquire Thai nationality according to Thai nationality laws. Besides, migrants who have been residing in the country for a long time are usually offered the right to reside in the country permanently as legal migrants and their children will be able to acquire Thai nationality.

3.5.2 Types of stateless people in Thailand

This section draws up those who are potentially stateless in Thailand. Basically, stateless in Thailand mostly belongs to one of the group of minorities in 3.4.1. Thailand National Security Council and the Central Registrar Office under the Ministry of interior has categorized stateless people in Thailand into 5 groups; highland people (9 hill tribes), children born in Thailand of migrants people who had

lived in Thailand for a long time, registered migrant people who were allowed to stay temporarily in the Kingdom, refugees and illegal migrant workers, and rootless people (IMPECT et al, 2005:1-2)

3.5.2.1 Highland people (9 Hill Tribes)

Highland people in Thailand include any groups of people who live permanently in the highland or mountain areas in northern and southwestern Thailand. Hill tribe people have different languages, beliefs, traditions and cultures comparing to the Thai people who lives in the lower area. This group of people can be divided into 9 tribes (Archawanichakul and Kerdsawang, 1997: 1-6). The nine tribes that are accepted by the Thai government to be original Thai hill tribes are Karen (Pkakeyaw), Mong (Meaw), Mian (Yao), Akha (E-kor), Lahu (Muser), Lesu (Lesor), Lua (Lwa or Tin or Mas or Prai), Kamu, and Mlabri (Tong-Luaeng). It was estimated in 2000 that there were around 377, 677 highland people in Thailand. This group can be divided into three groups (The Inter Mountain Peoples Education and Culture in Thailand [IMPECT] et al, 2005:1-2).

The first group is indigenous hill tribe people or those born in Thailand during 10 April 1913 - 13 December 1972. In 2000, there were 17,606 people in this group. The people in this group are actually Thai nationals but technically they are stateless. Their current personal legal status is illegal migrant allowed to reside in Thailand temporarily until they can prove their rights to Thai nationality and acquire Thai nationality according to the Regulation of Central Registration Bureau Regarding Personal Status of Highlanders B.E. 2543 (C.E. 2000)¹² or Reg. 2000. The permission to stay in the country was usually granted year by year (Ibid.).

The second group is hill tribe people who migrated from neighboring countries before 4 October 1985. It was reported that there were around 60, 262 people belonged to this group in 2000. The people in this group would be granted the right to reside in the country permanently as legal migrants. Their children born in

¹² The Regulation of Central Registration Bureau Regarding Personal Status of Highlanders B.E. 2543 (C.E. 2000) will be elaborated more in no. 4.3.2, page 58.

Thailand before 26 February 1992 have the right to acquire Thai nationality according to Section 7 *bis.* of Thai Nationality Act B.E. 2508 (C.E. 1965) as amended in B.E. 2535 (C.E.1992) or Section 23 of Thai Nationality Act B.E. 2508 (C.E. 1965) as amended in B.E. 2551 (C.E. 2008)(Ibid.). Current personal legal status of the people as well as their children's is 'illegal migrant' until they can prove their right to reside in the country and until their requests to have Thai nationality are approved (^BSaisoonthorn, 2003).

The third group is hill tribe people who migrated from neighboring countries after 3 October 1985. In 2000, there were around 220,527 people belonged to this group. This group of people is not granted the right to Thai nationality. Personal legal status of people in this group is 'illegal migrants' (The Inter Mountain Peoples Education and Culture in Thailand [IMPECT] et al, 2005:1-2).

3.5.2.2 Children of migrants who had lived in Thailand for a long time

Around 120,000 people belong to this group. The people in this group would be granted the right to reside in the country permanently as legal migrants. Basically they have to prove that they have moved into Thailand before the date indicated in the ministerial regulations on minority people's status¹³. Their children born in Thailand before 26 February 1992 have the right to acquire Thai nationality according to Section 7 *bis.* of Thai Nationality Act B.E. 2508 (C.E. 1965) as amended in B.E. 2535 (C.E.1992) or Section 23 of Thai Nationality Act B.E. 2508 (C.E. 1965) as amended in B.E. 2551 (C.E. 2008) (Ibid.). Their current personal legal status is 'illegal migrant' until they can prove their right to reside in the country or their requests to have Thai nationality are approved (^BSaisoonthorn, 2003)

¹³ See Table 3.3: Minorities in Thailand according to their personal legal status , page 47.

3.5.2.3 Registered migrants who were allowed to stay in the country temporarily

Around 360,000 people belong to this group. This group of people is not granted the right to Thai nationality. Their current personal legal status is 'illegal migrant' until they can prove their right to reside in the country temporarily (The Inter Mountain Peoples Education and Culture in Thailand [IMPECT] et al, 2005:1-2).

3.5.2.4 Refugees and illegal migrant workers

The people who belong to this group are migrants who reside in Thailand without registration. There were around 1,200,000 people in this group. Their current personal legal status is 'illegal migrant' (Ibid.).

3.5.2.5 Rootless people

Rootless people are those who do not have any evidence to prove their status. They are people whose parents or relatives are not found and their place of birth is unknown. The number of people in this group is not known. Most of them are those who miss the government's population surveys (Ibid.).

In sum, the five types of stateless people in Thailand include both people who are eligible and not eligible for Thai nationality according to the law. The people who have the right to Thai nationality under the current law are the first and second group of highland people: indigenous hill tribe people or those born in Thailand during 10 April 1913 - 13 December 1972 and hill tribe people who migrated from neighboring countries before 4 October 1985 and children born in Thailand of migrants who had lived in Thailand for a long time. The groups of stateless people who do not have the right to Thai nationality are registered migrant people, refugees, illegal migrant workers and rootless people. The latter groups who are not eligible to Thai nationality also include people who, in fact, have the right to Thai nationality

and do not have any evidence to prove their right. These people will have to live as stateless people until the Thai state grants a policy to grant nationality or the right to reside in the country permanently.

3.6 Conclusion

While the root cause of the problem of statelessness in Thailand is the conceptualization of 'nationality' of the state that is based on national security, the more specific causes are the problem of birth registration, lack of civil registration, withdrawal of nationality and rootless people.

The historical background and evolution of Thai nationality law provided in this chapter shows that that problem of statelessness in Thailand emerged when the country became a modern state that tried to find its permanent population by conducting a civil census. The problem became visible when the state tried to maintain national security by excluding migrants from the right to Thai nationality. The initial intention was to exclude only the newcomers but it affected all the minority people, migrants who have been residing in the country for a long time, as well as indigenous minorities who lack of civil census. Policies and regulations have been issued to solve statelessness in Thailand from time to time. Yet, the current policies do not cover all groups of stateless people.