

THE RIGHT TO NATIONALITY AND THE
CONSTITUTIONAL PROTECTION FOR STATELESS
PERSONS IN MALAYSIA

BY

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ABSTRACT

Statelessness is a real issue in Malaysia, yet it receives sluggish attention from the government. This thesis, which employs doctrinal legal research methodology, investigates the underlying legal frameworks that trigger statelessness. In this regard, analysis is made to the relevant concept of international law concerning the state, nationality or citizenship, and the principle of the reserved domain that circumlocutorily leads to the creation of statelessness. The study reveals that the dead-end suffered by stateless persons at the international level requires the attention of human rights initiatives, leading to the inception of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention of Reduction of Statelessness. Nevertheless, Malaysia is non-signatory to both conventions. The discussion investigates the application of Part III of the Federal Constitution regarding the acquisition of Malaysian citizenship and the grounds for the failure to acquire Malaysian citizenship, which may cause one to become a stateless person *de facto*. The human rights protection analysis for stateless persons in Malaysia lingers around the provisions of the Federal Constitution and the Malaysian government's initiatives. The study reveals that the stringent compliance to many procedural requirements has plunged many unfortunate individuals into the situation of statelessness. Discriminatory provisions in citizenship law complicate the citizenship acquisition for children born to a Malaysian woman and a foreign father outside the jurisdiction. The citizenship law also disallows children born outside wedlock to Malaysian fathers and foreign Mothers to inherit paternal citizenship even if they are born within the Malaysian territory. The study recommends reforming the discriminatory provisions of citizenship law and the policy for determining and recognising stateless status. The study limits its focus on examining in-situ statelessness and exclude the study of refugees statelessness and statelessness in the migratory context.

خلاصة البحث

يعد انعدام الجنسية مشكلة حقيقية في ماليزي، ومع ذلك فإنه يتلقى اهتمامًا بطيئًا من الحكومة. هذه الأطروحة التي تستخدم منهجية البحث القانوني العقائدي، تبحث في الأطر القانونية الأساسية التي تؤدي إلى انعدام الجنسية. في هذا الصدد، يتم إجراء تحليل لمفهوم القانون الدولي ذي الصلة فيما يتعلق بالدولة أو الجنسية أو المواطنة، ومبدأ المجال المحجوز الذي يؤدي بشكل غير مباشر إلى خلق حالات انعدام الجنسية. تكشف الدراسة أن الطريق المسدود الذي يعاني منه الأشخاص عديمي الجنسية على المستوى الدولي يتطلب اهتمام مبادرات حقوق الإنسان، مما أدى إلى بدء اتفاقية عام 1954 المتعلقة بوضع الأشخاص عديمي الجنسية واتفاقية عام 1961 لخفض حالات انعدام الجنسية. ومع ذلك، فإن ماليزيا ليست من الدول الموقعة على كلتا الاتفاقيتين. تبحث المناقشة في تطبيق الجزء الثالث من الدستور الاتحادي فيما يتعلق باكتساب الجنسية الماليزية وأسباب عدم اكتساب الجنسية الماليزية، مما قد يتسبب في أن يصبح الشخص عديم الجنسية بحكم الواقع. يتمحور تحليل حماية حقوق الإنسان للأشخاص عديمي الجنسية في ماليزيا حول أحكام الدستور الفيدرالي ومبادرات الحكومة الماليزية. تكشف الدراسة أن الامتثال الصارم للعديد من المتطلبات الإجرائية قد أغرق العديد من الأفراد المؤسفين في حالة انعدام الجنسية. تؤدي الأحكام التمييزية في قانون الجنسية إلى تعقيد عملية اكتساب الجنسية للأطفال المولودين لامرأة ماليزية وأب أجنبي خارج نطاق الولاية القضائية. يحظر قانون الجنسية أيضًا على الأطفال المولودين خارج إطار الزواج لآباء ماليزيين وأمهات أجنبيات أن يرثوا الجنسية الأبوية حتى لو ولدوا داخل الأراضي الماليزية. توصي الدراسة بإصلاح الأحكام التمييزية لقانون الجنسية وسياسة تحديد حالة عديمي الجنسية والاعتراف بها. تحد الدراسة من تركيزها على فحص حالات انعدام الجنسية في الموقع واستبعاد دراسة انعدام الجنسية للاجئين وانعدام الجنسية في سياق الهجرة.

APPROVAL PAGE

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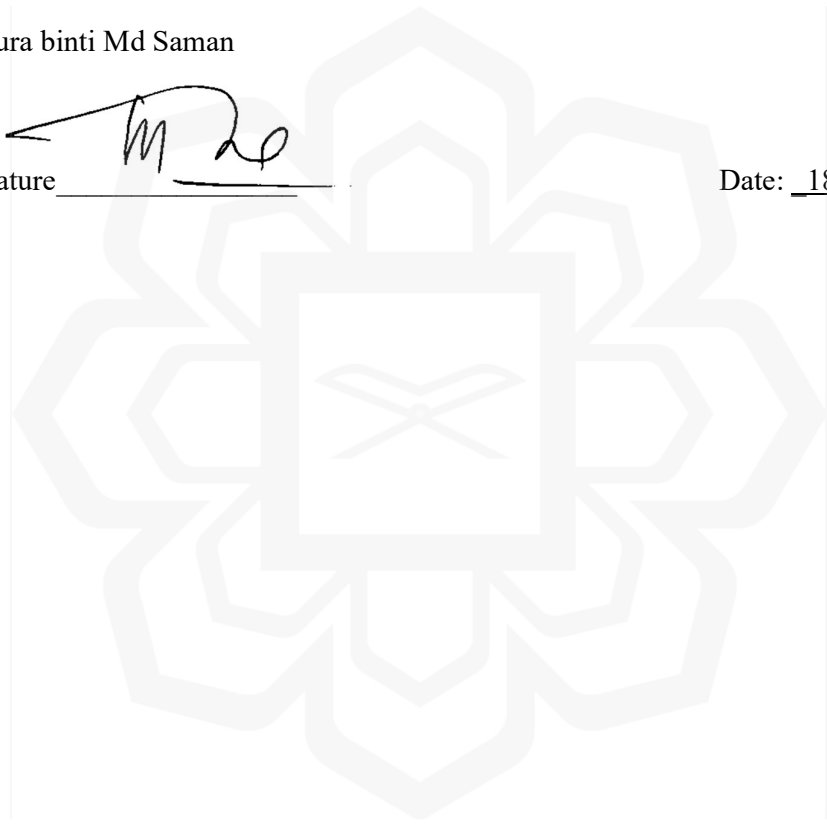
DECLARATION

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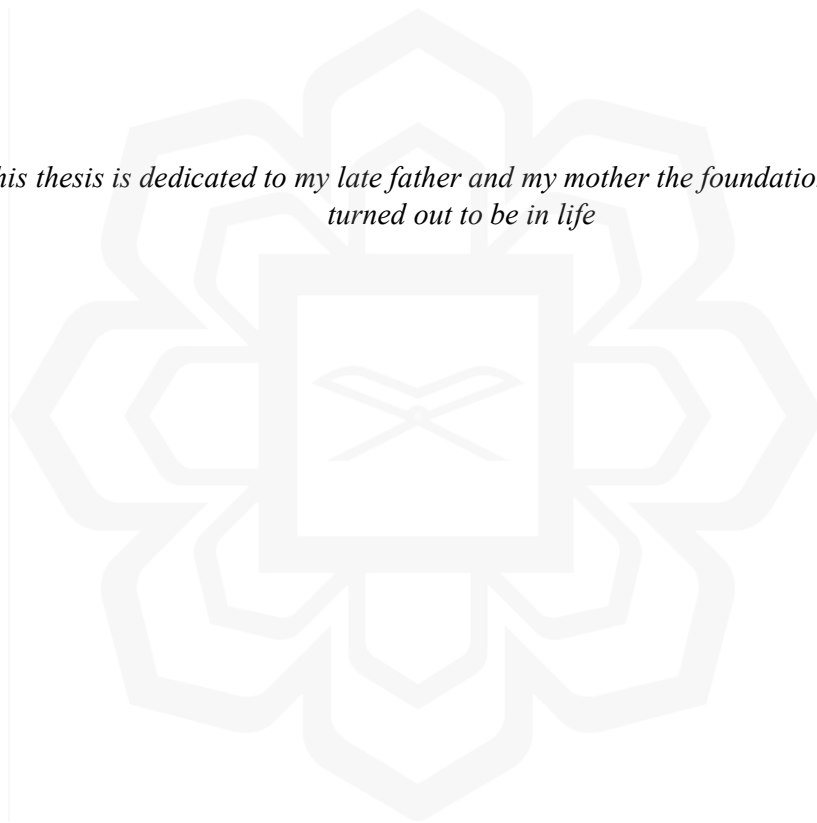
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This thesis is dedicated to my late father and my mother the foundation of what I turned out to be in life



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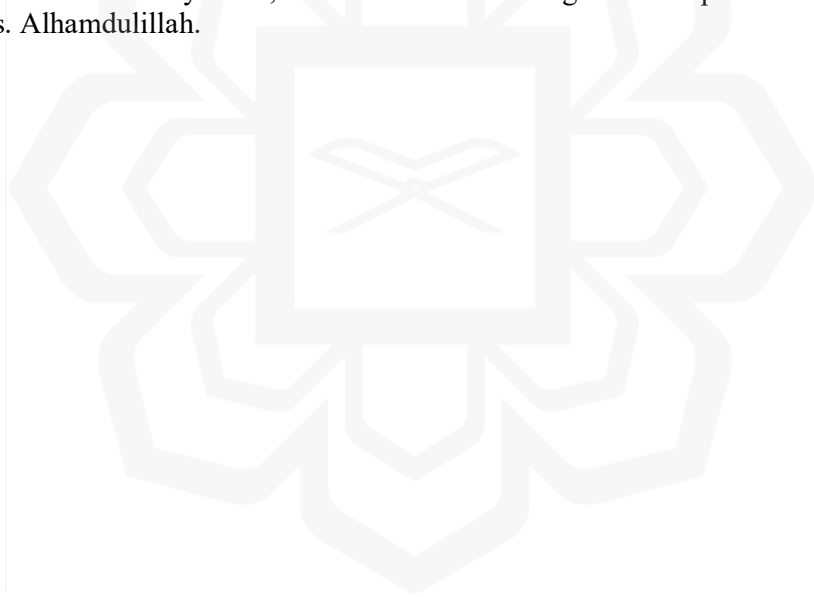


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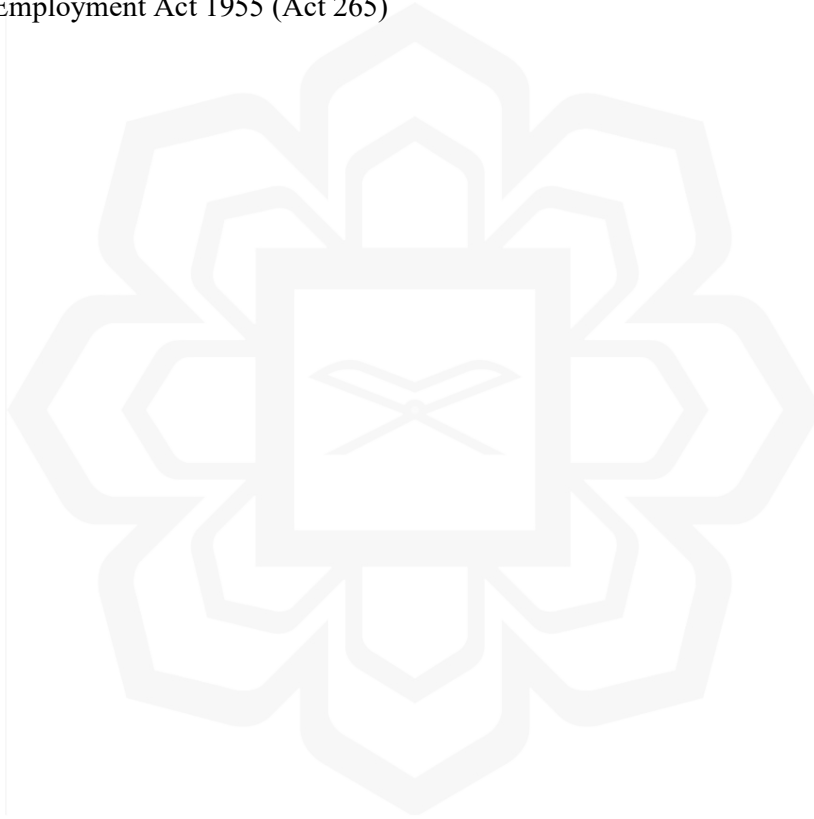
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 3 MLJ 684

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Births and Deaths Registration Act 1957 (Act 299)
Births and Deaths Registration Rules 2019 (P.U. (A) 54/2019)
Evidence Act 1950 (Act 56) (revised 1971)
Federal Constitution
National Registration Regulation 1990
Registration of Birth and Death Ordinance of Sabah 1951
Registration of Birth and Death Ordinance of Sarawak 1951
The Employment Act 1955 (Act 265)



LIST OF INTERNATIONAL TREATIES

American Convention on the Status of Aliens 1928
ASEAN Convention against Trafficking in Persons 2015
Charter of the United Nations 1945
Convention on the Elimination of All Forms of Discrimination against Women 1979
Convention on the Elimination of All Forms of Racial Discrimination 1965
Convention on the Nationality of Married Women 1957
Convention on the Reduction of Statelessness 1961
Convention on the Rights and Duties of States 1933
Convention on the Rights of Persons with Disabilities 2006
Convention on the Rights of the Child 1989
Convention relating to the Status of Stateless Persons 1954
European Union Treaty of Maastricht 1992
Hague Convention on Certain Question Relating to the Conflict of Nationality 1930
International Covenant on Civil and Political Rights 1966
Montevideo Convention on the Rights and Duties of States 1933
Refugees Convention 1951
Rome Convention 1922
Slavery Convention 1926
Universal Declaration of Human Rights 1948

ABBREVIATION

ACHPR	African Charter on Human and People's Rights
AHRD	ASEAN Human Rights Declaration
APYIHL	Asia Pacific Yearbook of International Humanitarian Law
Art	Article
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women 1985.
COA	Court of Appeal
CRC	Convention on Right of Child
CRCI	Covenant on The Right of the Child in Islam
DPA	Department of Political Affairs
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ESOHR	European Saudi Organisation for Human Rights.
EUDO	European Union Democracy Observatory
FC	Federal Constitution
IACrtHR	Inter American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
LNTS	League of Nations Treaty Series
NGO	Non-Governmental Organization.
NRD	National Registration Department
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Conference
Sing. L. Rev.	Singapore Law Review
Stan. J. Int'l L	Stanford Journal of International Law
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia
UDHR	Universal Declaration of Human Rights 1948
UN	United Nations
UNCAT	United Nation Convention against Torture
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Fund
UNECE	United Nations Economic Commission for Europe
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commission for Refugees.
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund

UNSC
UNTS
UPR
WHO

United Nation Security Council
United Nations Treaty Series
Universal Periodic Review
World Health Organization



CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

Since the beginning of this decade, statelessness has emerged as the primary concern of the United Nations High Commissioner for Refugees (UNHCR). Worldwide, while the exact number of stateless persons is unknown, the "Global Trends Report" published from 2013 to 2018 made a general assessment that there were approximately 10 million stateless people.¹ The 2018 "Global Trends" report, published in June 2019, did not give a specific estimation of the total global stateless population but only mentioned in general terms that it was "in the millions".² This report gathered statistical data from 78 countries, accounting for 3.9 million stateless people, but admitted that the "true global figure" was considerably higher, given the enduring disparities in data reporting.³ The most recent 2019 "Global Trends" report, published on 18 June 2020, indicated that, at the end of 2019, the accounted statistical data of stateless persons worldwide was 4.2 million, including those of undetermined nationality in 76 countries.⁴ The estimation made was based on information provided by governments and other sources. Nevertheless, the report cautioned that the true extent of statelessness was estimated to

¹ Lily Chen and et al, "UNHCR Statistic Technical Series 2019/1", UNHCR, <<https://www.unhcr.org/5d9e182e7.pdf>> (accessed 29 May, 2020); See also *UNHCR, "Statelessness Around the World"*, <<https://www.unhcr.org/en-my/statelessness-around-the-world.html>> (accessed 29 May, 2020); UNHCR, *Special Report – Ending Statelessness*, (UNHCR, 2014), 20 and UNHCR's Annual "Global Trends" reports published from 2013-2018, <https://www.unhcr.org/search?comid=56b079c44&&cid=49aea93aba&tags=globaltrends> (accessed 29 May 2020).

² UNHCR, *Global Trends - Forced Displacement 2018*, (Geneva: Field Information and Coordination Support Division, 2019), 51.

³ *Ibid.*

⁴ UNHCR, *Global Trends - Forced Displacement 2019*, (Copenhagen: UNHCR Global Data Service, 2020), 56.

be much higher, as fewer than half of all countries in the world submitted any data. Some of the most populous countries with a large number of suspected stateless populations disclosed almost nothing about statelessness within the countries.⁵

In Malaysia, while the accurate statistical official record of stateless persons is currently unavailable, the UNHCR reckoned that the recorded numbers of "persons of concern" were to include stateless persons, at the end of 2019, were approximately 243,784 persons.⁶ The registered numbers of the "person of concern" under the UNHCR statelessness mandate, which mainly consists of Rohingya refugees and asylum-seekers displaced from Myanmar, are 108,332.⁷ At the end of 2019, UNHCR also reckoned Malaysia's total stateless population includes 9,040 non-displaced stateless persons who may be entitled to Malaysian nationality under the law. This number of non-displaced stateless persons was based on a local NGO's registration and community legal assistance programme undertaken in West Malaysia with technical support from UNHCR. Among those registered, 930 persons acquired Malaysian nationality in 2019.⁸ The numbers would be more if the unrecorded stateless persons were included. Statelessness has been considered an ignored human rights crisis by UNHCR, and most of these many million peoples are stateless by no fault of their own.⁹

Stateless persons issue is very significant because it involves the deprivation of one's fundamental right that is the right to a nationality, as enshrined by art 15 of "the Universal Declaration of Human Rights" (UDHR).¹⁰ In ordinary circumstances, the nationality package will entail other fundamental human rights and necessities,

⁵ Ibid.

⁶ UNHCR, "Key Figures of Malaysia", UNHCR - Global Focus Worldwide, <<https://reporting.unhcr.org/node/2532>> (accessed 1 December, 2020).

⁷ UNHCR, Global Trends - Forced Displacement 2019, 74.

⁸ Ibid., 77.

⁹ Lindsey N. Kingston, "A Forgotten Human Rights Crisis: Statelessness and Issue (Non) Emergence", *Human Rights Review* 14, no. 2 (2013): 73-87.

¹⁰ UDHR, Art 15 asserts that "everyone has the right to a nationality".

including working right, education rights, free movement within the boundary of a country, ownership of living place and social security. On the other hand, if an individual is a stateless person, in most circumstances, he will be exhausted of all those rights and may become subject to criminal prosecution by immigration law. In a worst-case scenario, he will be persecuted by the state in which he is living.

Various reasons have been offered to justify the increase of statelessness. It includes a state breakup, a territory transfer, racial and ethnic discrimination, discrimination against women in relation to complex conflicts of marriage legislation, administrative practices, birth registration, denationalisation, citizenship renunciation, and automatic citizenship loss by "operation of law".¹¹

In Malaysia, statelessness has increasingly become a social concern due to reasons of human social security. Aljazeera reported that more than 50,000 stateless children lived in Sabah without gaining proper access to education and health facilities.¹² Most of them are the nomadic Bajau Laut ethnic and the offspring of undocumented migrant parents from Southern Philippines and Kalimantan, Indonesia, residing in Sabah for more than a decade. Most of these children were born in Sabah. Their presence was not registered and legally not recognised by the state. The circumstances had triggered a political debate, whether they should be given citizenship or not.¹³

Likewise, a non-governmental organisation (NGO) named "Development of Human Resources in Rural Areas" (DHRRA) Malaysia reported that approximately

¹¹ UNHCR, *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, January 1999, 3, available at: <https://www.refworld.org/docid/3ae6b3350.html> [accessed 1 December 2020].

¹² Chan Tau Chou and et al, "Malaysia's Invisible Children", Al-Jazeera, <<https://www.aljazeera.com/features/2016/7/5/malaysias-invisible-children>> (accessed 1 December, 2020).

¹³ Sarah Yeo, "Sabah Invisible Children", Al-Jazeera, <<https://www.aljazeera.com/program/101-east/2015/5/1/sabahs-invisible-children/>> (accessed 1 December, 2020).