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“US” VERSUS “THEM”: (RE)VISITING THE DAILY LIFE STRUGGLE OF STATELESS COMMUNITY IN SABAH, MALAYSIA

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Abstract

The statelessness issue in Malaysia, particularly in Sabah state, began in the early 1970s due to the influx of Filipino refugees during the Mindanao insurgency and civil war. Scholars have documented that the stateless community in Sabah faces social discrimination and exploitation from various actors that cause them to live in vulnerability. Although previous research has written extensively about the plight of the stateless children in Sabah, there is limited research that talks about living conditions and the daily life struggles of the community itself. Therefore, using a qualitative approach, this study will explore the issues and challenges this community faces regarding their living conditions and access to essential services and amenities. In so doing, we conducted in-depth interviews with 30 stateless individuals living in Kota Kinabalu, Sabah. This study found that the stateless community in Sabah is having difficulty in terms of status registration, limited access to employment, worse housing and living condition, and no access to healthcare and education. Therefore, this study may improve the understanding of the state of statelessness in Sabah and provide input in constructing policy and mechanism frameworks to reduce the statelessness issue.

Keywords: Statelessness, Plights, Policy Framework

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INTRODUCTION

The international law defines stateless as an individual who is not recognized by any state as a citizen under the operation of its law. Recently, statelessness and forced displacement have become the focus of global agenda as the high widespread of the issue globally (UNHCR, 2019). The stateless individuals can be classified as internally displaced persons (IDPs) because “they have been forced or obliged to flee or to leave their homes or places of *habitual residence*, in particular as a result of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border” (UNHCR, 1998). Thus, stateless individuals are separated into two types, namely, *de jure* (people who have no legal nationality) and *de facto* stateless (people who have no “effective” nationality) (Chickera, 2010; Massey, 2010).

Statelessness and forced displacement are interconnected because the stateless individuals encountered a high risk of being forcibly displaced and the forced displacement peoples also faced a high risk of being stateless (Albarazi & Van Waas, 2015). Though the refugees, migrants and stateless have clear differences from each other, Malaysia law categorized all refugees and stateless individuals as an illegal immigrant (Kanapathy, 2008; Petcharamesree, 2016). The issue of stateless people that occurred from the presence of refugees is highly happened in Sabah compared to other states in Malaysia (Jassica et. al., 2020).

Tamara (2016) identified three groups of *de facto* stateless in Malaysia, including Orang Asli and Indians in Peninsular Malaysia and the children of IMM13 pass holders (the Filipino refugees). Meanwhile, the *de jure* stateless group in Malaysia are among the Bajau Laut community (Sanen et al., 2019) in Sabah and the Rohingya ethnic (Tamara, 2016) in Peninsular. However, the data on the stateless population captured by UNHCR are highly concentrated on the situation in the Peninsular and there are unavailable data and demographic profiles for the stateless people in Sabah (UNHCR, 2017). The circumstances due to unavailability of documents and evidence of their citizenship for generations and rejection from the local people of any country fit them into the definition of the stateless person by international law (Rodziana, 2017). In 2018, it is estimated that there are 800,000 stateless individuals among were children and living in isolated areas across the Sabah (Jassica et. al, 2020).

The citizenship issue in Sabah was started in early 1970 due to the tremendous influx of Filipino refugees during the Mindanao insurgency in Philippines (Azizah, 2009; Badariah, 2018). The Filipino refugees were provided with basic housing and special permission to reside and work from the state government (Azizah, 2009). However, the vulnerability of Filipino refugees to register the birth of their newborn children to the National Registration Department Sabah (NRDP) led to the birth of a stateless generation (Badariah, 2018). As the consequences, the expanding of their generation led to the rising

number of this intergenerational case of stateless population in Sabah (Azizah & Ubong, 2005; Allerton, 2017). Since the Malaysia government does not ratified the convention related to refugees and statelessness, all the irregular migrants including the generation of Filipino refugees are seen as "illegal immigrant" (Azizah, 2009).

There are various factors including the internal and external reason that contributes to the statelessness issue in Sabah. The internal factors are including the vulnerability of refugees to register birth of newborn (Kanapathy, 2008), unregistered married (Azizah, 2009), the children status who born out wedlock (Allerton, 2017) and illegal status of the parents. For external reason, Tamara (2016) state that the ad-hoc policies by the government in governing stateless lead to confusion due to the inconsistencies in statements and poor registration system (Rodziana et. al., 2015). Therefore, a systematic framework involving multiple stakeholders are significant to find effective solutions to the statelessness issue (Rodziana, 2017).

RESEARCH BACKGROUND

The statelessness has wide concepts and perspectives from various scholars and institutions. The 1954 Convention relating to the Status of Stateless Persons and international law defines stateless as an individual who are not recognize by any countries or study under its operation law. Meanwhile, Rodziana et. al (2015) defined statelessness phenomenon as a result of reverse nationality. Groot et. al. (2015) state that the statelessness is related to the deprivation of legal documentation of birth certificate or evidence, that affect to another significant issues where it restricts an individual from proper access to civil, cultural, and social right. The definition by international law is criticized because it is not understandable and difficult to interpret (ISI, 2014). Besides, the interpretation of "stateless person" by international law only applicable by the authority of states on minority cases and unable to consider both citizenship laws and governance practices when determining whether a person is stateless (Thomas, 2006).

Generally, the stateless persons are divided two types which are de jure and de facto stateless. Both de jure and de facto stateless are comes from the Latin words meaning of "legally" and "factually" respectively (Vonk, Vink and de Groot, 2013). de jure statelessness occurred when the individual does not have any nationality from any countries in the world while de facto statelessness happened when the individual nationality in his/her country is ineffective (Chickera, 2010). In fact, the statelessness definition by international law is only referred to the de jure stateless and does not confer to de facto (Achiron, 2005; Guterres and Johnsson, 2005; Rodziana et al, 2015). Besides, many legal scholars also argued that the international law definition is too narrow and insufficient as it does not include those peoples whose citizenship ineffective or inability to prove their nationality (Weissbrodt and Collins, 2006). On the other hands, the

de facto stateless who are born as second generations and above are at the risk and vulnerable in changing their status to de jure stateless (Massey, 2016).

Being stateless also means limited from various access and right such as proper living conditions, education, and healthcare. The stateless are forced to lives in ghetto-like condition without sufficient access to healthcare, education, and job opportunity (Kaveri, 2017; Badariah, 2018). According to Lynch and Teff (2009), the unavailability of birth certificate among the stateless children causes them restricted to received vaccination and education. Many of the stateless population faced chronic poverty, malnutrition, unnecessary detention, denied from the right of education and being the victim of exploitation, which depicted overall of their daily life (Brunt, 2015). In a study by Barua et. al. (2019) had found that the Rohingya stateless peoples are not entitled on birth registration at government hospital, disposed to poor babies and child health, malnutrition, and other multiple illness and some of them lives in dismal condition in the unregistered refugee camp at Bangladesh (Crabtree, 2009). Meanwhile, the displaced Kosovo Roma community in Berane, Montenegro, who resides in impoverished informal settlements at riverside as they have no right on any property and proper dwelling (Arraiza and Ohman, 2009).

Lack of full set of rights accessible to citizens, stateless individuals face a greater discrimination in the justice administration, harassment, and arbitrary detention (Perks and Clifford, 2009). Besides, the stateless individuals are restricted to vote and participate in political affair, restricted to acquire travel documents, and restricted to access multiple ranges of government services and employment (Goris et. al., 2009). Limited information is available on the plight of stateless individuals in detention in the country they reside because they often seen as 'hidden' population and received a lack of attention been paid to stateless populations (Perks and Clifford, 2009).

Meanwhile in Sabah, the Filipino refugee generation who at risk of stateless lives in slum and squatter settlements or workers' housing with no proper piped water and electricity supply is limited (Azizah, 2009; Allerton, 2017; Tedong, 2018). Additionally, the majority of stateless communities in Sabah live in poverty because their income is below the poverty line (Tedong, 2022). The stateless individuals often received public resentment, and risk of exploitation (Allerton, 2017) and are often blamed by the local people in Sabah for the crime rate, security threat, pollution, and unemployment among the local community (Azizah, 2009). This is contradicted with the statement by Commissioners of Enquiry on Immigrants in Sabah (2014) as they mentioned that the refugees in Sabah have more privileges compared to the refugees in Peninsular in terms of their ability to work, to live with their dependents and apply for a Permanent Resident (PR) status.

In fact, they are frequently in the state of fear of arrest by the enforcers that jeopardize their freedom of movement (Tamara, 2016). Furthermore, due to the

poverty and the absence of birth certificates, stateless children are prevented from receiving Malaysian education (Allerton, 2014). The undocumented and stateless children are considered as marginalized and disadvantages group as they face confinement on access to education, healthcare, birth registration and child protection services (Fahisham, 2012). Past studies finds that the data on stateless persons captured by UNHCR statistics in Sabah is remain unavailable as they are largely concentrated on the stateless situation and population in Peninsular Malaysia (Rodziana, 2017). Also, each government agency and state government also have different definition and perspectives of who constitutes as stateless (Chuah, 2016). The locals add to the lack of focus on this group as they refuse to allow this group to be integrated into the community, by playing a key role in influencing the government to not grant them citizenship or any special pass for the proper documentation purposes. Past researchers finds that the authority encountered several issues and challenges in governing the Filipino immigrants including the stateless individuals, such as unacceptance of locals due to negative perception on them for created social issues in the state (Sabihah, 1992), a threat to the political sector (Suhaili and Kamarulnizam, 2018) and security threat (Institute for Policy analysis of Conflict, 2020). Consequently, the governance of statelessness in the state of Sabah must be examined so as to enhance the governance of stateless individuals. In light of this, this study will investigate the daily struggles faced by stateless communities in Sabah.

RESEARCH METHODOLOGY

This study derived insights from a mixed method approach which includes semi-structured in-depth interview with various key actors and face-to-face quantitative surveys with stateless communities. For quantitative stage, we employed a non-probability sampling and snowball sampling technique to select the respondents. The reason for using snowball sampling techniques is that the stateless individual is a marginalised group that may be difficult to find. Furthermore, this sampling technique is used because the actual population and sample distributions are unknown. The questionnaire survey took place in Kota Kinabalu, Sabah. This survey included 310 respondents who were either stateless or at risk of becoming stateless in Sabah.

We used the snowball sampling approach for the qualitative stage, interviewing more than 30 stateless people from four settlements near Kota Kinabalu, Sabah, namely Kampung Teluk Luyang, Telipok, Pulau Gaya, and Kampung Numbak. The qualitative interviews were usually recorded and transcribed for thematic analysis and lasted 60 to 90 minutes. The interviews were conducted to demonstrate how they discussed the issues and challenges they faced in their daily lives.



Figure 1: Map of Sabah
Source: <https://www.dreamstime.com/illustration/map-sabah.html>



Figure 2: Stateless community in Kampung Teluk Luyang (Left) and Kampung Numbak (Right)

Therefore, this study will investigate the implications of statelessness towards the stateless community in Sabah using a qualitative inquiry guided by case study design. We argue that the state of Sabah has unique characteristics for

studying the phenomenon of statelessness because it has the highest non-citizen population in Malaysia.

RESULT AND FINDINGS

In order to investigate the living conditions and challenges faced by stateless communities in Kota Kinabalu, Sabah, we asked respondents to rate seven statements on a 5-point scale: strongly agree (1), agree (2), neutral (3), disagree (4), and strongly disagree (5). Table 1 displays the percentage distribution of respondents, mean value, and standard deviation for respondents' perceptions of the settlement. According to the findings, the majority of respondents (92.9 percent) strongly disagree with the statement "my settlement area is clean and well maintained". The majority of respondents (84.7%) strongly disagree with the statement "my settlement area has a good selection of facilities and services that meet my needs." Further investigation revealed that 67.1 percent strongly disagree with the statement "I am satisfied with the current situation in my settlement area," while 50.6 percent strongly disagree with the statement "my settlement area incorporates elements of sustainability and eco-friendliness into daily life." Furthermore, 41.2 percent of respondents strongly disagree with the statements "my settlement area is safe and has a low crime rate" and "my settlement area is rich in landscapes and natural beauty (aquatic and green areas)." Finally, 38 respondents (44.7 percent) strongly disagree with the statement "(e) the location of my settlement area is strategic and easily accessible from other areas."

Table 1: Perceptions of statelessness about their living conditions.

Statement	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)	Mean	S.D	Level
My settlement area has a good selection of facilities and services that meet my needs	0	0	15.3	0	84.7	4.69	.724	High
My settlement area is clean and well maintained	0	0	7.1	0	92.9	4.86	.515	High
My settlement area is safe and has a low crime rate	28.2	0	30.6	0	41.2	4.41	1.061	High
My settlement area is full of landscapes and natural beauty (aquatic and green areas)	28.2	0	30.6	0	41.2	3.25	1.656	Moderate
The location of my settlement area is strategic and easily accessible from other areas	0	23.5	31.8	0	44.7	3.66	1.268	Moderate
My settlement area applies elements of	9.4	0	40.0	0	50.6	3.92	1.136	Moderate

Statement	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)	Mean	S.D	Level
sustainability and eco-friendliness in daily life								
I am satisfied with the current situation in my settlement area	(12.9)	(0)	(10.6)	(9.4)	(67.1)	4.31	1.102	High

According to qualitative data, the state of statelessness has placed the stateless in a miserable situation. Their documentation status presented them with numerous obstacles. Allerton (2017) argued that the second and third generation of Filipino refugees are desperately attempting to escape irregularity by possessing verified documents and being exploited by unauthorized passport or visa agents. The majority of stateless people interviewed faced registration and documentation issues as one participant talked commented:

“[...] I do not have any registration card. I was registered with “Kad Burung”, but the card is not verified by the government due to invalid serial number. Last time, I was registered the card with third party and I paid some amount of money”.

In addition, Malaysian law requires all children born in Malaysia to be registered and have birth certificates, regardless of their parents' nationality. However, the registration of children may impose a financial burden on stateless communities due to the numerous bureaucratic procedures that result in the lack of birth registration documents. The lack of a birth certificate as evidence impacts other significant issues, limiting the stateless community's access to human rights. This is what a father of stateless children reveals:

“[...] it is really difficult to have registration from the government. I have 7 children and all of them do not have birth certificate. How would they have birth certificates if the cost of DNA test for each child is RM2000. This is not including the cost for courts. I also need to pay RM50 to take the registration form. I do not have enough money.”

On the other hand, being stateless also restricts their employment and occupation opportunities. Due to their lack of documentation and formal education, it is evident that they are involved in 4D sectors (dirty, dangerous, difficult, and demeaning), and their income fluctuates based on environmental conditions, health, and job availability. A respondent commented as follows:

“[...] currently I only work at the sea to catch fish and sell it at morning market or night market in Kota Kinabalu. I earned RM20 to RM50 per day.

However, this is not daily based because I could not go to sea during rainy day. It has been 2 weeks I lack money and only eat anything left”.

In fact, Asis (2005) also mentioned that the stateless community has low income and underpaid as one of the participants told that: “[...] I was working as dish washer in restaurant. The employer pays low salary, but it is still enough to buy food for a day. I was arrested because I do not have any documentation and get released in few days after. I could not work due to lack of document”. In addition, our data analysis revealed a number of problems and obstacles faced by stateless communities, such as a lack of access to clean water. The villagers rely solely on natural sources of well water and clean water purchased by boat from the city centre. The cost of water for a single family can exceed RM200 per month. As a member of a poor family, one of the informants from Kampung Pondo has stated that this cost is burdensome for them. Clean water is an essential requirement for all humans on a daily basis. However, they must pay hundreds of ringgits per month for this clean water. In terms of living conditions, stateless people in Sabah reside in poor, slum-like settlements that lack proper infrastructure such as piped water, electricity, and waste collection. One respondent mentioned the following:

“[...] our house is wooden based made by our great-grandparents. I am living here as the third generations. It is terrible. We have no water supply and electricity, and we buy the water from middle person with the price RM1 per gallon.”

Besides that, our fieldwork revealed that the stateless people are lives in a small wood house with their big family. A participant simply said: “[...] our house has no bedroom, so we just sleep altogether. The small house is sufficient for my ten family members to lives here”. The federal and Sabah state government also must encounter issue related to escalating number of street children especially in Kota Kinabalu city (Ismail, 2008). A stateless parent said:

[...] “our children are not going to school. Since they were young, we asked them to do any job including catching fish or any other work”.

Apart from living conditions, the stateless community has limited access to healthcare services as they lack proper documentation and their children have no birth certificate (Jassica et al., 2020). A participant said: “[...] I have never gone to public or private hospital because I heard the cost is expensive. All of my children are born in the house and there is a midwife helping”. This issue is faced by most of the stateless people around the world. For example, Barua et al. (2020) in their study found that the Rohingya stateless people are vulnerable

to poor children health, malnutrition, lack of obstetric care and ineligible on birth registration at government hospital.

Nevertheless, drawing from the empirical data, two conclusions can be summarized: most of the respondents encountered similar issues and challenges as the stateless people and the vicious cycle will continuously happen within their generation due to the vulnerability of the stateless community. These findings are very significant because it is essential to identify the socio-economic characteristics of the stateless community to solve the issue as it is inseparable from the Sabah society, politics, development, and economy.

CONCLUSION

In conclusion, this paper revealed that stateless people in Sabah faced many barriers and discrimination throughout their livelihood. As seen in other countries, the enclosure and barriers faced stateless discuss Rohingya in Bangladesh (Crabtree, 2009); Kosovo Roma in Montenegro (Arraiza and Ohman, 2009); and Bihari community in Bangladesh (Hussain, 2009). In Malaysia, the statelessness issue may not have signaled the states on effective policing but rather to strengthen and protect the sovereignty and security of the state. Therefore, by this point we believed that the status as stateless person with ineffective nationality also means the absence of various human rights.

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