

CHILD STATUS : COMPARATIVE STUDY BETWEEN THAI AND CAMBODIAN LAW

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Abstract - Comparative research on the status of children under Thai and Cambodian laws has the objective to study the relationship between parents and children under Thai law in comparison with the law of the Kingdom of Cambodia. It is documentary research which analyzes various laws and regulations as well as related laws from foreign sources. It is found that the determination of legal status of child custody under the law of a male father under Thai and Cambodian law that the law is presumably based on the marriage of parents. However, for children whose mothers have married while and the child was born lesser than 180 days after marriage, according to Cambodian law, there must be evidence that the husband of the woman is aware of that pregnancy, or it is accepted that the child is their own child. For the child who was born after the parents divorced, the law specified the period for being a legitimate child within 300 days from the day the marriage has ended. This is different from Thai law which is presumed to protect children born within 310 days from the date the marriage ended. The relationship status of mother and child under Thai law holds the principle of natural pregnancy, so the child who was born from a woman is a legal child of the mother in all cases. This is different from Cambodian law that if a child was born from unmarried parents, being a legitimate child of a mother shall be certified by such party.

Keywords - Child, Legitimate Child, Support.

I. INTRODUCTION

In the era where medical technology is not yet advanced, the beginning of the relationship between parents and children existed according to natural rules by mixing between the mother's oval and the father's sperm which is the connection point through blood relations became the main mechanism for driving love, the bond, and generosity between parents and children. Later, when humans are having more knowledge, communication, help, and dependent, the frame of love that attached to the same bloodline started to expand to more people. Thus, another type of relationship in the family occurs, and it is called the adoption. In the adoption, it is the action to adopt the child of another person to teach, raise, and love like his/her own child. When the medical evolution has modernized, it helps healing those who cannot have children by themselves to be able to have children by themselves. Science and technology are introduced to help in the natural pregnancy process. Countries around the world have both social and legal measures in the matter to protect and guarantee the rights of citizens to build a family by determining such person to have legal relations between each other as the father and mother by law.

For Thailand, in the past, the relationship between parents and children has a direct relationship with blood. Law of spouses, which was a family law in the early Rattanakosin period required that the status of the family, which is a basic social unit, began when a man and woman married by expressing themselves according to the customary marriage ceremony of that religion without having to register for a marriage [1]. If later a woman who is a wife got pregnant and

gave birth to a child, the child will immediately become a family member as a legitimate child of the parent. Therefore, parents have a duty to protect, teach, and raise the child to become an adult until the child finally is able to support him/herself. Even there was a big amendment on Thai family law, and the Civil and Commercial Code, Book 5 on Family law was promulgated, it required that parents must provide care and education as appropriate for children while being a minor under Section 1564, paragraph one. Parents still need to provide care to the mature child if it appeared that the child is disabled and unable to support himself under Section 1564, paragraph two, and at the same time, it required that the child shall support the parents under Section 1563 as well. In addition, in the event that a child or parent is ordered by a court to be incompetent or quasi-incompetent, the law provides rights to the other person who is an interested person to act as a custodian or curator, as the case may be. Thus, it cannot be denied that the legal relationship between parents and children is a long-standing legal relationship than other types of legal relations.

However, when the new law is amended by using the conditions of marriage registration of parents as a main criterion for determining the legal status of a child, the principle of legitimacy is also changed. Hence, a child in bloodline who was born from unregistered parents became immediate illegitimate children of the father, so the children were not entitled to be supported from their fathers. Whereas, the laws of the Kingdom of Cambodia, neighboring countries, and is one of the member countries of the Association of South East Asian Nations (ASEAN) has mixed Cambodian customs and post-war needs in

the country together. In the past, Cambodia was a French colony and was protected for nearly a century (1863 - 1953). Thus, French legal models were used to plan their own legal systems for the law on marriage and family, and it was introduced in 1988 and 1989, respectively [2]. The rights and obligations as well as the status of a child under the bloodline is defined in Chapter 4 according to the marital conditions of the parents [3]. Children are separated into legitimate children and illegitimate children, with provisions that clearly state the status of both types of children, as provided for in Section 82 to Section 107, and the introduction of criminal enforcement conditions is used in cases of neglect of the duty of child support in order to protect the rights and interests of children.

Therefore, in this process, the researcher recommends conducting a comparative study of the status and rights of legal children under Thai law and the law of the Kingdom of Cambodia to find suitable legal measures to be used as tools for justice in society and can guarantee and protect the rights between parents and children in all cases to be able to reduce inequality and inequality of any person under the same law.

II. DETAILS EXPERIMENTAL

A. Objective of the research

To study about the status of children which is the relationship between parents and children according to the laws of the Kingdom of Thailand compare with the laws of the Kingdom of Cambodia

B. Scope of Research

The scope of this research focuses on the study of concepts and theories related to the status of children under the Constitution of the Kingdom of Thailand B.E. 2560 (2018), Civil and Commercial Code Book 5 on Family and the Family Registration Act B.E. 2478 including Marriage and Family Law of the Kingdom of Cambodia

C. Research Methodology

This study is a documentary research which analyzes various laws and regulations as well as foreign laws from various sources such as laws, books, journals, articles, academic textbooks of the expert lecturers, opinions of scholars on the internet, and websites [4].

D. Literature Review

The meaning of children

According to the Royal Institute Dictionary, the meaning of the word Bhut is son, and Bhutreeer is daughter, and Bhutra is also referred to son [5].

Waree Nasakul and Benjawan Thammarat stated that there are 3 types of children:

1. Natural child (I' enfant naturel)
2. Legitimate child (I' enfant legitime)
3. Adopted child (I' enfant adoptif) [6]

This study will be conducted only for natural children and legitimate children only, not including adopted children.

Children and juvenile should be specially protected according to the provisions of Declaration on the Rights of the Child, so it is important to the rights of children, and children and youth should be given equal rights without discrimination or discrimination in any way; regarding race, skin, gender, language, religion, political opinion, national or social race, property, birth, or other status, regardless of whether or family matter [7] and the Convention on the Rights of the Child, Article 7, regarding acquisition of nationality and parenting children [8], so the children should therefore be guaranteed equal rights in all cases.

LEGITIMATE CHILD UNDER THAI LAW

According to the Civil and Commercial Code, the status of a person is divided into legitimate children and illegitimate children or illegitimate children. Having legal status as a child in Thai family law began with all assumptions, and it is a presumption that the law is initially seen as the father almost in all cases [9].

1. Legitimate child

For legitimate children, for mothers, the law considers the natural relationship between pregnancy and childbirth, so it is considered to be a legitimate child of a woman who gives birth, even if the child is born from a woman who does not have, the pregnancy of a woman is an exception if the pregnant woman is a contractor who is pregnant as per Section 28 of the Child Protection Act According to medical reproductive technology 2015, the law stipulates that the child is a legitimate child of a spouse and a lawful wife who wishes to have a child but for the father the child will be a legitimate child. Legal or not, the law considers marriage by registering between parents as a basis, regardless of whether the result of the marriage is complete, null or void. Therefore, a child born during marriage or a woman who was a wife or within three hundred and ten days from the end of the marriage is presumed to be the legitimate child of the man who was a husband or used to be a husband, However, in this case, which includes children born between a spouse who are temporarily separated, or who either deliberately abandon them and that children born from marriage are void Because the man and woman are wrong,

When the legitimate child is born from the assumption, the law therefore allows men to file

lawsuits in order to refuse to accept children as children., which must prove that the male is not with the mother of the child during the pregnancy period between one hundred and eighty days to three hundred and ten days before a child is born. Or the male cannot be the father of the child because of other reasons such as the male is barren, etc.

2. Illegitimate children

According to Thai law, an unlawful child is called a illegitimate child or an illegitimate children. This is a child born from a parent who has not registered marriage under Section 1457 and has the opposite status as a legitimate child. It is legal for a woman who is the only mother under Section 1546. Therefore, these children do not have legal relations with their fathers and therefore do not have rights and duties to the family. The family law, including the right to receive the care and use the last name of the Father, except the right to receive the inheritance as a statutory heir to his father under section 1627 approved by the circumstances.

However, an illegitimate child may change to a legitimate child when the parents marry later or the father is registered as a child and the mother and child must give consent for the registration of the child as both of them will be registered next or the court adjudges to be a child [10].

LEGITIMATE CHILD UNDER CAMBODIAN LAW

Being children under Cambodian law are divided into legal children and illegitimate children, just like Thai law.

1. Legal children

According to the Marriage and Family Laws under Section 82, children are legally children only when the children are born from the parents and only if the mother of the child is pregnant during the marriage and the child is born within 180 days from Marriage day or within 300 days from the marriage ends with divorce. However, for children born, children born within 180 days from the date of marriage will be considered the son of a man who is a husband. Women, mothers, when there is sufficient evidence to prove that the husband knows that the woman who is a wife is pregnant before the marriage or that the male husband admits that the child belongs to the child. Otherwise, the husband of the mother child may deny that they do not Is the father of a child under Article 86. The husband must prove that he has a physical condition that is not ready to have children, such as not being able to have sex with the mother of the child. The body that may not be available as a result of the two factors.

- 1.) Husband and wife live life separately
- 2.) The weakness or disability of the husband that makes him unable to have children

2. illegitimate child

For unlawful or illegitimate children, children born from unmarried parents, as provided in Section 90 of Section 2 of Chapter 4 of Marriage and Family Law, and if only the father or mother of the child, certifies that the child is his or her child, it shall be considered that the child is the child of the person certified. In the case that there is no process of receiving the child while there is not certification provided in the birth certificate issuance process, the father or mother who did not certify at that time may be able to proceed with the certification later. The illegitimate child that has been certified by the parent will become a legitimate child. If the parents have registered for the marriage after the child is born, but in the case that the child is not certified by the family, the people's court may specify that the father or mother shall certify the child under 95. The illegitimate child who is certified shall have the same rights and obligations as children who are legitimate under section 104.

III. RESULTS AND DISCUSSION

In accordance with family law, both Thailand and Cambodia associate the child's status of children with the marriage of their parents without first taking the blood relationship principle into consideration. Mothers and children have strong relationships with each other, to pass on love, attachment and compassion towards each other, leading to the action to take care of each other. Traditions and practices have the status of being a child of a parent when the child is born, so the law established by the state is in the position of certifying and protecting the independent rights of children who are children rather than going into obstruction and denial of children by law by determining the status of a person according to the status of marriage of another person. For the legal measures that are in force, even though it is intended to protect children born out of wedlock every year, regardless of the legality of the marriage is consummated, the declarations for the child born out of wedlock.

IV. CONCLUSION

From the study, it is found that the determination of the legal status of child custody according to the laws of the Kingdom of Thailand and the laws of the Kingdom of Cambodia, will be mainly tied to the marriage of parents, whether it is effective in full or void or voidable as it does not affect the right of a child to be protected when determining the status of a child as legitimate child of a man who is the husband of the mother as well. However, in the case where a woman has married while she is pregnant and the child is born after 180 days after the marriage, there must be sufficient evidence to support that the husband of the woman is aware of that pregnancy or

admits that child is their own child. It is different from Thai law, which does not provide a similar reason, so even if a woman is pregnant before marriage, the law considered a child as it was born during marriage.

For children born after divorce by parents under Thai and Cambodian laws, there are principles of protecting the status of children born after divorce by taking the period of gestation according to medical principles in which the baby is in the womb. According to Thai law, it is presumed that a child born within 310 days is a legitimate child of a man who was an ex-husband of a woman who is the mother of the child; whereas, Cambodia's law specified in the period is 300 days from the date the marriage ended by the effect of divorce.

However, when the facts show that the child is not the son of a man according to the assumption of Thai law or consideration under the law of marriage and family (Law on The Marriage and Family) of Cambodia, the man can prosecute the case to deny to be paternity after he can prove that he did not stay with the mother of the child while she was pregnant, or it was due to a condition of physical inability to have sex or is barren.

In determining the legitimate childhood for a woman, according to Thai law, the principle of natural pregnancy, the pregnant woman is considered a legitimate mother of the child in her womb in all cases, regardless of whether at the time there is a point in relation to marriage to a man or not for the pregnant or not. This principle does not apply to women who are pregnant under the Uphold Contract under the Children Protection Act for the children who were born through medical assisted reproduction technology in 2015, illegitimate children are only applicable between illegitimate fathers and children, which is different from Cambodian law. If children are born from unmarried parents, if the father or the

mother certifies, the child is considered the legitimate child of the certified father or mother only.

SUGGESTIONS

1. Legal measures to protect the rights of children and youth of the state should specify the rights of the family of children born from parents without a marriage registration concretely.
2. There should be additional studies on rights and duties which are the relationship between parents and children in comparison with foreign laws, especially in ASEAN countries.

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