

Law development on accommodating the rights of same-sex relationship

Kamonwan Yoowattana

Abstract— According to section 1448 of Thai Civil and Commercial Code, sex plays a crucial role on a marriage. It stated that “A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age.” So, in Thai law, the marriage can be done only when one party is male and other is female basing on his and her inborn sex. Even a man went through transgender’s surgery; he’s still been recognized as man in the eyes of the law. In legal procedure, petition for sex changing is not authorized in Thai law also. Though Thai court possesses discretion on allowing marriage to be taken place, such discretion is being executed on the matter of minors whose age have of yet completed their seventeenth year of age. Therefore, it has nothing to do with same-sex marriage. Simply put, firstly, marriage between persons who are in the same inborn sex is unauthorized by the law. Secondly, it does not establish any legal rights and duties of husband and wife as appear in Thai Civil and Commercial Code.

Keywords— Development ,Law ,Same Sex Relationship ,Husband and Wife

I. INTRODUCTION

HUMANS are described as social animal so that they tend to live together. Relationships among human beings normally begin with primary group. Later, it grows bigger and bigger and finally be a family which is the biggest group in primary level. Family members, highly share their love and attachment to their parents and to their next of kin. However, when they turn to teens, sex thought and sex drive eventually come across their minds. Sex, therefore, can be considered as one of many reasons for humans to be together and they finally become family. As a universal and fundamental institution both in civil law and common law countries, social norms and legislations are set to authorize and protect the will of citizens to create their own family. To be emphasized, peace and welfare in family are guaranteed by social and state protection basing on security of right and person status without all forms of discrimination [1].

Prior to October 1st 2478, Thai law authorized status of family members when man and woman religiously express their commitment without considering registration as a condition in accepting or rejecting their marriage relationship.

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Moreover, the law also embraced polygamy system by considering that all types of wife are legitimate but possessing higher or lower status in the family²as influenced by present norms and cultures. After law reforms, monogamy principle is applied as appear in Book V of Thai Civil and Commercial Code so that marriage can only be completed by registration [3]. Since then, man and woman who cohabit as husband and wife possess legitimate status as the registration is made due to section 1457 and 1448 of Thai Civil and Commercial Code stating that a marriage can be taken place only when the man and woman have completed their seventeenth year of age. But the court may, in case of having appropriate reason, allow them to marry before attaining such age. This statement show that the right of husband and wife can only be legally protected and authorized when registration is taken place though there are kind of illegitimate couples such as non-registered couple and same-sex couples do still exist in Thai society. For this reason, even though those couples are willing to cohabit as husband and wife, they cannot retain such status in the eyes of the law.

Social factors such as gender affect the development with regards to quality of life [8]. Persons at all sex orientation are entitled to have right to choose spouse and create family basing on Freedom of Contract without limitation on gender issue. Therefore, researcher is interested in studying about legal rights and duties on same-sex marriage in order to seek for appropriate provision to apply with the issue. This is because the law should grant fair protection to all types of relationships.

Scope of Study

Researcher intends to study the issues related to rights duties and status of husband and wife in Thai Civil and Commercial Code with regards to same-sex relationship.

Expected Benefit

Researcher expects that this study will grant benefit to legal area and will be a guideline to amend and develop legislations regarding same-sex relationship in order to encourage development of Thai society in the future.

Review Literature

1. Principle of Human dignity

1.1 Human Dignity by the law

Interim Constitution of Thailand 2557 shows its concern about security of human dignity in rights

duties and freedom of people. Person can claim human dignity or exploit his/her rights and freedom as long as it does not affect rights and freedom of others. Also, person must not exercise the right in contrary with constitution or good morals. The ability to exercise such right is an evidence to guarantee that rights of persons is protected by law in accordance with the traditions of governing the Thai nation under a system of democracy with the King as Head of State and in accordance with international agreements to which Thailand is a party.

1.2 Human Dignity by Human Rights

Acknowledged by United Nations General Assembly in accordance with resolution no. 217 (III) at Dec 10th 1948, the Universal Declaration of Human Rights was supported by Thailand as intention of guarantee fundamental rights of person in article 16(1) stating that Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. The declaration pays attention to human dignity especially in equality before the law as describe as principle of family relationship protection without discrimination.

2. Marriage Theory

2.1 Social Contract

In the eyes of Natural Law, law is originated by natural reason of human kinds. Family husband wife and child, each atom or unit, are unrelated. However, they are next to each other so that they gather and be a family. Thus, stated in theory of social contract, collective group of people is together with freedom and consent to attach themselves with others. As persons are agreed to cohabit as husband and wife, they now commit themselves as a couple basing on theory of social contract in order to live their lives in harmony with nature [5].

2.2 Pactum Subjection

State sovereignty is originated by citizens. Therefore, the citizens must observe and follow state law. This is an origination of Pactum Subjection. The principle requires natural law applying to citizens [3]. Therefore, power that grants to head of state relating to marriage is the consent of persons of the state to follow the law in term of marriage conditions, rights, and duties on marriage basing on natural law.

3. Right Duties and Status of Husband and Wife

Meaning of rights (Right).

In accordance with the Royal Institute dictionary of rights means that the power of the Buddhist Era 2554 righteous person such as have the rights and duties in accordance with the Constitution and they have the rights to the land of power that this law shall be made by any of the good faith and freely, but shall not affect the rights of other people.

In H. predict (remember last year) ear of plants [1] saw that the rights certificate and legal protection is a benefit that is to be able to come into force in accordance with the law, it is usually the legal documents shall constitute a complete with a move to the right, that is, there was a motion to protect the law and stop the light and looked at it, the rising will be deemed eligible for the benefit, protection law was narrow

because it has the right to a lot of the right not to be beneficial to the owner [2].

rights are crucial elements are as follows:

1. The right holder or the owner may be entitled to be a person who is a natural person or a juridical person.
2. There must be an object of right or has content, it may be real estate or property.
3. Other person must respect the rights of the right holder holders can be used against other people.
4. There must be a legitimate exercise of the right is to be exercised within the limits of the law.

Therefore, it may be concluded that the rights given to a person is authorized by law, may be within the powers that are available over the property or authority over the person.

Conditions of Marriage the law are as follow.

1) Sex of spouse

In general, marriage is taken place in order to create family and child. Therefore, marriages in most countries acknowledge such relationship between man and woman. Presently, however, same-sex marriage is accepted by the law of many countries worldwide. On the contrary, marriage does exist only between man and woman. It does not matter even he or she is under transgender's operation since gender status basing on inborn sex. Though his or her appearance has changed, that does not verify them to file for the change of their gender status. Therefore, same-sex relationship in Thailand does not count as marriage. Moreover, in the eyes of the law, such relationship is null and void.

2) Age of Spouse

According to Thai Civil and Commercial Code, A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age (section 1448). If marriage failed to comply with section 1448, such marriage is voidable according to section 1503. In this case, interested person such as parents is entitled to apply for cancellation of marriage (section 1504) but they tend to do it before both man and woman have complete their age required under section 1448. If the age requirement is fulfilled, such marriage cannot be cancelled and shall be deemed to be valid from the time it was made according to section 1504 paragraph 2.

3) Competence of Spouse

According to Thai Civil and Commercial Code a marriage cannot take place if either the man or the woman is an insane person or adjudged incompetent (section 1449). If such marriage fails to fulfill the condition, it is definitely void due to section 1495. In such case, interested persons may apply for a judgment of the Court affecting the void of marriage and such marriage shall be deemed to invalid from the time it was made.

4) Marriage with blood related

A marriage cannot take place if the man and woman are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. The said relationship shall be in accordance with blood relation without regard to its legitimacy. Otherwise, such marriage is void according to section 1495 Thai Civil and Commercial Code.

5) Adopter and Adopted

An adopter cannot marry the adopted. If the marriage fails to comply with this condition, The adoption will become dissolved due to section 1451 of Thai Civil and Commercial Code.

6) Plural Marriage

A marriage cannot take place if the man or woman is already the spouse of another person. This is not include man or woman who married and his or her marriage come to an end, then, remarry again or cohabit as husband and wife without registration. Therefore, plural marriage is prohibited due to section 1452. If the marriage fails to comply with this condition, The adoption will become dissolved due to section 1495 of Thai Civil and Commercial Code. Though marriage registration is taken place with good faith of one side of spouse, such marriage is still invalid.

7) A marriage of widow, woman with dead of her husband, woman whose marriage had ended

Widow, woman with dead of her husband, woman whose marriage had ended can remarry only when previous marriage is at the end at least 310 days except such woman gave birth to a child during the periods or remarry with ex-husband or can show medical certificate stating that there is no sign of pregnant or can show court permission on marriage.

8) Consent of Spouse

A marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar according to section 1458 of the Thai Civil and Commercial Code.

9) Consent of parents, adopter, or guardian

In case of marriage of a minor, 17 to not completed full age of 20, the consent of parents, adopter, or guardian is required otherwise such marriage failing to comply with the condition is voidable.

10(Registration of Marriage

Marriage under the Thai Civil and Commercial Code is legitimate only registration is completed according to section 1457. Prior to Oct 1st, 1953, marriage was valid without any registration according to Law relating to Husband and Wife. After law reform with regards to conditions of marriage, registration has to be performed in order to authorize the marriage between man and woman. As a form of marriage, registration acts as legal acknowledgement to public in change of status [6].

II.METHODOLOGY

The research on Law development on accommodating the rights of same-sex relationship aims to seek for appropriate legal resolution for marriage with different sex orientations in Thai Law. Researcher selects to perform qualitative research through documents. The primary resources are Code, Act, legislations, Court Case, books, articles, journals, and research etc. Therefore, sample group is not designated in this reaserch.

III. RESULT AND DISCUSSION

In accordance with section 1448 the Thai Civil and Commercial Code, marriage can be done only between man and woman. Gender or sex of spouse is basing his or her inborn thereof. Transgender's operation can be performed to persons but the inborn sex is not changed by such surgery. Also, persons, in accordance with Thai law, are not entitled to apply to court either for changing their gender or for requesting legitimate registration of marriage. As a result, there is no authorization or rights of same-sex relationship under Thai law.

Table I STATISTIC OF COUPLE WITH MARRIAGE CERTIFICATE BY REGION AND PROVINCE: 2011 - 2012

Unit: Couple

2011	2012	and Region province
308,048	314,338	Whole Kingdom
42,316	45,064	Bangkok
86,787	88,569	Central Region
49,319	51,343	Northern Region
92,609	89,891	Northeastern Region
37,017	39,471	Southern Region

Source : of Department Provincial Administration, Ministry of Interior.

Discussion

Marriage under Thai law is legitimate only if it is done by registration between man and woman. No rights of same-sex relationship stated in Thai Civil and Commercial code. It can be concluded that cohabit between persons with same sex is not accepted and is not valid. as provided by law, the marriage has been registered, but only the men and women in the marriage, there is no provision for the right to same-sex parties that will be able to make the wedding, it is the wife of the person Sharing my husband sex. So I don't give rise to the rights and duties in the law, the person who saw that the rights to research the family as a fundamental right, the state should be the protection of the people and of the equally. In the spouse of his spouse in accordance with the principles of a single (Monogamy) with free trade and imposes is not because of the sexual act in accordance with the principles of freedom of speech; (Freedom of Contract), so it should be to support development of a law, same-sex rights of a person to live together in my husband wife

IV.CONCLUSION

It has nothing to do with same-sex marriage. Simply put, firstly, marriage between persons who are in the same inborn sex is unauthorized by the law. Secondly, it does not establish any legal rights and duties of husband and wife as appear in Thai Civil and Commercial Code.

Recommendations

In order to guarantee the right of same-sex relationship or same-sex marriage. The related law should be amended from “Marriage can be taken place between man and woman when both parties ... ” to “Marriage can be taken place between persons when both parties ...”. This provision encourages effective law enforcement in practice and in protection of persons without all form of discrimination including sexual issue.

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