

THE ASSUMPTION OF CHILD LEGITIMACY IN THE CASE OF POLYGAMOUS MARRIAGE

KAMONWAN YOOWATTANA

Faculty of Humanities and Social Sciences, SuanSunandhaRajabhat University Thailand
Email: kamonwan.na@ssru.ac.th

Abstract - Polygamous marriage is the marriage of men and women who violate the conditions of marriage by getting marriage with the one who has a spouse according to Section 1452, and it is considered as void by law. Under Section 1495, any stakeholder can claim or appeal to the court to judge the marriage as void. However, the claim from the stakeholder in the polygamous marriage is only to protect the interests of the nullity of the void marriage. The marriage registrar will be able to record the nullity only when the court has finally judged that the marriage is void under Section 1497/1. Therefore, if the husband or wife who is legally married can also claim to the marriage registrar to make the marriage becomes void in another way, it can protect more interests of the stakeholders. In the case of having polygamous marriage for several times, if the facts turn out that the last married man denied being the father of the child, the paternity determination according to the legal assumption should be turned out that the child is legitimate of the husband in the previous marriage, and it should be reversed in sequence instead of applying the clause under Section 1536 to be enforced. Thus, it is to determine the paternity of the child according to the reality in order to prevent the prosecution to deny a legitimate child.

Index Terms - Family, Law, Legitimate child, Polygamous marriage.

I. INTRODUCTION

Marriage is a form of family formation, a social foundation that shapes the members of the family within the framework of good society. Each state has imposed the rules of marital integrity on the basis of its own beliefs and principles. In Thai society, apart from belief, marriage also develops from traditions and cultures, and it is changed into social conditions. In the past, more physically strong men were accepted as family leaders who protected, and raised family members. The husband was able to punish the wife and the children who committed offences. However, when the conditions changed, men and women have equal rights and freedoms, so husband and wife have the same rights and duties in the family to support each other, including parenting and the use of parental power. One of the purposes of marriage is the act that a man and a woman are cohabiting without having sex with another person other than their spouses. Nowadays, there are four types of marriage: marriage between many men and many women, marriage between several men and one woman, marriage between one man and several women, and the marriage between a man and a woman alone [1]. In Thailand, according to the Civil and Commercial Code, marriage is based on having spouses as one man and one woman according to the form of marriage between one man and one woman. This is a consequence of the amendment of the spousal law to allow family law to be accepted by the civilized world. However, such a principle is excluded in the case of marriage between Muslims in the four southern border provinces according to the Act on Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun, 1946, where the principle of marriage between one man and one

woman will not be applied, but shall be based on the principle of marriage between one man and several women according to the principles of religion. In other countries where most people are Islamic, there is a tendency for men to have only one wife such as in Indonesia [2].

The principle of having single spouses is consistent with the beliefs of Thai society where most people respect Buddhism that having an affair with others is immoral, and it causes the collapse of the family and chaos in society. Therefore, marriage while having a spouse is contrary to peace and good morality of people in general. Moreover, it is the violation of marriage conditions as it is a polygamous marriage under Section 1452, resulting as void under Section 1495, and any stakeholder can claim or appeal to the court to judge the marriage as void under Section 1497, and the void will be appeared on the registration only when the court informed the registrar to record the nullity on the marriage certificate after the final judgment provided that the marriage is void under Section 1497/1. The polygamous marriage is an offense that affects the status of the members of the family, leading to social problems, especially the case of children. If the court does not have a verdict that the marriage is void, the marriage is considered as complete. The problem is that the child who is born is a legitimate child of whom. If polygamous marriage occurred at the same time, how much the assumption of the enforced legitimate child shall protect the right and status of the child.

II. LITERATURE REVIEW

Under Thai law, there are several prohibitions on marriage. However, the breach of the marital status

causes void marriages will be appeared only in four respects, which are a man or a woman married while being an insane or incompetent person by the court in Section 1449, the man and woman are blood relations in the direct ascendant or descendant line in Section 1450, the man and woman do not agree to take each other as husband and wife in Section 1458, and the man or woman is already the spouse of another person in Section 1452 as the polygamous marriage. The void of the marriage is equal to the absence of marriage, and it is different from the voidable marriage as the marriage is still existed, but it may be terminated when the judgment is revoked at the request.

When considering according to the Civil and Commercial Code, the behavior of a polygamous marriage will be occurred from the man or woman who registered with the man or the woman who had already registered for the marriage. The first marriage is considered as legal by law under Section 1457 prescribed that the marriage shall be effected only on registration being made. Hence, marriage registration with the man or the woman that the marriage is still effective, it is considered as the polygamous marriage. On the other hand, if it is the case that the man and the woman are living as a husband or a wife without having marriage registration under Civil and Commercial Code, even later on, the man or the woman registered for the marriage with other person, this behavior is not considered as the polygamous marriage as living as a husband and a wife without marriage registration is considered as having no intention on sexual relationship with another person forever, so it cannot be considered as marriage in Thai law. For the marriage abroad between people of Thai nationality, or one of them is Thai, a man and a woman who enter into marriage can marry according to the form determined in Thai law or the law of that country under Section 1459 such as the marriage made in the church of Christians in some countries. After entering into the legal marriage of that country, it is certified as same as having marriage registration. Therefore, if such person has a new marriage, the marriage is void as it is considered as the polygamous marriage as well. In general, when it marriage is void, the law will allow the spouse, parents, or the descendant of the spouse to request the court to judge the marriage as void. If there is no such person, the stakeholder can claim to the public prosecutor in order to file the claim to the court. Only the judgment of the court that shall consider the violated marriage as void under Section 1469 only for the void marriage because the polygamous marriage under Section 1452, the stakeholder whose right is affected due to the polygamous marriage such as a legal wife who registered for the marriage first, shall claim for the void under Section 1497. While the defendant registered for the marriage with N., the N. had registered with the plaintiff first. Hence, the marriage

between the defendant and N. violated the Civil and Commercial Code in Section 1452, so it is considered as void. When the marriage between the plaintiff and N. is legal, the plaintiff becomes a stakeholder who has the power to prosecute the case to the court to judge the marriage between the defendant and N. as void [3]. Unfortunately, the illegal wife is not a stakeholder who can claim to the court to judge the polygamous marriage of the husband as void [4]. The claim for void of the stakeholder is just to maintain the benefits from the nullity of the void, so the man or woman who has the polygamous marriage in good faith cannot claim for the prejudice of the right when he or she acknowledged the cause of the void marriage, and cannot make the polygamous marriage becomes incomplete as long as there is no order from the court presented that the marriage is void under Section 1497. For the claim to the registrar, the registrar cannot register to revoke the marriage if there is not court's order presented that the marriage is void under Section 1497, and the court has declared the final judgment to the registrar to record the void on the marriage certificate of the polygamous marriage under Section 2497/1 [5]. So, if there is no judgment of the court, it must be considered that the marriage still exists.

For children born of marriage Thai law is committed to the protection of children born of marriages in all cases, regardless of whether the marriage of such parents is effective, voidable, or void with the reason that the child is innocent and does not know the violation of the marriage from their parents. Hence, the child born while parents were living as a husband and a wife and registered for the marriage later is the legal child of the man who is the father, and if the child was born during that time until the father is deceased. Therefore, there was a judged by the court as the final decision as the marriage registration between father and mother is illegal because during that time the father still had his wife and had not divorced, but the child is a legal child of the father and mother throughout the time and has a right to receive the legacy of the father [6]. For the legitimacy of the child who was born from the polygamous marriage, there is a provision to eliminate the problem that the child will have two legal fathers at the same time [7]. It is assumed that the child born during the contravention of the marriage is a legitimate child of a husband who has been married in the latter time. It is enforced to a child born within three hundred and ten days from the date the court finally gave the marriage as void under Section 1538, but if the court has the final judgment, the child is not a legitimate child of the man as a husband who has been married in the latter time, it is assumed that Section 1536 shall be applied to the child, and the child is the legitimate child of the first husband who is legally married. For the use of parental authority, normally, when a child is assumed to be a legitimate child of the man as the father, the

father will have a parental authority together with the mother immediately. However, in the case of void marriage, the spouse can make an agreement between each other in writing whether who will have the parental power on the child, or any party or both parties will be responsible to pay for the child support, and how much it is. If it is not possible to settle the case, the court shall be the arbitrator [8]-[10]. For the court's final decision, the court will order the man or the woman to exercise parental authority or order a third person to be a guardian. Thus, the well-being and the benefits of the child are taking into account as an essential.

The purpose of research

To study the status of child caused by polygamous marriage according to the assumption of law

III. RESEARCH METHODOLOGY

The study on the assumption of child legitimacy in the case of polygamous marriage is a qualitative research conducting by documentary research and studying and collecting relevant documents.

Expected Benefits

To guide the development of family law in relation to the rights and status of children born of polygamous marriage, and this will lead to better quality of life for the population

IV. RESULT AND DISCUSSION

Summary of the study

Family law is intended to protect family institutions, especially for the child born of marriage. Even the marriage will be void, the child is born with a legal presumption to be a legitimate child of the man who is the father, or had been the father, and it is different from the child born to unmarried parents who the presumption of child cannot be enforced.

For a marriage that is void because of a polygamous marriage, which is a severe breach of the terms of marriage other than the violation of the condition that the man or woman is an insane or incompetent person, the man or woman is the direct relatives, is the same siblings with the same parents or different father or mother, and the man or woman married without having a consent to be a husband and a wife because the polygamous marriage is made from the dishonest man or woman who already has the spouse but still marry with another person. Moreover, the behavior of the offenses can occur many times. The effect of the act does not affect only the integrity of the latter marriage, but it also affects the right status and the peaceful of the first married husband or wife as well as the child. However, even if the law provides an opportunity for the stakeholder to make a statement of nullity, the claim under Section 1497 is

only to maintain the benefit from such void, but not a claim to present that a marriage is void as in other juridical acts that allow the stakeholder to raise the nullity of that void. In practice, even there is the claim for void, the stakeholder must also file a petition to the court to have an order to void the marriage, and then the marriage registrar can record the void. When considering the legal status of a child who was born in the polygamous marriage and the law is intended to protect, it can be seen that the assumption to make the child becomes the legitimate child of the latter married man as the void of polygamous marriage can be applied when it has appeared that the marriage between a man and a woman is the polygamous marriage violating Section 1452, so it is needed the court's order to make the marriage void under Section 1497 first. With this reason, if there is no judgment to present that the marriage between parents is void from the polygamous marriage, it may not be considered a child born during the polygamous marriage. At the same time, if the court has the final judgment that the child is not the legitimate child of the husband who has been married in the latter time, according to the provision of the law, the assumption in Section 1536 can be enforced immediately. It means if the father, according to the first assumption, denied being the father, it should be assumed that the child is legitimate of the first husband in the marriage. On the other hand, if the facts appeared that the polygamous marriage happened many times, and the latter married man denied to be the father of the child, the assumption of paternity will be on the first married man. There is no provision provided that the man in the previous polygamous marriage shall have rights and obligations as the paternity according to the legal assumption; unless, it is appeared that there is a prosecution to accept the child as the legitimate child under Section 1555.

CONCLUSION

The marriage registrar will be able to record the nullity only when the court has finally judged that the marriage is void under Section 1497/1. Therefore, if the husband or wife who is legally married can also claim to the marriage registrar to make the marriage becomes void in another way, it can protect more interests of the stakeholders. In the case of having polygamous marriage for several times, if the facts turn out that the last married man denied being the father of the child, the paternity determination according to the legal assumption should be turned out that the child is legitimate of the husband in the previous marriage, and it should be reversed in sequence instead of applying the clause under Section 1536 to be enforced. Thus, it is to determine the paternity of the child according to the reality in order to prevent the prosecution to deny a legitimate child.

SUGGESTIONS

1. If it is possible for a legal married spouse to make a claim to the marriage registrar in order to void the marriage and allow having the assumption of legitimate child of a latter married man after claiming to the marriage registrar, the child and the stakeholder can be protected more than before.
2. In the case that the woman entered into the many polygamous marriages at the same time, if the last married man denied being the father of the child, the paternity determination according to the legal assumption should be turned out that the child is legitimate of the husband in the previous marriage, and it should be reversed in sequence instead of applying the clause under Section 1536 to be enforced.

REFERENCES

- [1] W. Suridechakul, (2014). The Sustainable to Develop Quality of Life of the Elderly in Dusit District, Bangkok International Science Index Vol 8. No.5 (1201-1204).
- [2] P. Boondej.(2016). Family Law Description. (22nd Edition). Bangkok: Institute of Legal Education, Thai Bar Association.
- [3] The judgment of the Supreme Court no. 6077/2537
- [4] The judgment of the Supreme Court no. 3279/2542
- [5] The comments from Council of State. (1993). the story no. 741/2536 titled the practice on the claim for the polygamous marriage under Section 1497 of the Civil and Commercial Code (The draft of the 8th Council), December, 1993.
- [6] The judgment of the Supreme Court no. 1580/2494
- [7] P. Gumpusiri. Civil and Commercial Code Description, Book 5, Family Law, 9th Edition, (Bangkok: Thammasat University Press, 2017), page 146.
- [8] The Conflict of Laws Act, 1938
- [9] Act on Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun, 1946.
- [10] The comments from Council of State. (1993). the story no. 741/2536 titled the practice on the claim for the polygamous marriage under Section 1497 of the Civil and Commercial Code (The draft of the 8th Council).

★ ★ ★