MUSLIM AND MARRIAGE CONDITIONS: COMPARATIVE STUDY ACCORDING TO THAI LAW

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Abstract - The creation of a family by marriage between a man and a woman under Thai law is related to the customs, practices, and principles of religion by adopting a strict code of conduct as a law in order to protect family institutions which are important social institutions. Hence, laws related to family relations in accordance with the Civil and Commercial Code, Book 5 on Family, and Islamic Law on Family and Heritage have specific provisions relating to the conditions of marriage as specifically necessary for the enforcement of local laws. By the Islamic marriage in four southern border provinces such as Pattani, Narathiwat, Yala, and Satun Provinces according to the polygamous that men can have many wives but not more than four wives. Additionally, marriage is complete by having the Nikah ceremony without the need to register marriage under the Civil and Commercial Code.

Keywords - Marriage, Cohabitation, Husband and Wife

I. INTRODUCTION

In the past, humans lived together as a small society in the manner of tribes. Later, when the number of members increased, it gradually expanded and developed into a large society. The cohabitation of many people will have a variety of things for living whether it is food, housing, medicine, clothes or even sexual relations according to the human's instinct to reproduce children. In the first era, sexual intercourse occurred independently between people in the tribe, assuming everyone belongs to each other without separating their spouses from each other. However, when the society began to develop, there was a separate family line apart, and the cohabitation became more specific, so the marriage was finally occurred. The marriage is not only to be declared to the society that the couples have agreed to live together. Additionally, marriage is still considered as a culture created by man, and it is generally practiced. Hence, it can be said that marriage is closely related to the traditions of the local nature that has marriage, and it is considered to be a traditional practice and then developed gradually, and it becomes the legal endorsement (Prasopsuk Boondech, 2016, page 107). Previously, the marriage was an action under the religious tradition in each society. There might be a proposal under the tradition, and there would be a religious ceremony as well as having a wedding ceremony as a party which was done according to tradition as if was conducted according to the law (Somchai Kasitipradit, 2013, page 87). The cohabitation together as husband and wife by marriage is accordance with the natural rules; therefore, it is accepted by many civilized countries as a basic social unit that has contributed to the creation of a family institution However, marriage is not just a traditional marriage, but it still have to follow the procedures and conditions as required by law. If there is no action taken, it will be considered as it is without legal marriage (Kamonwan Yoowattana, 2560, Page 30). The conditions of marriage will follow the social, beliefs, religions and cultures of each nation. For Thailand, although most of the population is Buddhist, there is no compulsion or prohibition on other religions. In addition, constitution, which is the highest law, also guarantees equal rights and freedoms of individuals, and the state may not choose to treat unfairly to people by reason of differences in the origin, race, language, gender, including religious beliefs (Constitution of the Kingdom of Thailand, 2017, Section 27). The state must, therefore, conform to religious beliefs as well. The family creation according to the current law, therefore has both in family law in accordance with the Civil and Commercial Code which applies to the general public, and family law according to Islamic law on family and heritage which is applicable to Islam in four southern border provinces: Pattani, Narathiwat, Yala and Satun Provinces instead of the Civil and Commercial Code, and they have adopted strict practices for prescribing law.

In the view of Islamic persons, the bond that is born from marriage is a stronger bond than the commitment that comes from other agreements (Ismaa Ali, 1997, p. 19). It is not only supportive measures in some cases, Islamic law also defines the composition of the marriage contract as well as the various conditions of each element thoroughly and concisely, and Mulee (guardian) is specified for every marriage that is an important element, and it is considered one of the measures to consider choosing a male spouse from the female side as well; whereas, for marriages under the Civil and Commercial Code, which is a social law that evolves from customary practices in living together, there are many conditions of marriage, such as the age of marriage, conditions of relationship of persons who are married Conditions of being a monogamy, and marriage conditions in

marriage in which each law stipulates specific conditions of marriage.

Thus, in order to understand law enforcement, it is necessary to study and compare the conditions of marriage according to the Civil and Commercial Code, Book 5, regarding families and conditions of marriage according to Islamic law on family and heritage.

II. RESEARCH OBJECTIVES

To study and compare about the conditions of marriage under the Civil and Commercial Code, Book 5 on family and marriage according to Islamic Law on Family and Heritage

III. SCOPE OF THE RESEARCH

This study is a study on the specific conditions of marriage in terms of comparative study on 2 principles of law such as Civil and Commercial Code, Book 5, Family and Islamic Law on Family and Heritage.

IV. EXPECTED BENEFITS

For the benefit of the legal education industry and as a guideline for the development of laws related to marriage in order to certify and protect the rights of those who live together and cohabit as husband and wife. Thus, this will lead to further development of the quality of life of people in Thai society in the future.

V. RESEARCH METHODOLOGY

This research is a qualitative research by studying and researching from the law codes, articles, research reports, law books and textbooks, including electronic sources in a systematic way

VI. LITERATURE REVIEW

Marry means to marry someone; for example, Mr. A married Ms. B, and it is related to marriage such as a marriage ceremony, while marriage means the marriage with marriage registration (Royal Institute Dictionary, 2011). Therefore, the marriage is to create a relationship system, causing social groups (Siriphan Thawornthaweewong, 2016, page 31)

Marriage under the Civil and Commercial Code, Book 5, Family Law

Being a husband and wife according to the spouse law which is the law that determines the relationship between the husband and wife in the past does not contain the provisions that require marriage to occur by registration. However, marriage is based on traditional practices. In this case, women and men must present that they will live together and cohabit as husband and wife with the consent of their parents who have authority over their children. Later, when the spouse law was terminated, and the provisions of the Civil and Commercial Code, Book 5, for families has been applied. Marriage can only be made after being registered according to Section 1457, and marriage can only be done when men and women are seventeen years of age under Section 1448. If there is the case of reasonable grounds, the court may exercise discretion to allow a man or woman to marry before they are seventeen years of age.

At the same time, marriage cannot be done if a man or woman is an insane person or a person who is ordered by the court to be incapacitated under Section 1449 in order to control the ability of a person as when marriage, men and women must act as spouses by living together and cohabit as husband and wife with the support of the other party as well as their ability and position. In addition, there is a prohibition for men and women with blood relations by prohibiting male and female relatives from directly or descending as brothers or sisters, parents or having the same father or mother. The aforementioned kinship shall be considered according to the bloodline, regardless of whether it is a legitimate relative (Civil and Commercial Code, Section 1450). Hence, those who want to get married while they are having their own spouses under Section 1452. Both men and women must show their consent to be husband and wife to appear in the presence of the registrar.

Marriage under Islamic Law

Marriage is, therefore, a good model for all Muslims. This pattern is the pattern of the Prophet that he said "Marriage is my style, so those who do not follow my guideline, they are not in the same group with me. “It makes sense of the Islamic context that Islam does not separate religious principles from general human life. He can practice according to his abilities, and there is no excessive force from it (Winai Samoon, 2007, page 83). Marriage under Islamic law is not a religious ceremony, but it is a contract act like a common contract. Thus, Islamic lawyers provide the meaning of marriage that marriage is a contract that results in the spouse being approved to take pleasure from the other party in accordance with the law approved (Isma Ali, 1997, page 22) by doing the Nikah ceremony for the members who are living in the four southern provinces of Thailand, Pattani, Narathiwat, Yala and Satun Provinces. In addition, if a case occurs in a province other than the four provinces as it is mentioned above, even if all parties are Muslims, the Islamic law cannot be enforced as it must be complied with the Book 5 of the Civil and Commercial Code (Prasopsuk Boondech, 2016, page 21).

According to Chapter 1, Section 22 of the Islamic Law, the marriage (Nikah) means to bind the marriage relations between men and women in order

to be a husband and wife by law. Section 49 stipulates that a married person must be a man and a woman. If it is appeared that anyone drinks milk of any woman, that person and the bloodline of that person must not be directly married to that woman and the husband of the woman who had a child with the woman and it caused milk to that woman as well as the relatives of the woman and the relatives of her husband under Section 51 (Den Tohmeena and Bukhari Bin Raman, 2009, page 123). The Islamic man has no more than four wives, and he needs to take care of all wives thoroughly by sharing for each wife with equality. If the husband married many wives on the same day, the queue must be determined according to the sequence of the marriage at the wife's house, and the queue must be set. If he is not married at the wife's house, the queue must be consented from all wives. If it is unable to agree, drawing will be taken place. Therefore, if Islam has been domiciled in Pattani, Narathiwat, Yala and Satun has already married according to Islamic law, he is considered to be a lawful husband in accordance with Section 3 of the Act on the Use of Islamic Laws in Pattani, Narathiwat, Yala and Satun Provinces, 1946, even though they are not registered in the Civil and Commercial Code (Office Council of State, 2012)

VII. RESULTS AND DISCUSSION

From the study, it was found that various rules relating to marriage conditions will have many differences such as the age of the person who will be married, according to civil and commercial law in Family stated that the person who can enter into marriage shall be those with seventeen years of age; except in the case of reasonable grounds, the court may allow marriage before seventeen years of age. Nevertheless, for marriage according to Islamic law on family and heritage, there is no definite age, but according to physiology and fertility by the age of 15 years, the male must appear to have sperm movement.

As for women, they must have period. The law also prohibits men or descendants of men from marrying women who had previously drank milk whether a male or a female is a relative or not.

Marriage under the Civil and Commercial Code will only be completed once registered by prohibiting to have marriage to those who already married. Thus, it is to apply the rules of having only one spouse; whereas, for marrying according to Islamic law on family and heritage, the completion of marriage takes place immediately after the Nikah ceremony is performed according to tradition without having to register to the Provincial Islamic Committee or having a marriage registration under the Civil and Commercial Code again. The law also allows men to have many lawful wives at the same time under the Polygamous principle, but not more than four people. However, those who are married under the Civil and Commercial Code, Book 5, and according to Islamic law on family and heritage, they must be from male and female only. The conversion of sex is not only unacceptable to Islamic law, but it is also be considered an act that should be condemned and cursed because they change things that Allah had created.

SUGGESTIONS

1. In the event that a man and a woman expresses their tradition in public practice to be a husband and wife forever, the man and the woman is considered as husband and wife by law. This is as it is stated in the principles of Islamic law on family and heritage because there are not many couples who have agreed to live together and cohabit as husband and wife without the need to register for marriage at present.
2. There should be a study to find legal and social measures to support the right to live and cohabit as husband and wife of a person with the same sex.

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