THE STUDY ON THE CONDITIONS OF ACT ON CIVIL PARTNERSHIP BILL OF THAILAND COMPARED TO THE REGISTERED LIFE PARTNERSHIPS OF THE FEDERAL REPUBLIC OF GERMAN

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Abstract - Every human being, regardless of gender, is equal. They have the dignity of human rights, freedom, and equality. The state, as an organization of governing authority, may not discriminate against individuals for reasons of difference in origin, race, language, gender, age, disability, physical, health condition, personal status, economic or social status, religious beliefs, education, training, or opinions, as well as the matter of creating a family. Humans have the right to choose and decide for themselves. The family forming creates legal bond as provided in the Thai Civil and Commercial Code which defines the rights, duties, and conditions of marriage, stating that men and women according to their origin, can be married as husband and wife by law. For same-sex couples, according to the draft of Civil Partnership Bill, A.C....., it is another hope that will support the right to coexistence of people with sexual diversity in the near future that have set criteria similar to marriage, except for the age of the person who registered as the partner, only the age under the age of the criteria is important.

Keywords - Partner, Sexual Diversity, Marriage

I. INTRODUCTION

Naturally, human is defined as female and male by the figure of the body. The society will play an important role in determining sexual behavior of people according to beliefs, traditions, and culture, including sexual values in order to meet the conditions, needs, and appropriateness of that society; therefore, in the past, it was clear on the belief that being husband and wife by marriage to produce descendants, who were the foundations of social foundation, could only occur between males and females who were from different sexes. Hence, in a world society, it is accepted to live as husband and wife between men and women through the issuance of both legal and social measures to certify and protect the rights and status of such persons. However, when social conditions changed, the desire to express the needs of various subjects according to the taste of each person became more varied, especially the sexual orientation of human beings like the same sex, such as Lesbian, Gay, Bi-sexual, Transgender, Inter-sex, and Queer, also known as "LGBTLQ", with more expressions in roles and identity of genders.

At the same time, the current legal status of infants at present is completely eliminated from the marriage registration of the father and mother. The parents are registered for marriage or not have no any legal consequences towards the status as well as the rights and duties of the infant; therefore, inheriting the human race is no longer the essence of marriage. With this reason, there is no reason for the law to prohibit a person of the same gender to marry (Pairoj Kampusiri: 1998). In many countries around the world, it is accepted that people with sexual diversity can form a family to live together as husband and wife as same as the marriage between men and women in general such as in the Netherlands, Belgium, Canada, Spain, South Africa, Norway, Sweden, Argentina, Iceland, Portugal, Denmark, Brazil, England/Wales, France, New Zealand, Luxembourg, Scotland, Uruguay, Finland, Greenland, Ireland, the United States of America and Colombia (Thai Rath: 2017), which includes the Federal Republic of Germany that has enacted the Act on Life Partnership on 16 February 2001 to certify the status of cohabitation of persons with the same sex through legal registration in order to create equal rights as couples with different genders.

In Thailand, even though the society is currently accepting more sexual diversity, but the effective laws at present are having no legal provisions that will guarantee basic rights regarding the status of same-sex individuals who wish to live together because the attitude of most people is still controlled by norms of love between different genders, and it is the ideal love; thus, the sexual expression to form a family is limited to only love between males and females by marriage according to the Civil and Commercial Code on Book 5. However, establishing a family legal relation is an independent right in which a person can make a decision freely. Hence, there is a claim from a group of people who have a sexual diversity or same-sex group to push for changes in the context of laws related to families in order to ensure that the status and rights of same-sex couples is equal. Lately, the Act on Civil Partnership

Bill, A.C... at the Department of Justice, Department of Rights and Liberties Protection has been proposed through the approval of the cabinets on 25 December 2018, with a total of 6 categories 44 Section (BBC Thailand: 2018) with specific requirements regarding the terms of Civil Partnership Bill registration from the Civil and Commercial Code.

Therefore, in order to understand and be consistent with the measures of the state that wants to raise the level of human rights protection, there is a comprehensive guarantee of the right to create families of people with gender diversity. Hence, it is needed to study to compare the conditions relating to the registration of a partner according to Thai law compared to the Act on Registered Life Partnerships (Act on Life Partnership) under the law of the Federal Republic of Germany.

II. RESEARCH OBJECTIVE

To study about the conditions of being a partner under the draft of the Act on Civil Partnership Bill of Thailand, A.C. ...., compared to the law of the Federal Republic of Germany.

III. SCOPE OF THE RESEARCH

This research is a study of the conditions of registration of individuals with sexual diversity in terms of comparison on the draft of Act on Civil Partnership Bill of Thailand, A.C. ..... Marriage under the Civil and Commercial Code of Thailand, and Act on Registered Life Partnerships of the Federal Republic of Germany.

IV. RESEARCH METHODOLOGY

The study on the conditions of registration of partners according to the draft of Act on Civil Partnership Bill of Thailand, A.C. .... compared to the Act on Registered Life Partnerships of the Federal Republic of Germany is a qualitative research by using documentary research methods through researching and collecting documents such as textbooks, books, academic articles, researches, theses, independent studies, and law codes in both Thai and foreign languages, and then collected all details for analyzing and presenting systematically.
Thus, this is to find appropriate legal measures to apply in Thai law.

V. EXPECTED BENEFIT

This is for the benefit of the legal education industry and as a guideline for correcting, improving, and developing laws to certify and protect the rights of same-sex persons who live together as husband and wife, and it leads to further development of the quality of life of people in Thai society in the future.

VI. LITERATURE REVIEW

Basic principles of human rights protection

Human right means the right that every human being has equality with the dignity of humanity, rights, freedom and certified equality of persons, both in thoughts and actions, that cannot be violated, and it is protected by the Constitution of the Kingdom of Thailand and international treaties which is in accordance to the Universal Declaration of Human Rights, Section 16 (1) gives men and women the right at legal age to have the right to marry and to build families without any restrictions due to Race, Nationality, or religion. People like to have equal rights in marriage, during marriage, and in the divorce. The Universal Declaration of Human Rights emphasizes human dignity, especially in legal equality with the principles of protection without equal discrimination in family relations (Kamonwan Yoowattana: 2015).

Marriage concept and theory

Marriage is the way in which a man and a woman agree to live and cohabit together as husband and wife to build a new family in society. Marriage is a way to lead to relationships in important family institutions by causing rights and duties. Marriage is the creation of interpersonal relations that creates a legal status whether in terms of conditions, results, and divorce as provided in the Civil and Commercial Code, Book 5, Characteristic 1, Chapter 2 (Somrak Promma and Prasert Limprasert: 2002). The marriage is a civil contract, in which men and women must present their intentions correctly together in order to make legal commitment. However, the marriage is different from ordinary contracts because apart from the contract, marriage also creates a social institution. Most marriages are in accordance with the law. The spouse may not agree to be different from the law, except in the prenuptial agreement. In addition, the law also stipulates the conditions of marriage which is applicable to Thai people who are married in Thailand or abroad (Prasopsuk Boondej: 2016).

Concepts of people with sexual diversity

Sexual diversity is related to concepts, theories, behaviors, identities and human sexual practices. The idea of "Sexual diversity" is an idea that needs to open space for the expression of human identity or gender identity, which does not necessarily conform to social norms and rules such as presenting the identity of same-sex lovers and people with sexual diversity, presenting gender identity in a way that is different from "men" and "women" is something that can be seen in many cultures. Thus, diversity in sexual expression is due to the different ways of thinking and cultural beliefs (Naruphan Duangwiset: 2015), so an expression of human beings is based on the mechanism of the body's natural function, depending on the factors in the body of each person at

that time said that it would be expressed in any form whether it is the same or different in each person.

The concept of coexistence of people with sexual diversity according to the laws of the Federal Republic of Germany

The Federal Republic of Germany uses a civil law system that accepts the legal status of same-sex couples since 2001 through The Life Partnership Act of 2001). There is a principle similar to marriage by giving rights and duties to couples who have the same sex in many matters such as inheritance, alimony, health insurance, etc. In 2004, the law was amended in the part of the right on joint adoption, including changing the complicated steps of asset division and foster care payments in 2004. After there was an amendment and add of the possibility of adoption, foster care money, and regulations regarding divorce, excluding tax benefits like spouses with different sexes. In 2017, Germany approved the same marriage law, making same-sex couples to be able to register Act on Registered Life Partnerships according to the law and receive tax benefits, including the right to adopt a child like couples of different genders (rainbow: No Date).

The conditions of registration of Act on Civil Partnership Bill, Section 1 Form and requirements

(1) A life partnership shall be entered into by two persons of the same sex who, being present at the same time, declare in person to a registrar that they wish to maintain a partnership for life (life partners). These declarations may not be subject to any condition or stipulation of term.

(2) The registrar shall ask each of the life partners individually whether they wish to enter into a life partnership. If the life partners answer this question in the affirmative, the registrar shall declare that the life partnership is now established. The life partnership may be entered into in the presence of up to two witnesses.

(3) A life partnership cannot be entered into with effect

1. with a person who is a minor or is married to a third person or is already in a life partnership with another person;
2. between relatives in direct line;
3. between full and half-blood siblings;
4. if, upon entering into the life partnership, the life partners agree that they do not wish to establish the duties set out in section 2.

(4) No motion may be brought for the entering into of a life partnership on the basis of a promise to enter into a life partnership. Section 1297 (2) and sections 1298 to 1302 of the Civil Code shall apply mutatis mutandis. (Act on Registered Life Partnerships 2001, Section 1)

The concept of coexistence of sexual diversity persons according to Thai law

According to Section 3 of the draft of the Act on Civil Partnership Bill, A.C..... "Life partner" means two persons who may not exercise the right to register marriage under the Civil and Commercial Code for reasons of gender of any party and registered a spouse under this Act. The registration of the spouse under this Act shall be continued only when both persons are twenty years of age with Thai nationality or any party having Thai nationality (The draft of the Act on Civil Partnership Bill, A.C....., Section 5) The partnership registration can be made only when both parties submit a request and give consent in a presence of the registrar. And, the Registrar shall also record such consent under Section 7.

Thus, under Section 8, the registration of a partner is not allowed in the following cases

(1) If either party is an insane person or a person ordered by the court to be a careless person

(2) If both parties are relatives with direct descending as siblings with the same parents, or siblings from the same father or mother. Such relative is considered to be based on blood, regardless of whether it is a legitimate relative or not.

(3) Having a spouse or already registered as a partner, and the foster and adopted child will not be able to register the life partner under Section 9.

VII. RESULTS AND DISCUSSION

Marriage is the beginning of the creation of a family institution in which the law has come to certify the rights and duties of individuals that must be connected to each other, so the persons who are registered as a marriage under the Civil and Commercial Code shall be protected by law. However, in marriage registration under Civil and Commercial Code, Section 1448, it required only men and women to register for marriage, so people with sexual diversity cannot register for marriage, resulting in the lack of legal rights and obligations because there are no laws to certify the status of such persons in Thailand at present, and there is only a draft of legal measures; whereas, the Federal Republic of Germany has enacted a law to certify the status of a group of people with gender diversity using the word life partner Causing such persons to receive legal rights and duties as they have spouses. In this study, it is found that the Act on Registered Life Partnerships of the Federal Republic of Germany is similar to the Act on Civil Partnership Bill of Thailand, A.C..... The laws of both countries apply to same-sex couples based on gender which is the physical characteristics of the person, and it brings the conditions of registration to be tied to the marriage principle according to civil law. The said person must not have a spouse or partner during the registration.

Nevertheless, when considering the age criteria of a person, it can be seen that marriage between a man

and a woman, according to the Thai Civil and Commercial Code, the law allows minors to be married when they are seventeen years old, or if there is a reasonable cause, the court may allow marriage before the seventeen years of age, according to Section 1448, and it leads to legal age under Section 20. The registration of a partner according to Section 5 of the draft of the Act on Civil Partnership Bill, A.C. .... The registered person must be a person with twenty years of age who has a legal age under Section 19 of the Civil and Commercial Code. This is different from the German federal law that it determined the age of men and women who are married at eighteen years of age, which is in accordance with the legal age. In case of necessity, the court may allow those who are sixteen years of age to be married as well. For the age of the applicant for registration of the life partner, it has been prescribed for eighteen years in the same way as the age of the person who is married in normal circumstances according to civil law.

SUGGESTIONS

According to the study "Analysing the conditions of registration of a partner according to the draft of the Act on Civil Partnership Bill, A.C. .... ", the researcher has a suggestion as the guideline for the study as follows:

Legal suggestion
According to the conditions under the draft of the Act on Civil Partnership Bill, A.C. ...., which requires that only persons who are at legal age can be registered for the marriage. If the marriage under the Civil and Commercial Code results in minors being underage, even under the age of twenty years, but if the court has seen that it is appropriate, the court can allow the minor to marry and make minor becomes a legal age. After the marriage ended, the minors who are not yet twenty years old but have legal age due to the previous marriage can request to register for a life partner or not.

Social suggestion
Most people may not yet understand how the state will enact legislation to certify the rights and obligations of people with sex diversity in registering a life partner about the types of registration, whether it is the same or different from the marriage between the husband and wife under the Civil and Commercial Code, and tell those who registered as life partners on how they shall receive legal rights or legal liability or not. In this case, relevant government sectors should formally provide information and knowledge as well as understanding in this matter.

Academic suggestion
There should be a study of the relationship between life partners, assets between partners, the termination, and management of the spouse's inheritance according to the draft of the Act on Civil Partnership Bill, A.C.... that are expected to be an additional important factor to get the most complete and useful information

ACKNOWLEDGMENTS

The authors would like to thank Suan Sunandha Rajabhat University, Bangkok, Thailand to provide funding support to attend the dissemination of research on this and thank family, friends, colleagues for cooperation in research, all of you. (http://www.ssru.ac.th)

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