LEGAL MEASURES ON CHANGING TITLES AFTER SEX REASSIGNMENT SURGERY

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Abstract - Currently, Thailand does not have a law recognizing the rights of LGBT people to change their title after undergoing sex reassignment surgery. As a result, these transgender people have limitations in living in society and are treated unfairly. Although, in Thailand, there is a draft law recognizing rights after transgender, the Act has not yet been considered and has no law enforced at present. When studying about the Act used in Netherlands, it was found that there is a law on the recognition of rights after transsexuality which can solve the problems of people who have undergone sex reassignment surgery. Hence, Thailand should push forward the draft of the Act recognizing rights after doing transgender to be valid to ensure equality for transgender people and in line with the current situation to solve the problem and to guarantee the rights of people who have sex reassignment surgery as in the Netherlands.

Keywords - Gender Diversity, Title, Transgender, Gender

I. INTRODUCTION

At present, Thailand has begun to accept gender diversity by a group of people with gender diversity or alternative gender, LGBTQ+ is the perception of what gender you want to be. Some people may have a gender identity that matches their genitals, but some people may have a gender identity that is different from their physical structure as we call this group transgender people or have a sexual orientation that is different from that of most people in society. Due to the increase in gender diversity [1], some people wish to change sex, and people who have transgender, resulting in inequality. The rights of transgender people are violated by humiliating speech, and transgender people are questioned about their gender identity whether it's female or male from people in society, such as government officials and immigration officials in case of traveling abroad or the general public due to confusion because the external gender seems to contradict the title on the ID card passport and important government documents The transgender person will have to answer a series of questions. As a result, human dignity may be violated or embarrassed [2]. which such groups want society to be more accepting of the LGBTQ+ group [3], and in Switzerland. Also, there is a survey of needs by wanting society to accept the LGBTQ+ group to change the title from the Netherlands to be used in your own country [4].

In addition, in Thailand, there has been a ruling by the Administrative Court. In the case of a person who has undergone sex reassignment surgery submitted a request to the district registrar to amend the history information in civil registration documents to be up to date to match their physiological gender even if the plaintiff had undergone surgery to have female genitalia. On the other hand, it does not change the legal status of the plaintiff from male to female because the legal status of the plaintiff is dependent on sex at birth and is not legally recognized as such. According to the Supreme Administrative Court's ruling No. 203/2562 [5], from the Administrative Court's ruling, it can be seen that although Thailand has begun to accept more gender diversity, there are still certain legal rights that are not protected to achieve equality based on coexistence in a diverse society and give transgender people the same rights as other people. For that reason, there is an issue to consider whether Thailand should have a law recognizing post-transgender rights to achieve equality in determining the gender as desired, which is a fundamental right that every human being should have.

II. LITERATURE REVIEW

2.1Meaning of gender diversity

Gender diversity is known as LGBTQ+, which is considered a wide variety of preferences for individuals like things in everyday life in general, such as pictures, tastes, smells, colors, or tastes. It is not caused by an abnormality from any part of the body. LGBTQ+ can be classified as follows: L; Lesbian is a group of women who love women, G; Gay is a group of men who love men, B; Bisexual is a group that loves both. Men and women, T; Transgender is a group of transgender people from male to female or female to male, Q; Queer is a group of people who are satisfied with a certain gender without limiting sex and love [6]

2.2 Definition of gender identity

Gender identity is the sexual experience that can be perceived or felt within an individual and is a matter of person which may or may not match the sex of birth Incorporating changes in appearance or the system of the body by medical means, surgery or any other means by freely deciding Including various expressions of gender, dress, speech and gestures, having a heterosexual identity, having a homosexual identity, having a bisexual identity, and having a transgender identity which in this group may be divided into 2 subgroups: people with cross-dressing and transgender people [7]

2.3Meaning of genders

The meaning of gender refers to the sex that is determined by social or cultural conditions to express the role of being female or male. Thus, the gender that is determined by this society can change according to circumstances and conditions of being a male or female in another era. The characteristics of each gender are not appeared naturally but have been shaped and created through the process of social conditioning as a part of social identity. [8]

2.4Meaning of Gender Identity

Gender identity refers to individuals who have abnormalities in their sexual identity (Gender Identity Disorders - GID). This is categorized as individuals who want to undergo sex reassignment surgery or individuals who want to dress and live as the opposite sex. In addition to the definition provided by the World Health Organization, there are others who define transgender individuals as: individuals who define themselves as having a gender role that is opposite to their biological sex, regardless of whether they exhibit characteristics of both sexes, have a psychological condition, have a desire to be the opposite sex of both male and female genders, dress in clothing of the opposite sex, or are both male and female in the same person [9]

2.5The Dignity of Humanity

In regard to the dignity of humanity, all individuals desire acceptance from others in society in addition to the basic necessities for survival and the desire to have dignity in human characteristics to eliminate discrimination in society. A good social system must have measures and processes in place to ensure that human dignity is preserved. Human dignity can be violated by state power and authority, actions or measures taken by the state, government officials or even other individuals. The ways in which human dignity can be upheld by the state include provisions for [10]:

First, all members of society, regardless of poverty, having the four basic necessities to survive, which includes adequate food, clothing, shelter, and healthcare. Second, protecting basic freedoms and rights that are enshrined in the Constitution and cannot be changed.

Third, all individuals should have the opportunity to change their social and economic status, and this requires opening up opportunities for education and employment equality.

2.6Meaning of Human Rights

Human rights are the fundamental rights and freedoms that belong to every individual, regardless of their race, place of birth, gender, age, skin color or differing opinions. They are the inherent rights of all human beings that come with birth, which cannot be transferred and cannot be taken away since human rights are conceptualized and protected by law. However, sometimes human rights can be limited by legal implications or actions that may pose a threat to national security.[11]

2.7Meaning of the rights to freedom

The right to freedom is comparable to the right to have a voice for individuals living in various areas according to the explicitly planned regulations. It is the ability to act on various things without creating turmoil for others, which can be distinguished as a right and freedom. The right is the legal power that protects individuals, giving rise to legal duties, guarantees protection, and must not disturb the rights or duties of others. It is a moral preference that individuals can use to maintain the benefits they deserve from others. Meanwhile, freedom is the ability to act appropriately, decide whether or not to act, determine what one desires and not stir up emotions in others. [12]

2.8Equality

Equity is the most fundamental thing that humans should have in any aspect, whether in politics or in the economy. Equity does not mean we are the same or equal, but it is a linkage that certifies the equity of human beings. It demonstrates that everyone has the same value. However, fundamentally, every individual cannot truly be equal in every aspect because humans have differences in their nature, such as ethnicity, appearance, skin colour, gender, personality, belief, religion, culture, and so on. Nevertheless, those things do not constitute equity. They are mere distinctions. Therefore, equity does not mean that we must be the same in every aspect. Hence, equity can be interpreted as every human being is equal in humanity and under the law. [13]

2.9Impartiality

Regarding the concept of equality, it is not necessarily equal in all respects. To consider the principle of equality, it must be viewed from a proportional perspective, not just a numerical one. In addition to equality in terms of quantity, the same action with differing quantities should also receive different results. When applying the same action to

the same thing, it is considered equal. However, when applying the same action to different things, it may not be equal. Reasoning or criteria must be established to support the correct and fair application of unequal treatment. If there is no acceptable reason, then that action will lead to unfairness. Nowadays, everyone has become more equal in many aspects, such as natural rights, and the equal respect every individual deserves in their capacity as a human being. [14]

2.10Change the title after sex reassignment surgery in Thailand

At present, Thai society's acceptance of gender refers to the natural sexes of male and female. Any other types of gender are considered variants, leading to limitations in meaning, interpretation, and renaming, creating a sense of alienation for transgender individuals within society. Even for trans individuals who have undergone gender reassignment surgery, and whose physical appearance is similar to their desired gender, there are still cases where they are not recognized as their true gender. This can be observed in official documents such as ID cards and passports. Thailand has proposed legislation that recognizes the rights of transgender individuals in relation to gender reassignment. Under this draft law, "gender confirmation surgery" refers to surgery performed on individuals with abnormalities in sex perception, which aims to change a male's sex to female or vice versa.

"Certificate of Confirmation" means a document issued by a doctor certifying that the individual who seeks gender confirmation surgery is physically, mentally, and emotionally ready, and eligible to undergo sex change procedures.

"Doctor performing Confirmation" refers to a licensed medical practitioner authorized to perform gender confirmation surgery.

"Applicant" refers to a person who has received confirmation from a doctor and has undergone complete gender confirmation surgery.

"Registration" means recording the information in the register for the purpose of completeness in accordance with this law.

"Registrar" means the local registrar, provincial registrar, or centralized registrar under the Civil Registration Law. To qualify for registration, the applicant must meet the following criteria:

1) Have Thai nationality by birth,
2) Be between 18-20 years of age, and have the consent of a legal representative, unless the applicant has obtained legal status through marriage according to commercial and civil law or is over 20 years of age,
3) Have undergone complete gender confirmation surgery in accordance with the Medical Council Regulations and have been certified by the doctor performing the confirmation as an eligible person for sex change. Once the applicant meets all the requirements, they must submit an application to the local registrar where their name appears on the house registration according to the Civil Registration Law.

Once the registrar has reviewed the application, the registrar will issue a certificate of registration of the change of sex, which will include changes to the prefix of the applicant's name to "Mr." or "Ms." The registrar shall also proceed to issue a new national ID card immediately after the registration is complete. Once an individual has successfully changed their name prefix, they will have the rights, duties, and responsibilities of their desired gender from the date of registration and name change.

In cases where a person has undergone a sex reassignment and intends to register their marriage in accordance with commercial and civil law, the registrar must disclose information regarding the sex change to the other party prior to the registration of marriage. Both parties must also consent to the registration of marriage and allow the registrar to record their consent. Sections 1496, 1497/1, 1498, and 1499, as well as paragraphs one, three, and four of section 1500 of the Commercial and Civil Code, apply mutatis mutandis.

Section 1496 states that only a court ruling can determine whether a marriage that violates section 1449 is invalid. If the couple, their parents or legal guardians are unable to do so, the petitioner may seek legal representation.

Section 1497/1 requires the registrar to record the invalidation of a marriage in the registry if it has been declared so by the court.Section 1498 states that an invalid marriage cannot be used to establish property rights between the spouses. Any preexisting property or possessions belong exclusively to the individual who owned them before the marriage. Any property acquired jointly during the marriage must be divided equally, subject to the court's discretion and after considering the family's financial burdens, ability to sustain themselves, and other mitigating factors.Section 1499 declares that an invalid marriage due to a violation of section 1449 does not affect the rights of innocent parties acquired before the registration of the invalidation of the marriage under section 1497/1.

If a party to a marriage that is declared invalid under these circumstances acts in good faith, they may be entitled to compensation under section three or support under section four. The right to claim compensation or support under section three expires two years after the court has declared the invalidation of the marriage under section 1497/1. Section 1500 states that an invalid marriage does not affect the

rights of innocent third parties before the invalidation is recorded.

Persons who have undergone sex reassignment surgery before the enactment of this Royal Decree are required to follow the criteria and procedures for changing their gender and title in accordance with the law. It is evident that the proposed Royal Decree certifying post-gender reassigned people's rights could help resolve these issues in society. However, as the proposed royal decree is yet to be confirmed, individuals who have undergone sex reassignment surgery are still unable to change their title after the surgery [15]

2.11Change the title after sex reassignment surgery in Netherland

The Netherlands has accepted the third gender by considering the legality of same-sex marriage. The freedom to explore one's own sexuality, regardless of gender, allows for the registration of same-sex couples. The status of transgender individuals has been recognized since 1985 under the Civil Code, Book 1 Personenenfamilierecht, articles 29a-29d. Conditions have been established for Dutch nationals who wish to adopt behavior that deviates from their assigned gender at birth. Reports from medical councils and psychological evaluations verify individuals for gender correction, which can then be legally altered on their birth certificates. The request must be processed by authorized personnel, and a six-month notice period is established for public record. Expert opinions disclose the truth of the petition, indicating consistent behavior patterns and pervasive evidence that coincide with the applicant's petition. In cases where an individual seeks to transition from male to female, they cannot have any biological children. Likewise, if seeking a transition from female to male, they must not have had any children. Upon review and authorization of the court order, the applicant may be granted status of their affirmed gender from birth, and their name and sex indicated on legal documents may be changed accordingly. Furthermore, individuals who undergo gender reassignment surgery may register legally as married in their affirmed gender and update their legal documents to reflect their new gender [16]

III. ANALYSIS

After analyzing the data, it has been found that there is an increase in the number of people with diverse sexual orientations in Thailand. These individuals often have a desire to undergo gender reassignment surgery. However, transgender individuals face a situation where they are questioned about their gender identity after undergoing surgery. This is because the honorifics used do not correspond to their gender identity, which is a result of Thailand's lack of legal recognition for post-transition name changes. The only legal recognition given is for the right to change gender and there is no enforcement in place. This creates unequal rights for transgender individuals. Studies have shown that transgender individuals face a number of problems such as discrimination, bigotry, and infringement of their right to privacy due to their incorrect honorifics not reflecting their gender identity, resulting in numerous questions being asked. These problems are often difficult to avoid in society.

IV. SYNTHESIS

Upon conducting the aforementioned study, it is evident that there exists a group of individuals in Thailand who undergo gender reassignment surgery without receiving the necessary protection and recognition of their rights and duties as mandated by court rulings. In Thailand, only a draft of the Royal Decree has been proposed to recognize the rights of individuals who have undergone gender reassignment surgery, which has not been fully enacted into law, resulting in negative impacts on those who have undergone gender reassignment surgery in Thai society. Conversely, other countries have recognized and legalized gender identity, as evidenced by marriage laws between same-sex couples, and the Netherlands allowing individuals of any gender to register their marriage. Furthermore, the Netherlands established laws recognizing the legal status of transexual people as early as 1985, which includes conditions for Dutch nationals wanting to live in a gender opposite to their assigned sex at birth, determined through reports from physicians and psychiatric evaluations, as well as the ability to change their name but not their surname, and amend registry documents with their new gender identity. In contrast, the kingdom of the Netherlands has not established a minimum age for gender reassignment surgery, although the draft of the proposed Royal Decree in Thailand stipulates that individuals seeking gender reassignment surgery are obligated to be at least 18 years of age but less than 20 years of age, and must have the consent of a legally appointed representative or attain emancipation through legal or commercial marriage or be 20 years of age or older.

V. CONCLUSION AND FUTURE WORK

From the issue and consequences on individuals who have undergone gender reassignment surgery, demanding a change of title after the surgery. It can be observed that accepting gender diversity, emphasizing on rights and responsibilities that these individuals should receive for equality, is a principle acknowledged that all individuals are equal and should be treated as such. This would be beneficial for individuals with gender diversity to receive fairness and equality.

Therefore, there is a proposed recommendation that a draft of a Royal Decree be pushed to certify the rights of individuals after gender reassignment surgery, as a means to resolve the issue and recognize their rights, similarly to the Netherlands.

REFERENCES

[1] Kanchana Tuangsuwan. (2013). Third gender roles in Thai society from past to present. (Thesis of study Master of Fine Arts Program, Visual Arts Education, Silpakorn University). Retrieved from http://www.sure.su.ac.th/xmlui/bitstream/id/9e754a71-ee24-4b84-a6fb-ecc1ebb6b4fb/MA_Kanchana_Toungsuwan.pdf?attempt=3

[2] MatalakSremethakul. (2021). The need for a law on sex recognition in Thailand. Retrieved from https://so05.tci-thaijo.org/index.php/tulawjournal/article/view/254065

[3] SeksanSaisisod et al. (2021). A Study of Living Behavior and Life Satisfaction of LGBTQ+ Groups in Udon Thani Province. Retrieved from https://so03.tci-thaijo.org/index.php/jmspsru/article/download/253121/170532

[4] Daily News. (December 27, 2021). 'Switzerland' is allowed to change the title from January 1. Retrieved from https://www.dailynews.co.th/news/609525/

[5] Kom Chad Luek. (May 24, 2019). Changed gender and can I change the title and gender in the civil registration? Retrieved from https://www.komchadluek.net/scoop/372897

[6] Pornnipa Sriprasert. (July 20, 2022). LGBTQ, diversity that is not different in society. Retrieved from https://www.paolohospital.com/th-TH/kaset/Article/Details/Health Articles/LGBTQ-Difference in Society

[7] Paisan Likhitpreechakul, Translator. (2008). Yogyakarta Principles on the Application of Human Rights Law between Country on sexual orientation and gender identity, 1st edition, Bangkok: Office of the National Human Rights Commission of Thailand, p. 11, retrieved from https://www.hrw.org/sites/default/files/. media_2021/12/thailand1221thai_ appendix.pdf

[8] PraneeWongthet. (2014). Gender and sexual refinement in Thai society. Damrong Journal of The Faculty of Archaeology Silpakorn University, 3(6), 72–76.

[9] Piyalak Phothiwan et al. (2014). Transgender people: identity in abbreviated culture. and social space (IDENTITY, SUB – CULTURAL AND SOCIAL SPACE OF THE TRANSGENDER). Damrong Journal of the Faculty of Archaeology Silpakorn University, 10(1), 98–125.

[10] Likit Thiravekin. (January 17, 2007). Dignity of human beings. Retrieved from https://mgronline.com/daily/detail/9500000006120

[11] AMNESTY INTERNATIONAL THAILAND. (January 15, 2018). What are human rights? Retrieved from https://www.amnesty.or.th/latest/blog/62/

[12] Stiftung Freiheit. (January 9, 2018). The meaning of freedom is. Retrieved from https://www.stiftung-freiheit.org/What does freedom mean/

[13] PloyjaiPintobthaeng. (2023). What is equality? Academic Politics and Governance, Faculty of Political Science and Public Administration, Chiang Mai University. Retrieved from https://www.thaitheatre.org/what-is-equity

[14] PreechaChangkwanyuen. (2015). Equality.Office of Thammasat and Politics, Newsletter of the Royal Institute, Year 7, Issue 68. January 1997. Retrieved from http://legacy.orst.go.th/?knowledges=equity

[15] Draft Act on Recognizing the Rights After Transgender. Retrieved from https://web.parliament.go.th/assets/portals/5/files/29_3_2562-5.pdf

[16] WatcharinSangsikaew. (Mor.Por.Por.) The law recognizes the status of transsexuals of European countries in the Kingdom of the Netherlands. Retrieved from https://web.senate.go.th/lawdatacenter/includes/FCKeditor/upload/Image/b/b39%20j un_2_4.pdf

[17] Civil and Commercial Code

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