



Qualifications of a Potential Adopted Child under the Civil and Commercial Code

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Abstract

This research study, entitled “Qualifications of a potential adopted child under the Civil and Commercial Code”, aims to study the requirements for adoption under Thai Civil and Commercial Code. We look forward to analyze the effectiveness of the laws and policies on adoption including the rights and duties of all stakeholders. Therefore, the purposes of this study are not only limit to analyze the legal impacts of adoption in Thailand but try to explore a possibility to revise Thai adoption law as well. In this regard, it is quite necessary to adopt the methodology based on comparative law studies and should try to find out an appropriate model law in order to propose a new amendment on the qualification requirements of an adopted potential child under Thai Civil and Commercial Code. It should be noted as well that we need to know the loophole of law and understand the legal deficiency of Thai existing law in order to propose an appropriate amendment on the age requirements of a potential adopted child including the required age difference between the adopter and the adoptee.

In brief, we can conclude that Thai adoption law at present day has some weak points and need to be amended as soon as possible by the authority by taking account on the minimum age requirement of the adopted children.

Finally, we think that further research study on the best interests of the adopted child would be useful for the protection on the rights of the child on this matter.

Keywords: Qualifications of a Potential Adopted Child, Adopted Child, Adoptive Parent

Introduction

Historic Background and Rationale of the Study

Family is generally regarded as a major social institution and a place of much of a person's social activity. It is a social unit created by blood, marriage, or adoption. As primary agents of socialization, families remain a vital means of preserving and transmitting cultural values which implies a shared bond, our belonging to a community and represents our history and our identity from past to present, and have surely a lot of cultural impacts from generation to generation.

Adoption is an act that not only creating impacts to the child who is being adopted, but also creating legal relations between their family, extended family, and community. Thus, it is the permanent legal transfer of all parental rights from one person or couple to another person or couple. Moreover, it effects a permanent change in status and as such requires societal recognition, either through legal or religious obligation. In this regard, adoptive parents shall have the same rights and responsibilities as legitimate parents but they will have no right of succession to the heritage of their adopted children. In turn, adopted children shall have the same legal status and obtain the same rights as other legitimate child. As family is a major social institution of each nation, it is quite necessary that some provisions of family law needs to be update in order to have a better law for settlement of disputes in each family.

In the area of adoption, the researcher is motivated by believing that the unity of each nation depend on the unity of each family. In spite of the many changes that have altered their roles and functions, families continue to be the root of the nation and need to be developed in various aspects in order to have a better standard of living



and better quality of life. Children need to have love and good take care of their parents. Being part of a warm and loving family makes children feel secure and have a good chance to develop themselves to be a good human resource through their education and practical skills. It should be noted that many children today are still live in a poor condition. A high numbers of vulnerable orphaned children living and residing in the country affects the quality of life of these children. They live in bad conditions and fail to have a better life and therefore they need to be take care closely by their parents or by other people such as by adoptive parents if their parents cannot do so. However, the researcher encounters the greatest challenge that is how we can overcome this challenge that we have faced. Nevertheless, the researcher had found that promoting adoptions to tackle this issue can achieve the goals so the orphans will be placed with a loving family who love them and can provide a safe and happy home also opportunities to pursue their dreams. These different reasons motivate a researcher to conduct a research on the qualifications of a potential adopted child under the Civil and Commercial Code and the Adoption Act B.E. 2522 in order to reach the conclusion that whether the adoption law in Thailand has some weak points and need to be amended in order to ensure that people involved in or affected by adoption will be protected under the new adoption law or not.

Meanwhile, the researcher is also motivated to assess the straight and weakness of the present legal system regarding to the qualifications of a potential adopted child under the Civil and Commercial Code. Thereafter, the knowledge obtained will be analyzed and compare with foreign laws in order to know whether that the adoption law in Thailand has some weak points and need to be amended or not. Last but not least, the researcher hope that our research outcome will bring a fruitful benefit to all stakeholders and cam help children form the problem of poverty or other serious problems that they are facing and need someone to help them.

Finally, some highlight notices are offered by the researcher and addressed accordingly. First, the research sources both published in Thai and in other languages like statutes or enactment, report committees, legal judgment etc. were reviewed and analyzed throughout in order to get in-depth information on adoption requirement. Our recommendations here are quite clear that the provisions concerning adoption prescribed under the civil and Commercial Code of Thailand were stated in very broad terms and need to be amended to ensure that the best interests of the children must be protected and care for. Furthermore, an adoption under the Civil and Commercial Code today is very flexible and open a chance for a single person to adopt a child without the requirement of the minimum age of the adoptive parent. Other problems may be occurred as well when the said law allow an adult to apply for adoption or *vice versa* an adult may be adopted by another adult. Such problems will be examined and analyzed as well in this research paper.

Research Objectives

This research aims to develop a better understanding of the principles of law on the qualification of the potential adopted child and/or adoptability of the adopted child under the Thai Civil and Commercial Code and to assess and compare the information obtained with foreign laws. In addition, it aims at evaluating the different model laws of different legal traditions in order to find out the best model law for Thailand law reform through the amendment process.



Hypothesis

As the adoptability under Thai family law is very flexible and has some loopholes especially in term of the qualifications of a potential adopted child requirements as mentioned above, therefore our hypothesis will be based on a solid finding that a good model law of some countries can be pick up as an appropriate guideline for the amendment of our relevant laws. In this regard, a comparative study and analysis of international law together with civil law and the common law traditions would bring practical benefits to all stakeholders. Thus the research outcome will certainly facilitate the authorities to revise and amend the Thai family law for the best interests of children and should entrust all stakeholders that people involved in or affected by adoption can be protected more efficiently and more effectively under the new adoption law according to the findings and recommendations of this research.

Scope of the Research

This research focuses only in the framework of the provision concerning the adoptability of the adopted child under Thai law and chosen countries' laws. Thereafter, the comparative analysis based on some major case studies will be examined throughout of this research. However, this study does not cover any other requirements for adoption and therefore non relevant issues will not be included in the study.

Research Methodology

This research is a documentary research. All relevant legal materials, such as the civil and commercial code, other official documents, judicial decisions including some major foreign laws relating to the research topic, will be analyzed and examined in-depth in order to find out convincing conclusions and recommendations for the qualifications of a potential adopted child.

Expected Benefits from Research Project

The research emphasizes to revise some outdated provisions of the Civil and Commercial Code relating to the quality of the potential adopted child and try to propose a new model law for an appropriate amendment. Thus this amendment will bring a lot of benefits not only for the potential adopted child and/or the adoptive parents but also for all other stakeholders. The researcher do believe that the authorities will adopt the said proposed amendment and enact it into law in order to have a better effective protection for the best interests of a potential adopted child.

The Qualification of the Potential Adopted Child under Foreign Laws

The intent of this research is to contribute the understanding of legal principles concerning the eligibility and suitability criteria for adoption under foreign laws. The researcher pursues the research objective by comparing the strengths and weaknesses of the legislation relating to the qualifications of a potential adopted child with a view to examining that at what extent the adoption law needs to be amended for the best interests of the children.

In this regard, this research aims to compare Thai law with some selected foreign laws from different legal traditions. In order to reach the final findings, the researcher needs to apply comparative law method by looking



for the similarities and the differences between Thai law and the relevant foreign laws, then the legal analysis will be provided accordingly.

Moreover, this research will focus and examine the existing model laws of some developed countries such as French Civil Law, German Civil Law including UK Law and California Law. Then the researcher will try to argue and justify that which model law should be the best model law for Thailand. Hence, the final outcome and recommendations should be based on the assessment of comparative law studies on this matter.

1. The Qualifications of the Potential Adopted Child under the Civil Law System

1.1 The Qualifications of the Potential Adopted Child under French Law

Adoption is a legal situation subjected to the law by which a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person. Adoption creates a parent-child relationship between an adopter and an adoptee that is not based on the adoptee being the biological offspring of the adoptive person or couple.

French law disposes and distinguishes clearly the difference between two types of adoption in France. The first type is full or plenary adoption (L'Adoption Plénière) and the second type is simple or ordinary adoption (L'Adoption Simple) (Gaudemet-Tallon, 1990, p. 569; Mignot, 2015, p. 761; Colombet, 1994, p. 206).

1) The Plenary Adoption

The Qualifications and Suitability Criteria of the Adoptive Parents and the Adopted Child

The Qualifications of the Adoptive Parents

In French law, it is possible that adoption may be also petitioned by a person over 28 years of age where the adopter is married and not judicially separated, his or her spouse's consent is required unless the spouse is unable to express his or her intention.

“Adoption may be petitioned by two spouses not judicially separated, married for more than two years or who are both older than twenty-eight years” (section 343 French Civil Code).

In principle, the adopters must be fifteen years older than the children whom they propose to adopt. Where the latter are their spouse's children, the required difference of age is only ten years. The court may, however, if there are good reasons, make an adoption order where the difference in ages is less than that provided for by the preceding paragraph (section 344 French Civil Code).

Adoption produces its effects from the day of the filing of the petition for adoption and eventually an adoption order granted by regional court.

The Qualifications of the Potential Adopted Child

Adoption is allowed only in favor of children under fifteen, who have been received in the home of the adopter or adopters for at least six months. Where however the child is older than fifteen and has been received before having reached that age by persons who did not fulfil the statutory requirements for adoption or where he was the subject of an ordinary adoption before reaching that age, plenary adoption may be applied for if the conditions for it are fulfilled, “during the minority of the child and within two years following his coming of age”.

“Where it is older than “thirteen”, an adopted child must personally give his consent to his plenary adoption” (section 345 French Civil Code).



2) The Simple Adoption

In general, the simple adoption, an additional parentage, has fewer step and different conditions in the adoption process.

The Qualifications or Eligibility of the Prospective Adopter

Apart from the differences in the step number and condition in the adoption process between the plenary adoption and the simple adoption, the qualification or eligibility of the prospective adopter is fortunately the same as stated in the plenary adoption provision.

Adoption may be also petitioned not only jointly by spouses married for more than two years, not separated from body, whether of the same sex or of different sex. They must both be at least 28 years old, unless they have been married for more than two years. But also individually by any person (whether a man or a woman) aged at least 28. The adopter or adopters must be at least 15 years older than the child they wish to adopt, however, the judge may allow exceptions if the age gap is smaller.

The Qualifications of the Potential Adopted Child

Ordinary or simple adoption is allowed by the same way as the plenary adoption irrespective of the age of the adoptee. However, the adopters must be at least fifteen years older than the child they wish to adopt. With regard to the provisions of Articles 343 to 344, 346 to 350, 353 paragraph 1, 355, and 357 last paragraph that can be applied *mutatis mutandis* to ordinary adoption, it would also be of interest to remark that the aforementioned provisions expressing similarities between full and simple adoption with regard to status of capabilities, differences in age, allowances for weeding, change in family name, registration in the family record book, conditions for inheritance, and mandatory child support for parents (section 361 French Civil Code).

In summary, the adoption process in France is theoretically a very effective and flexible system where children can be adopted two ways. The first method is called plenary adoption—or full adoption—when adoptive parents legally replace biological ones, The second method, France also offers another form of adoption called simple adoption, adoptive parents join birth ones on the child's birth certificate. When plenary adoption is contemplated but the prospective adopters do not meet the French's eligibility criteria for adopting or the said contemplation is for adopting children under 15 years old which is normally allowed either only if the child has been entrusted to the prospective adopter and lived in his/her home for at least 6 months or is subjected of a simple adoption. In the two afore-mentioned cases, the prospective adopters have been allowed only applying for simple adoption. The best practice is the adoptive families' first applied for simple adoption before converting their simple adoption to a plenary adoption. It has been observed that the most distinctive achievements of France are in the fields of law and administration and apparently, adoption law of Thailand has been profoundly influenced by the French model law.

1.2 The Qualifications or Eligibility and Suitability Criteria of the Adoptees under German Laws

Federal law regulates adoption in Germany. The basic legal framework is set forth in section 1741 to 1772 of the German Civil Code (BGB) and the Adoption Agencies Act. The qualifications or eligibilities and suitability criteria of the prospective adopter are addresses as follows.

The Qualifications or Eligibility and Suitability Criteria of the Adoptive Parents

With regard to the well-being of the child, German Civil Code laid down the adoption process differently from the French Civil Code, especially first of all, married couple who would like to adopt a child must have the age of twenty-five, having no children and having legal capacity to do so (Section 1743, 1744 of the



German Civil Code). They must adopt jointly. However, exceptions are permissible in the cases of section 1741 (2) para. 3, which means that only if the spouse is legally incompetent or under the age of 21 (Section 1743 para. 2 of the German Civil Code). Likewise, a married person cannot adopt alone even if the couple has separated and has already filed for divorce. Only after divorce, can either spouse adopt alone. In addition, married couple that already have a children may adopt a child, unless the adoption would conflicts with the interests of the biological children or could hamper the best interests of the child to be adopted (Section 1745 Para. 1 of the German Civil Code).

In all other cases, unmarried individuals can only adopt a child. (Section 1741 (2) para. 1) No two people can adopt a single child unless the second person married the first person after the first person adopted the child. (Section 1741 (2) para. 3)

It is noteworthy to mention that there is no legal maximum age limit of an adopting parent prescribed by law. However, as in many other countries, the authorities tend to hold the view that a child should be placed with parents who are not beyond the age of 40. As a result, the guidelines for the placement for adoption has been issued by the Working-Group of State Youth Authorities (Guidelines). The guidelines which are not legally binding nevertheless has a lot of influences in practice. That is to say that the age gap between the adopting parents and the child being adopted should not be greater than 40 years (No. 3.311 of the Guidelines). Nonetheless, as German couples now generally tend to have children at a later stage in life so the Working-Group of State Youth Authorities plans to reform the Guidelines in order to allow more couples beyond the age of 40 to adopt, (See Ehrenstein "Adoptionsrecht for altere Paare" Die Welt, December 14, 2004, page 4. The debate is said to have been boosted by the fact in 2004, German Chancellor Gerhard Schroder (then 61) and his wife (then 41) adopted a child from Russia), which is quite deviate from the former practice.

In brief, as a general rule, only married couples can adopt a child. In the case of the adoption had been acted completely by a spouse, it is possible that the partner may adopt jointly as well (Section 1741 (2) Para. 2 the German Civil Code) unless the adopter is incompetent person or has not achieved yet 21 years old (Section 1741 (2) Para. 4 the German Civil Code). In this regard, the said person cannot adopt unilaterally a child even though the couple had already separated and the divorce pleading was submitted to the Court unless the Court decided that the marriage status of the said couple has come to an end by the divorce verdict.

Adoption is possible for a person who have already a child unless that adoption violates the principle relating to the best interests of his child or against the interests of the adopted child (Section 1745 the German Civil Code). It should be noted that financial aspects do not count as interest in this regard. In many cases, the adoption is just a legal pattern for the establishment of rights and duties between the adopter and the adoptee. Therefore, German civil code allows a single person and cohabitation partners to adopt unilaterally a child (Section 1741 (2) para. 1) However, two persons which are not married are not entitled to adopt a child together unless they are married. Then, one spouse can adopt the adopted child of the other (Section 1742 (2) para. 3).

Furthermore, a child may not be adopted by its legal parent. The German law distinguishes between the parentage of women and men. The differentiation is based on the biological difference that is the birth procedure. In consideration of German law which only allows the establishing of legal maternity to the woman who gave birth (section 1591 the German Civil Code) and a presumption of legitimacy only to the husband of the woman who gave birth (section 1591 the German Civil Code) and not to the partner of the latter. Consequently, there are only two suitable and eligible exceptions, namely (1) mother who gave birth to the baby born by the



intended mother (egg donor) must be considered as a legitimate mother (Section 1591) but the intended mother shall still have a right to adopt that child (Maurer, in: *Munchener Kommenter zum Bürgerlichen Gesetzbuch*, Band 8, Familienrecht II, 1741, No. 4) and (2) The biological father may adopt his *de facto* child (a child born of the non-marriage parents) even though the mother's husband is the legitimate father (section 1592 no. 1 the German Civil Code). In this manner, the biological father may adopt the child.

The Qualifications of the Potential Adopted Child

As general rule, only person who has age of maturity can be adopted unless the Court granted a permission or in some particular cases it might be possible that a person who has more than 25 years old may be adopted as well if that person is an outlaw son of an adoptive parent or he is a biological child of a potential adoptive parent or it has a good moral reason to do so (Art.1745 (b), (c)).

It should be noted that German Civil Code does not dispose about the minimum age of a potential adopted child, the adoptive parents must wait until the child is eight weeks of age before providing consent to adoption (Art. 1747 (2) para. 1) just because this law still gives a chance for the biological parents to withdraw their consent during that period.

Furthermore, German civil law does not impose the maximum age requirement for the adopted person. Pertaining to the historical development of adoption law in Germany, the adoption of a person who has reached age of 18, the age of majority (*sui juris* status), must be justifiable and not contradict with the public order or good morals.

An adopted child may not be adopted by legal parent or be adopted again by other person or persons unless he or she is a child of the spouse of the adoptive parents or the adoptive parents died or the adoption was cancelled (Art. 1747).

2. The Qualifications or Eligibility and Suitability Criteria of the Adoptees under the Common Law System

2.1 The Qualifications or Eligibility and Suitability Criteria of the Adoptees under the British Law

In 1926 the first legislation relating to adoption was passed for England and Wales, and broadly similar legislation rapidly followed for Northern Ireland and Scotland. By the end of the 19th century, some poor law authorities and voluntary organizations were using it as an official alternative to putting neglected children in the workhouse or an orphanage. During and after the First World War, there clearly an increase in organized adoption as evidenced by the growing number of adoption societies as well child rescue organizations. Pressure from adoption societies, adopting parents and children's charities for the legalization of adoption had been put on authorities. First adoption legislation in the UK was the Adoption of Children Act 1926 which covered England and Wales. It was followed by the Adoption of Children (Northern Ireland) Act 1929 and the Adoption of Children (Scotland) Act 1930. In 1972, the Houghton Committee's recommendation provided the basis for provisions in the Children Act 1975 aiming to regulate adoption work. Although little used by foster parents, the section relating to the provision of a comprehensive adoption service was not brought into force until 1988 when most of the Adoption Act 1976 came into force. (Bromley and Lowe, 1992, p. 409)

The subsequent Adoption Act 1976 placed a duty on each local authority to provide a comprehensive adoption service to all those involved in adoption. The Act acknowledged that people who have had a personal connection to adoption should have a right to a service if they had unresolved issues and counselling needs. The adoption policy must be conform to the Adoption Act of 1976 and Regulations made under it. However, there



have been some amendments, mainly under the Children Act 1989. This means that the Act cannot be read in isolation.

The Qualifications or Eligibility and Suitability Criteria of the Adopting Parents

Applicants must be at least 21 years old to adopt. Adoption by the mother or the father of the person to be adopted cannot be applied unless the court is satisfied that he or she has attained the age of 18 years, and the other has attained the age of 21 years (Nigel and Gravels, 1992, p. 195) (s 14 (1)-(1B) substituted (14.10.1991) for s. 14(1) by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para.4 (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)).

The United Kingdom does not have a statutory upper age limit. However, in making decisions on adoptive placements, each council or local authority has the power to consider age as a factor in determining whether placement with a prospective adoptive parent is in the best interests of the child. Being older or having a disability may be disadvantage in which the court would take into consideration and the adoption would not likely be granted.

There is no provision governing medical examination report requirement that would preclude prospective adoptive parent from applying for adoption however any health factor would be considered on a case-by-case basis. As part of the approval process, the adoption agency must ask the prospective parents to present a medical report for consideration (Bromley and Lowe, 1992, p. 418). In this regard, it is possible that married or single persons are eligible to adopt a child. Married couples must adopt jointly unless one partner cannot be found, is incapable of making an application, or if a separation is likely to be permanent. Adoption by the mother or the father of the person to be adopted cannot be applied unless the court is satisfied that (a) the other natural parent is dead or cannot be found, or (b) by virtue of section 28 of the Human Fertilization and Embryology Act 1990) there is no other parent, or (c) there is some other reason justifying the child's being adopted by the applicant alone. An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted. Adoption may be applied by a person whom the child has a relationship, other than a birth parent, in this case the court would likely order the Residence Order with respect to the child's interest. Unmarried couples may not adopt jointly, although one partner of that couple may adopt as a single parent (Bromley and Lowe, 1992, p. 422).

Under the Adoption and Children Act 2002, Section 49 and 144 (4), residence order can be granted to more than one person and can be made jointly to an unmarried couple.

The Qualifications of the Potential Adopted Child

To be adopted, a child must be under the age of 18 when the adoption application is made and not be (or have never been) married or in a civil partnership (Section 12 (5) the Adoption Act 1976).

2.2 The Qualifications or Eligibility and Suitability Criteria of the Adoptees under the California Laws

In accordance with the California Civil Code Section 221-230.8, an adult may be adopted by another adult, including a stepparent. The prospective adoptive parent may file a petition for adult adoption with the court. If the court is satisfied that the adoption will be in the best interests of the persons seeking the adoption and in the public interest and that there is no reason why the petition should not be granted, the court shall approve the adoption agreement and make an order of adoption declaring that the person adopted is the child of the adoptive parent. In addition, adoptions are also governed by the California Family Code, Division 13 including Part 2



Chapter 2 Agency Adoption, Chapter 3 Independent Adoptions and Chapter 5 Stepparent Adoptions as well as Part 3 Adoption of Adult and Married Minors. The adoption process and requirement concluded as follows.

The Qualifications or Eligibility and Suitability Criteria of the Adopting Parents

The California law does not have a statutory lower age limit. Nonetheless, a prospective adoptive parent or parents shall be at least 10 years older than the child. An exception may be made if the court is satisfied that the adoption of a child by a stepparent, or by a sister, brother, aunt, uncle, or first cousin and, if that person is married, by that person and that person's spouse, is in the best interest of the parties and is in the public interest, it may approve the adoption without regard to the ages of the child and the prospective adoptive parent or parents (Section 8601, the California Family Code).

The Qualifications of the Potential Adopted Child

California has no adoption age limit. The state simply requires that an adoptive parent be at least 10 years older than the child he or she is adopting. The proposed adoptee being disabled or physically handicapped can be adopted under the California Law as well (Section 225, the California Civil Code).

In summary, the requirements for adoption in California has different legal provisions and similar to the conditions for adoption under Thai law in many cases. Despite some differences in statutes, adoption requirements in California are fairly similar to the requirements in Thailand: above all, the life situations and well-being of the child to be adopted. The courts play a crucial role in setting and monitoring child welfare goals, the court, at any time, would base its decision to dismiss adoption application on evidence and the best interest analysis with respect to the principle of equality before the law.

3. The Qualifications of the Potential Adopted Child under Book Five of the Civil and Commercial Code of Thailand

In accordance with Book Five of The Civil and Commercial Code of Thailand, the requirements for those who want to adopt child regulated herein can be summarized as follows.

3.1 The person to be adopted can be a minor or an adult.

3.2 The adoption will be legalized provided that application of the adoption of a child shall be made in accordance with the principles, procedures and conditions stipulated in the Civil and Commercial Code of Thailand so it will be valid upon registration being effected according to law.

3.3 In general, the legal requirements to adopt are lengthy and quite detailed. In general, the following are some basic requirements:

3.3.1 Adoption of Someone over 15 years old

1) A person who is not less than twenty five years old may adopt another, provided that he is at least fifteen years older than the adopted person (Section 1598/19 Thai Civil and Commercial Code).

2) A married person who is to adopt or is to be adopted, must obtain consent of his or her spouse. If his or her spouse cannot express the consent or has left the domicile or residence and no news of him has ever been received for not less than one year, the application for the Court's permission in lieu of the consent by the spouse must be made (Section 1598/25, Thai Civil and Commercial Code).

3) If the person to be adopted is not less than fifteen years of age, the adoption can take place only with the consent of the adopted person (Section 1598/20, Thai Civil and Commercial Code).



3.3.2 Adoption of the minor

1) A person who is not less than twenty five years old may adopt another, provided he is at least fifteen years older than the adopted person (Section 1598/19 Thai Civil and Commercial Code).

2) If the person to be adopted is the minor, the adoption can take place only with the consent of his parents, but if one of his parents died or has been deprived of his or her parental powers, consent thereto has to be given by his father or mother who has parental power (Section 1598/21, Thai Civil and Commercial Code).

3) A married person who is to adopt or is to be adopted, must obtain consent of his or her spouse. If his or her spouse cannot express the consent or has left the domicile or residence and no news of him has ever been received for not less than one year, the application for the Court's permission in lieu of the consent by the spouse must be made (Section 1598/25, Thai Civil and Commercial Code).

4) If the person to be adopted is not less than fifteen years of age, the adoption can take place only with the consent of the adopted person (Section 1598/20 Thai Civil and Commercial Code).

5) In case the minor to be adopted has been deserted and been under supervision of an institution for child welfare under the law on child welfare and protection, the institution shall give consent on behalf of his parents. Moreover, the parents or one of the parents, in case the other died or whose parental power has been deprived, may make a letter of power entrusting the said institution to give consent to the adoption, and the provisions of Section 1598/22 shall apply, mutatis mutandis (Section 1598/22, 23, Thai Civil and Commercial Code).

6) Under the Child Adoption Act of 1979 of Thailand, an adoption of a child shall be subject to a probationary placement not less than six months and must have received approval in accordance with the provisions of this Act. Besides, the requirement for a probationary placement of a child mentioned earlier shall not apply to cases where the applicant is a blood brother or sister half-blood brother or sister, great grandfather or great grandmother grandfather, grandmother, uncle, aunt, or lawful guardian of the child to be adopted. The principles, procedures and conditions for the probationary placement of a child shall be as prescribed in Ministerial Regulations.

7) In pursuance of Thai Civil and Commercial Code, there is no maximum or minimum age concerning the adopted person.

4. Comparative Study Relating to the Adoptability of the Adopted Child between Foreign Adoption Laws and Thai Adoption Laws

Eligibility Requirements vary from Country to Country

The provision pursuant to the adoptability of the adopted child under the chosen countries' laws both countries following a civil law system and countries where the common law is adopted, is assessed and analyzed. Thereafter, the similarities and differences were identified and presented as follows.

1. Adoption under the legal provision of foreign countries tends to permit only child adoption, adoption laws of Germany and England are most concerned about the age of the adopted child. The state of California has no adoption age limit. The state simply requires that an adoptive parent be at least 10 years older than the child he or she is adopting however, the adult adoption is possible if it serves the best interests of the child, the adoptive parent and the public. On the other hand, under Thai law, the person to be adopted can be a minor or an adult.



2. Under the legal provision of foreign countries, the final step is the finalization of adoption in court. Whenever the court grant adoption order, the adoption will be considered legally effected. After the adoption order is made, the registration process will begin. Under Thai law, the adoption will be valid upon registration being effected according to law. Courts permission to adopt under is required only in the cases where the issues concerning the adoption arise for example if the person to be adopted is the minor, the adoption can take place only with the consent of his parents, but if one of his parents died or has been deprived of his or her parental powers, consent thereto has to be given by his father or mother who has parental power (Section 1598/21 Thai Civil and Commercial Code).

3. Minimum age limit in adoption is another aspect the researcher personally concerned. Apparently, Thailand does not specify a minimum age to be eligible to adopt. However, it would serve the purpose of this research if we were to contemplate this aspect in comparison with the minimum age limit under German adoption law. Under the German law, parents must wait until the child is eight weeks of age before consenting to adoption. The researcher strongly suggests that the minimum age of adopted child should be concluded in Book Five of the Civil and Commercial Code.

4. Minimum age difference as a requisite for adoption is one among preliminary qualifications of an applicant for adoption have been regulated under Thai adoption laws including Book Five of the Civil and Commercial Code of Thailand. The researcher recommend that the conditions regarding the fifteen year difference may be disregarded if the person to be adopted is the child of the adopter's spouse or adopted child of the spouse, then the required age difference is reduced to ten years. The reason behind the proposed amendment supported by the research finding is the adoption should support the creating of so-called parent-child relationship which will be achieved but not in short period of time. The reduction of the age variation would allow the integration of the child to a family to complete accordingly.

5. Under adoption laws of other countries, the laws clearly define the standard for issuing an adoption order. An adoption order shall not be made unless such adoption will serve the welfare of the child and if it is to be expected that a parent-child relationship will develop between the adopting parent and the child. In contemplation of serving the purpose of the mentioned law, the adoption procedures and decisions are the way to entrust the best interests of the child. The researcher recommends that the Civil and Commercial Code should be amended to include objects to clearly set out its overall aims. It should also include general principles to guide decision making about adoption and the provision of adoption services. The principles should apply to the Court, officers of approved agencies as well as any other persons and bodies involved in the administration of the said law.

Conclusions and Recommendations

Conclusions

For the reasons as mentioned above, the researcher esteems that the provisions under Book Five of the Civil and Commercial Code of Thailand respecting the qualification of the potential adopted child needs to be amended based on the best interests of the child principle and the German law model regarding to the rights of the biological parents must be protected by allowing them to withdraw their adoption consent during the 8 weeks period after the birth of the adopted baby.



Recommendations

In brief, the researcher proposes that the provisions concerning adoption requirement prescribed under Book Five of the Civil and Commercial Code of Thailand needs to be amended as follow:

Under Section 1598/19 the Civil and Commercial Code, the existing law provided that a person who is not less than twenty five years old may adopt another, provided he is at least fifteen years older than the adopted person. The researcher agrees with the finding of this research that the proposed amendments regarding to the adoption requirements shall be initiated to increase the rights and privileges of the concerned persons so the Civil and Commercial Code should be amended as followed:

“A person who is not less than twenty five years old may adopt another, provided he is at least fifteen years older than the adopted person. Exceptions are permissible only if the adoption of the spouse’s child or adopted child of the spouse is in concerned, the reduction of the age difference principle should be applied so the age gap between the adoptive parent and the adopted child is only 10 years.

Parents must wait until the child is eight weeks of age before consenting to adoption.

A child may be adopted if such adoption order will serve the welfare of the child. An adult adoption may be permitted if that adoption ensures the best interests of the child concerned, both in childhood and in later life, and that the adoption should be for the best interests of the other parties including the prospective adoptive parent and in the public interest as well.”

The researcher would conclude the aspects that should be amended in 3 aspects as follows.

1. The Minimum Age Requirement of the Adopted Child Should be Concluded

Under Thai law, there is no minimum age for a child to be adopted, only the minimum age requirement concerning the prospective adoptive parent specified. Nevertheless, analysis of the data obtained in this research shows that adoption in Thai law is still subject to limitations which make it falls unnecessarily short of the normal parent-child relationships, so it would serve the purpose of this research if we were to contemplate this aspect in comparison with the minimum age limit under foreign country laws. In conclusion, the researcher strongly suggests that the minimum age of adopted child should be concluded (Boondech, 2017, p. 747). In another word, parents must wait until the child is eight weeks of age before consenting to adoption (or another age level if it is considered appropriate).

2. The Provision for a Special Reduction of the Age Variation Should be Amended

It should be noted that the research results do prove the hypothesis is right in which explaining the principle relating to the qualification of the potential adopted child in broad term could not addressed all the problems occurred under adoption laws and practices. This may be due to such belief held by some people that adoption is often classified with the assumption that all adoptions are the same. In reality, adoptions are not the same and in some situations are not even similar. The age variation, the issue having been scrutinized, most suits the place in this misconception. The purpose of this research is to examine the various laws requiring or failing to require a minimum age difference between adopter and adoptee, along with the conflicting social interests involved, so that it can be determined whether further safeguards are desirable or necessary in our own state laws at this time. The research analysis confirmed that minimum age difference as a requisite for adoption which is one among preliminary qualifications of an application for adoption has been regulated under Book Five of the Civil and Commercial Code of Thailand, the required age difference of fifteen years between adopter and adoptee has been maintained since then (Aekaputra, 2012, p. 205).



The restrictions in relation to the difference of age between the adopter and the adopted shall not apply in the case where a prospective adopter wishes to adopt the child or adoptive child of the spouse of the adopter. The reason behind the proposed amendment supported by the research finding is the adoption should be provided in a way that ensures the best interests of the child concerned. Since the integration of the child in a family gradually creating so-called parent-child relationship is the paramount object aiming toward the adoption goal promoting the welfare and best interests of the child both in childhood and in later life, the law should extend its protection to the hard-to-created-parent-child-relationship case; an adoption of the spouse's child or adopted child of the spouse as well. By mean of reducing the age variation from the number of year required in the existing law to only 10 years, the adoption of the spouse's child or the spouse's adopted child would benefit the concerned parties in term of providing the legal rights and responsibilities and assisting the creation of parent-child relationship.

The research findings also showed that recent incidents of abortive uses of adoption laws have pointed up the possible need for a healthy change in our adoption laws: the reduction of a required age difference between adopter and adoptee. The researcher encourages that such a statutory requirement is necessary to be amended where the adoption of the spouse's child or adopted child of the spouse is in concerned, the reduction of the age difference principle should be applied so the age gap between the adoptive parent and the adopted child is only 10 years.

3. The Specific Objects and the Purposes of Adoption Should be Included in the Civil and Commercial Code

The researcher recommends that the Civil and Commercial Code should be amended to include objects to clearly set out its overall aims. It should also include general principles to guide decision making about adoption and the provision of adoption services. The object and purposes of adoption should be applied by the Court, officers of approved agencies as well as any other persons and bodies involved in the administration of the said law.

Inarguably, it is not beyond the realms of possibility that a number of people is able to comprehend that the inclusion of objects and purposes of adoption in relevant provisions would help to improve the clarity and accessibility of adoption law and provide guidance about the purposes of the law including a framework for what the law meant to do. Principles of law will help certainly the decision makers to implement the objects of law by providing guidance about the things they should consider. In the same manner, since the adoption laws in Thailand do not include an object or purposes section in a specific case. This means that there is nothing in the provision that clearly sets out the overall aims. As a result, the researcher suggests that the adoption law should be amended to include the principles of law including object and purposes of law and it must be ensure that the best interests of the child concerned, both in childhood and in later life, must be paramount and must be protected. In this regard, the adoption laws should specify that the object of the law is to provide for adoption in a way that: ensures that the best interests of the child concerned, both in childhood and in later life, are the paramount consideration in adoption law and practice and that the adoption should be for the best interest of the other parties including the prospective adoptive parent and in the public interest as well. In addition, there should also be a secondary principle stated that 'In all matters relating to the exercise of powers and the performance of duties under the adoption laws, the adoption of a child is authorized only by competent authorities; the court and the principal officer of an approved agency, who shall have regard to adoption as a service for the child and shall determine in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians.'

These proposed practice would avoid the danger of illegitimate use of adoption laws and preclude the utilization of the adoption statutes with totally undesirable and totally unintended purposes from being utilized.



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