

# RIGHTS AND STATUS OF ILLEGITIMATE CHILDREN UNDER THAI FAMILY AND SUCCESSION LAW

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## ABSTRACT

This article aims to investigate the legal rights and status of illegitimate children under family and succession law.

According to the study, Thai family law certifies and protects the rights as well as status of children who were born from the parents with marriage through registration by assuming that they are the legitimate children of the husband or the mother's ex-husband. However, the same protection to the rights and status does not be provided for illegitimate children, particularly children whose fathers certify by actions. Law of succession contains provisions establishing the right of blood relationship children either those legally born or illegitimate children whose fathers certify by actions. They have the legal right to inherit their father's estate. Both type of children is able to receive the same portion of the inheritance, and they shall represent for the purpose of receiving inheritance if their fathers who have been the heirs were dead or have been excluded before or after death of the de cujus.

The author proposes to modify the relationship between father, mother and children in family law to legally certify that direct blood children born from unmarried men and women are the legal children of the father who present the practical certification of their children.

**Keywords:** Rights, Status, Illegitimate Children

## INTRODUCTION

### 1. Introduction

Family relationship according to the Thai Buddhist way is not only being tied to belief, faith, and religious principles, behavior in accordance with traditions and cultures is also an important foundation that helps shape society to be more accepting of the value of blood ties between family members. From the past to the present, the principle of proximity of blood has been used as a rule to protect rights and define duties against each other in many chapters. According to family law, legitimate parents are obligated to provide care and education to their children during their minor years., including children who have reached sui juris but infirm and unable to support oneself. This is a duty based on the natural rules that, at birth until a young age, it is considered that a child is still inexperienced in various skills, including thinking, analyzing, and the ability of the body. In some cases, the child is sui juris, but he/she is disabled. This would be difficult for him/her to support oneself sufficiently for necessity. Therefore, requiring parents who are directly close by blood to perform the duty of fostering and providing assistance in the necessities of living. On the other hand, a legitimate child has a duty to take care of his legitimate parents who are his/her direct descendants. Such duties are considered as moral and social duties

(Prasopsuk Boondej, 2565:616), combined with the objective of enabling human beings to live in society as normally as possible.

However, the rights of family members by blood continue in the form of inheritance from one generation to the next generation. When it appears that a person has died or is deemed to have died by the effect of the law. Estate, which means all kinds of assets, as well as the rights, duties and liabilities of the deceased, except for the identity of the deceased, inevitably passed on to the heirs that is a person who has a close relationship with the deceased as long as the rights of the heirs are not lost due to the loss of inheritance rights. The law of succession is established on the basis that the way of life and the existence of blood relations are taken into account as a matter of fact according to the principle of close relatives and the distant relatives, and the emphasis will be on inheritance. In the event that any child dies before the inheritor, but there is a blood lineage, the deceased grandchild has the right to receive the inheritance in place of the deceased parents. And, when the deceased has descendants by blood as heirs, other relatives who are not descendants have no right to inherit (Pornchai Soonthornpan, 2560:2), requiring that all children who are descendants have the right to inherit equally.

Considering the rights and duties of the relationship between parents and children, both under the family law and the law of succession, it can be seen that there are corresponding and differences in some cases, especially on the status of rights and duties of illegitimate children. For this reason, the author has an opinion that an analytical study should be conducted on rights and status of illegitimate children under Thai family and succession law in order to obtain an appropriate approach that serves as a model for amending family law and succession law in the next stage.

#### **Idea regarding human dignity**

Human dignity is a right that has been inherent to human beings as it is a natural right to view that human beings are by nature equal, and each has the right to life in the body which is the right that is innate. Hence, it cannot be changed or make it disappear just because that person is married, emigrated or get naturalized. Jean Jacques Rousseau has viewed that, in the natural state, human beings are satisfied with their own existence and live together in unity. There is a natural satisfaction in life and a love of simple living and the unity of society arising from unity and harmony as of the utmost importance as personal liberty which is a natural characteristic of humans. Freedom and equality are the essence of human happiness (Somchai Kasitipradit, 2017:20).

According to Article 2 of the Universal Declaration of Human Rights, everyone is entitled to all rights and freedoms without discrimination of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status. (Human Rights Committee, 2017:21); whereas the state must provide protection by issuing internal measures to protect rights, freedom, and equality of people as citizens. The principle of equality is an important fundamental principle of human rights. According to the Constitution of the Kingdom of Thailand, there is a legislation certifying that all persons are equal before the law and are equally protected by the law. It prohibits unfair discrimination against individuals on the grounds of differences (Constitution of the Kingdom of Thailand, B.E. 2560, Article 30) and the rights of a person in the family, dignity, reputation and privacy are protected. It regards the family as the natural and fundamental unit of society and is entitled to the protection of society and the State in accordance with Article 16. (3) The child has the right to receive special care and assistance. All children, whether born in or out of wedlock, are subject to the same social protection in accordance with Article 25 (2). Therefore, everyone has the right to own property either alone or in association with others in accordance with Article 17. (1) Acquisition of the heir's property due to inheritance is therefore the right to be protected in ownership, including the inheritance is inevitable as required by law.

### **Meaning of a child and descendant according to law**

According to Thai law, the protection and status of the child is received from the time that child is born and survives as a baby, and it is the beginning of the personality of an ordinary person leading to the relationship between parents and children under family law. The status of the children can be considered by dividing into 3 types as follows:

1. Legitimate child: Children born during the marriage of parents or within three hundred and ten days from the date of the termination of the marriage or the judgment of the court declaring that the marriage is void, as the case may be, shall be presumed to be the legitimate child of the man who is or was the husband of a woman. This is the automatic recognition of the status of the child as a result of the parents' marriage. In the case of the mother, the child is considered to be the legitimate child according to the natural state of pregnancy. However, recognition of the status of the child appeared to be continued when the child's parents registered their marriage after the child was born or the father registered the adoption of the child as a son or the court adjudged to be a son, as the case may be, according to the Civil and Commercial Code, Section 1547

Presumption of legitimacy It is the relationship between parents and children under family law established from the probability that the child is born from the true lineage of the parents.

2. Child adoption: Adoption has occurred since ancient times by adopting children as children. Partly, it is for solving the problem for some families who are unable to have children of their own as they wish, including to find a new family for a child who has no parents or if only the parents are unable to raise them for proper education.

The adoption is fully valid when the adoption is registered. According to the Civil and Commercial Code, Section 1598/27, it leads to the birth of the status and family law relationship between the adoptive parents and the adoptive child that it cuts off the legal relationship between parents and children in the matter of parental power to establish a legal relationship between the adoptive child and the adoptee instead (Prasopsuk Bundej, 2022:740), but the adopted child has not lost his right and other duties in the family where they were born, whether they have the right to be taken care of by their parents and the duty to support their parents or the right to inherit each other as statutory heirs under section 1629.

3. An illegitimate son: Normally, children who are born have parents, but legally there may be a problem called "fatherless son", which does not mean the absence of a natural father but means the absence of a legal or de jure father, known as the absence of a legitimate father considered as the illegitimate son of the father (Varee Nasakun and Benchawan Thammarat, 2013: 236). A child is just the child born from parents who are not legally married. It may be in the case of a child born of a man and a woman who live as husband and wife but have not registered their marriage and did not change the status of the child to become a legitimate child under section 1547.

According to the 2011 Royal Institute Dictionary, the meaning of "Descendants" are direct descendants, i.e. children, grandchildren, great-grandchildren, and great-great grandchildren which is similar to the provision in Section 28 that the descendants are children, grandchildren, great-grandchildren, and great-great grandchildren. Therefore, it was assigned to be the first descendant of parents, considering as the closest relative of the inheritor. Therefore, succession law stipulates that he is a statutory heir. The legitimate child is the heir according to Section 1629 (1), while the illegitimate child who has been certified by the father and the legally adopted child shall be regarded as the heir as the legitimate child under Section 1627.

### **Rights and Duties between Parents and Children under Family Law and Succession Law**

1. For the right to use the family name of parents, a child born of parents who are not married or the father is not registered to certify the child or the court did not have a verdict to him to be the father; legally, the child and the father have no relationship between them, so the child has no right to use the father's family name. Instead, the child must use the mother's last name;

2. Duty to support parents Section 1563 is a duty that the law requires children to do without waiting for their parents to be old or unable to support themselves first;

3. The right to be taken care of and educated by parents, whether while being a minor or sui juris but infirm and unable to support oneself, Section 1564, which must be a legitimate child, according to Supreme Court Judgment No. 7228/2537, a child who is entitled to maintenance and education from his parents, Section 1564, first paragraph, must be a legitimate child from the beginning or be a legitimate child afterwards as specified in Section 1547;

4. Exercise of parental authority over minor children in addition to taking care of parents can retrieve their children from those who do not have the right to detain their children and have the right to determine the address of the child. The law also determines that the domicile of the parents is the domicile of the child, and they shall work for the child as they should to inflict appropriate punishment for reproach including managing the property of the child;

5. The right to claim for lack of support from the offender causing the death of a parent or child;

6. Legal representation of the minor child to give consent to perform legal acts or perform any acts under the law;

7. Being a parent or guardian in case that a child or parent being ordered by the court to be incompetent or quasi-incompetent;

8. The right of children to acquire nationality according to their parents;

9. The right to be the victim who has the authority to act on behalf according to the Criminal Procedure Code;

10. Rights as a descendant to inherit as statutory heirs, Section 1629 (1) (2) to each other;

### **General principal illegitimate child regarding Family and inheritance law**

Family law and succession law are social laws that have been developed from traditions, cultures and religious principles of society in each era. In the past, family creation occurred with expressions according to the traditions of those religions that men and women respected by marriage does not require marriage registration as it is today. As a result, the relationship between parents and children creates social and legal status, rights and obligations to each other, and both have the right to inherit from each other as well.

Relationships leading to the rights and duties of parents and children in mutual support, giving rights to children to use the surname of the father, the surname of the mother, including the requirement that minor children be under jurisdiction of guardianship of parents under Chapter 2, Title 2, Book 5 of Thai law, and it is a provision certifying and protecting the rights of children who have the status of legitimate children under the presumption of law under Chapter 1 and adopted children arising from adoption registration according to the provisions of Chapter 4 only without having any provision that mentions the relationship between father and son born of offspring of a man who is not actually married to the child's mother in other categories.

However, according to the law, it is considered that the actual child has the status of the descendant under Section 28, thus being in the position of the descendant who has the power to manage on behalf of the damaged person according to the Criminal Procedure Code, Section 5 (2), both as a statutory heir. The right to inherit by law in property, rights, duties and liabilities, except according to law or by nature, is for the person who is truly deceased when it appears that any person is dead or is considered dead, so it gives the right of an inheritance. Therefore, the cause of inheritance is death because if there is no death of a person, property, rights, duties and liabilities still belong to those people (Kerati Kanchanarin, 2020:3), which in capitalist and liberal countries have considered the principle of personal property as central to the political economy as freedom of contract with the acceptance of the principle of ownership during the lifetime itself (Bawornsak Uwanno, 2005:3).

Result of kinship and marriage causes the right to be a legal heir called a statutory heir. The surviving spouse is legally regarded as a statutory heir in the marriage sector. For the statutory heirs, relatives, there are 6 levels as follows:

- (1) The descendant as the child means the legitimate child of the parents.
- (2) Parents means the legitimate parents of the child, excluding illegitimate fathers and adoptive parents.
- (3) Siblings of the same parents are siblings born from the same parents as the deceased.
- (4) Siblings from the same father or mother are siblings born from the same father but from different mothers or from the same mother but from different fathers to the deceased, based on reality.
- (5) Grandparents mean parents of the inheritor.
- (6) Uncle and aunt mean brother or sister of the father or mother of the inheritor.

For an illegitimate child whose father has been certified under Section 1627, he/she shall be regarded as a descendant as if a legitimate child has the right to inherit the illegitimate father in the first place, appearing in the Supreme Court Judgment No. 677/2537 that a legitimate child and a statutory heir who has the right to inherit in the first place under Section 1629. There is no need to file a lawsuit for adoption or must have a court order that it is a legitimate child first.

Inheritance of heirs by statutory law is determined according to the close relationship with the deceased according to the principle of close relatives, dissolving distant relatives, so according to the order of first-come-first-served and adopting the principle of inheritance instead of being used in the case that an heir who has the right to receive inheritance before death or being eliminated shall not be inherited before the death of the de cujus, an illegitimate child is a direct descendant who has the right to inherit in place of his illegitimate father under Section 1643 and has the right to inherit his father according to rights prescribed in Section 1643 as well.

According to the provisions of Section 1639, the right to inherit instead of an heir who is deceased or has the fact that he behaved improperly for any reason until being eliminated from the inheritance before the de cujus, when it appears that such heir who is deceased or has been eliminated, as the case may be, has descendants, the descendants shall inherit instead. And if it appears that any of the descendants of such heirs has died or has been eliminated from the inheritance as well, then the descendants of such descendant inherits instead and to receive the inheritance instead of each other only the share of each person individually. It will be continued like this until the end of the descendants line which are provisions of proximity for blood to the deceased. According to the Supreme Court Judgment 2495/2540, the right to inherit instead of each other only to direct descendants means descendants by true blood only. This includes both legitimate and illegitimate children recognized by the father. According to the Supreme Court ruling 1312/2537, the deceased has expressed to the villagers in the neighborhood that Mr. Tor was the son of the deceased and lived together with the deceased. Also, he uses the last name of the deceased. When Mr. Tor married the objector's mother, he lived together at the house of the deceased and during the time the objector was born. The deceased showed that the objector was a grandson of the deceased, so he could hear that Mr. Tor was the son of the deceased, who had been confirmed by the deceased. Hence, he has the right to receive the inheritance of the deceased when Mr. Tor dies before the deceased. The objector; therefore, has the right to receive the inheritance of the deceased in place of Mr. Tor, including showing his relationship as father and son by providing support to use the same surname as a commonly known behavior. This case appeared according to the Supreme Court judgment 381/2538. The first plaintiff is an illegitimate son whose father has been certified as a descendant as a statutory heir, so he has the right to inherit Mr. Mor, but when Mr. Mor, the son of the inheritor, dies before the first plaintiff has the right to inherit, he shall receive the inheritance of the deceased in lieu of the Mr. Mor.

However, the right of inheritance in lieu of the descendant can occur when it appears that the heir who has the right to inherit before him has become a missing person considered by law to be dead. The stipulation of the inheritance relationship of kinship heirs is not stipulated by

inaction or inadequate performance in the family law. There is a ground for denial of the right to inherit. There is no provision in the Thai Civil and Commercial Code that would prevent descendants from inheriting property on the grounds that the inheritee had failed to fulfill all of their legal responsibilities to the decedent especially the case of parent and their children. (Pawita Kakhai, Paiboon Chuwatthanakij, Surasak Meebua, 2023:4)

## **RESULTS AND FINDINGS**

### **3. Results and Findings**

Legal maternity status arises from the birth of a child according to natural law, requiring that parents, who are proximity for blood, in fact perform the duties of foster care and provide education for children when they are youth and even growing up to reach the age of majority. If the child appears to be disabled and unable to support oneself, the law still requires parents to continue performing their foster care duties. However, such rights and obligations are enforced only between legitimate children and their parents. The actual child whose parents are not married despite the father's acknowledgment from the mother's womb or later as Informing the registrar that the child is a foster child, using the surname, living, or having the same domicile as the father, with evidence appearing in the same household registration, including other manifestations revealing the relationship between the father and the illegitimate child. These illegitimate children who are direct descendants of the father's blood relatives do not recognize their status as children under the family law while they are still alive, but guaranteed to have the right to inherit the deceased father according to the law of inheritance even if the deceased father is not registered to certify that the legal child considers only from the behavior expressed to each other. A descendant is considered as a legitimate child with the right to inherit and share in the estate as a statutory heir equal to the legitimate children and being able to inherit instead and inherit from the illegitimate father according to the right.

Thai Family law and succession law, which have evolved from cultural traditions and religious principles, contain provisions that protect the rights of illegitimate children in a secrecy manner. This makes a direct descendant loses the right to be taken care of, promoted, protected according to legal rights, including the exercise of parental power from the father, who is the most important person in the family. Hence, it is inconsistent with the principles based on nature aiming to protect the rights of the person according to the pre-existing rules that every child should be cared for in the same way as in the past, according to the accumulated traditions of society.

## **CONCLUSION**

### **4. Conclusion**

Rights of persons requiring assistance, care, and protection from the state society and family is a fundamental human right that a state governing by law must establish for its citizens to be guaranteed on equal rights and freedoms. Assigning parents and children a duty to each other during their lifetimes to support each other and inherit as statutory heirs upon the death of the other is consistent with the principles of natural and rational law, moral and ethical, legal rights, and obligations should therefore be in line with all types of actual child protection related to parents by certifying the status and protection of the rights and obligations of all types of children regardless of the relationship in any form without sticking to any single reason. Hence, the law prescription should be based on a human conscience deep in the collective consciousness that family members have to raise one another according to the way of life. When it turns out this way, the state, as a party to the social contract that the people have delegated some powers to the state and the rulers of the country to create a suitable framework for coexistence, shall create

according to the moral correctness that will lead to the guarantee of rights, freedom, and equality bring justice to the people in the end.

## DISCUSSION

### 5. Discussion

Currently, the government has issued a policy to promote fertility due to the declining birth rate while the rate of longevity of the elderly is increasing; therefore, to solve the problems of society in the future, there are persuasion measures to promote childbearing to plan the labor shortage in the country's economic development, partly. And, lack of labor would lead to lack of income for tax collection, including the full stepping into an aging society. It is a big responsibility for the government to solve problems in many ways. In order not to relax the situation, the idea of sending children was born with the expectation that the children who are born will be an important force in driving the country in the future. On the other hand, the reflection of the legal requirements for determining the rights and obligations of children born of biological parents still have many differences even in the real text. Every child, regardless of status, should be fostered and educated by their actual parents. This can be regarded as an ordinary right that ordinary wise people can realize with intuition and common sense that parents must raise, educate, protect and love their true children equally. Therefore, the state regulations that apply to the people should not be formulated in a way that separates the rights and duties of children by giving rights under family law only to legitimate children and denying the rights and duties of an illegitimate child born to parents who are not married. With the role of the state in setting this policy, it is only in the manner of recognizing and protecting the rights already inherent in the natural child. Thus, the status, rights and obligations between father and son under family law should arise implicitly when the actual father has the circumstances expressed in accordance with the law. It is generally perceived that a child is a child as it actually appears and cannot be avoided or eliminated, except for the end of the person. The rights of illegitimate children under family law and inheritance law should therefore be similar. An illegitimate child who has been recognized by his parents has the same rights and duties to his parents as a legitimate child.

By protecting of the rights and obligations of all citizens to adoption, it provides a family relationship between parents. Hence, both have the right to inherit as a statutory heir upon the death of the other without division and also be ensured to be citizens of the state to get the rights guaranteed without discrimination on the grounds of differences in all respects. It also encourages people in society to recognize understand and respect the basic rights of fellow human beings.

## SUGGESTIONS

### 6. Suggestions

With this reason, there is a suggestion to amend the law to certify the status of a child as a proximity for blood born from a man and woman who are not married to the status of the legitimate child of the man whose father has demonstrated the behavior of the child certifier to provide the rights and duties to the child under family and succession law at the same time.

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