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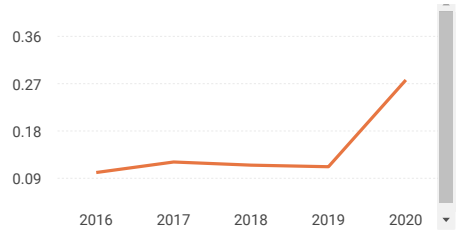

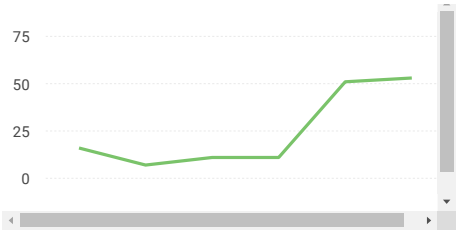

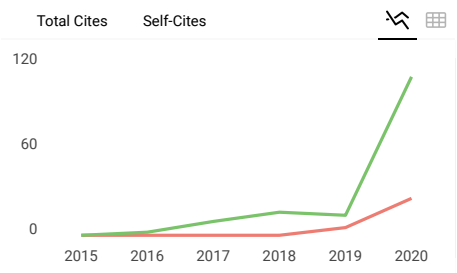

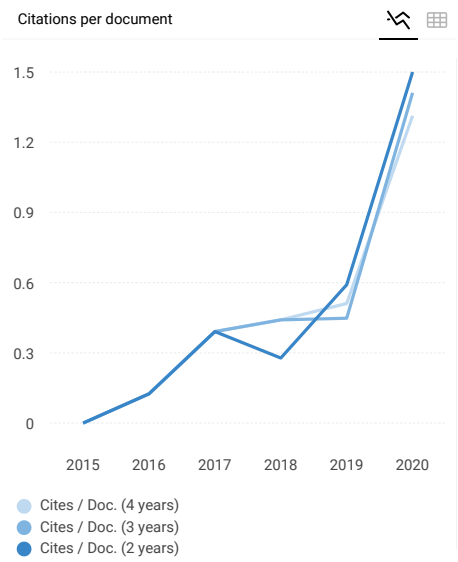

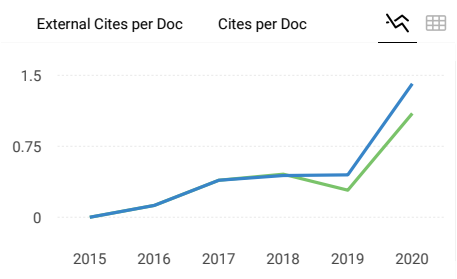

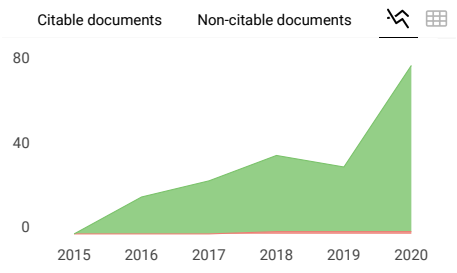

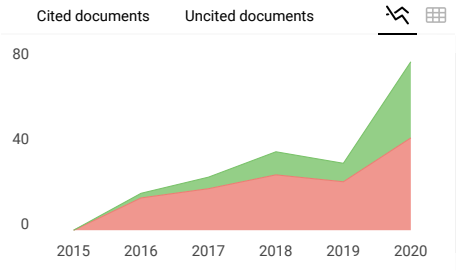

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THE PARTITION OF THE PERCEPTIBLE IN THAI COMMUNITY ON THE CONCEPT OF THE QUALITY OF A MARRIAGE IN THE CONSIDERING OF THE BILL OF LIFE PARTNERSHIP ACT

Nut Keawngam, Petchabun Rajabhat University
Pixitthikun Kaew-ngam, Petchabun Rajabhat University

ABSTRACT

This article purposed to the philosophical explanation on the disagreement between Thai communities on the concept of the equality of a marriage in Thailand which were precepted between each group/part of the Thai community in the process of consideration on the Bill of Life Partnership Act. The methodology of this article followed the spirit of Postmodernism by using Jacques Rancière's concepts; the wrong, the part, the perceptible, the police order, the political, and the disagreement, to interpret the discourses on the same-sex marriage, represented the disagreement perception/perceptible on the concept of spouse influencing the concept of the equality of marriage in each group. The result reveals 3 parts of the Thai community. The first part is the traditional/conservatism part which the equality of a marriage means the act of spouse. The second part is the supporters of the Bill of Life Partnership Act part which allows the meaning of the equality of marriage as the act of partner. The last part is the confrontation with the 2 later parts which they prefer to restore a new concept of the spouse to cover the perception of the equality of marriage for all sexual diversity.

Keywords: Laws and LGBT+ Discrimination in Thailand, Equality of a Marriage, The Partition of the Perceptible

INTRODUCTION

The Background Situation of Discrimination on Thai LGBT+ and the Bill of Life Partnership Act. Thailand has been calling as one of the best Gay Paradise among foreigners (Atkins, 2011). But many reports were pointing to a complex and contradictory situation with the outward LGBT+ acceptance. Even there were many Incidents of gender and sexual behavior that did not conform to heterosexual norms that have been recorded since the 14th century in Thailand. But from the 19th century onwards, the colonial Western norms of behavior and thinking have been adopted into Thai culture including the criminalization of homosexuality and sexuality being considered not a private matter but instead a part of social norms. In the 20th century, regulation codes and concepts on gender roles and sexuality have been interrogated to social morality. During and After World War II, the dramatically and humorously LGBT+ characters appeared increasingly in the media. Even today, the Tourism Authority actively promotes the image of Thailand as a gay paradise but the open discussions of sexuality in society are still taboo and limited. LGBT+ tends to be more visible in urban than rural where LGBT+ still condemns as a shame to their family (UNDP & USAID 2014).

Even today, Thai people are more accepting of LGBT+ (especially male-male couples) maybe because of the growing pace of the East Asianization of genders and sexualities culture influenced by the freedom of social media access. But for the Thai state (or even Thai conservatives) this pace still has to be a concern (Sukthungthong & Bunyavejchewin, 2019). Some reports also revealed a majority of non-LGBT+ respondents supported equal access to services and benefits for LGBT+; regulation-making to support same-sex unions, adoption

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rights, lifting the ban on blood donations from men who have sex with men (Pongruengphant, 2019).

But, According to the United Nations Development Programme (UNDP) surveyed 2,210 participants across Thailand, including 1,349 LGBT+ and 861 non-LGBT+. The result showed a generally positive attitude towards LGBT+ people and significant support for inclusive laws and policies, but also entitled a 'toleration but not inclusion'. However, the attitude from family and social networks and in rural areas were still low. From the survey, many results show the discrimination on LGBT+ such as sexual assault, pretended to be straight to be accepted, discrimination at health care settings, has been made fun of or called names, have been hit or beaten up, have been harassed by the police, have lost friends, have lost a place to live. Tragedically, some cases have conceived of suicide and have accessed to mental health services. Reported according to the National Committee on Gender Discrimination of Thailand which informed the numerous complaints about gender discrimination in educational institutions and workplaces especially those who identify themselves as transgender are forced to dress according to their sex instead of which they identify with. Workers who are LGBT+ always have had a higher chance of unemployment (Bangkok Post, 2020). Some cases of discrimination on LGBT should be exemplified for clear evidence.

In 2015, Thammasat University, the most famous university in supporting Liberalism in Thailand, has decided to allege Kath Khangpiboon, a transgender lecturer of the Faculty of Social Administration, of his behaved inappropriately in social media which affected his image as a university lecturer. Khangpiboon claimed that the university's decision was related to her gender (Prachatai, 2015). In 2019, there was a report that Worawalun Taweekarn, a Mathematics graduate and the second runner-up of Miss Tiffany's Universe 2018, has been rejected his applications from 4 Christian schools by the reason of his transgender being which reason that his gender might present a bad example for students and scandal. Taweekarn also has been disdained by many school interviewers who recommended that he should become a showgirl or work for a cosmetic brand instead of a teacher (Prachatai, 2019). And In 2020, The Facebook avatar named Mikky Billsons, a Thai transgender teacher in the public school appraised his story in his Facebook status. After the marriage with his couple (he called him his husband) for 5 years, her couple was diagnosed with late-stage liver cancer which should be sedated with pain reliever medicine. Because of the high cost of the medical treatment, Billsons tried to register his marriage certificate with his husband to make him claim Bilsons' right to Thai civil servant welfare. Unfortunately, same-sex marriage is prohibited according to Thai Marriage Laws. A few days after Bilsons' status was posted, her couple passed away (Matichon, 2020).

Drawback to 2015, the most initial point in LGBT+ rights movement in Thailand in certificated same-sex marriage. The first famous significant exposition emerged in 2012 when Natee Teerarojpong AKA Gay Natee, a famous Thai gay activist who had ever succeed in-demand Thai lady-boy rights in exemption from the military status, tried to register his marriage certificate with his couple. After the District Office rejected their petition, Gay Natee appealed to the National Human Rights Commission of Thailand to revision the Thai Civil and Commercial Code which has been picking up against his marriage petition. Gay Natee alleged that the Code is the source of the discrimination toward same-sex couples and it is un-constitutional (MgrOnline, 2012). As Wisarut Sinpongsaporn (2020) briefly concise the importance of the Gay Natee case on the important turning point of the legal reform on certification of same-sex marriage in Thailand. In that case, the officer mentioned their petition was against section 1448 of the Thai Civil and Commercial Code where specify 'marriage' is allowed since it is an act between over 17 years old male-female couple. After that, the case of Gay Natee raised the resistance between Thai conservatives.

According to iLaw (2013), a Thai human rights and legal reforms supporting NGO, informed the legal interest for LGBT+ couple even if the same-sex marriage is authorized such as Tax Reduction, Marriage Property Management, Right of Inheritance, Right to Being a Guardian, Right of Business and Financial Cooperation, Civil Servant Welfare, Right on

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Funeral Management, Right in Legal Report and Notify, Right to Visit a Patient-prisoner, Right in Request for Nationality, Right to Apply for a Visa, Right to Change Surname. Baramee Panich & Supannee Chai-amporn (2016) categorized some antecedence in Thai laws on same-sex marriage which were contradicted with Human Rights. The crucial obstacles were 1) Thai concept on complete household co-initiation must begin with different sex couple – male and female, 2) Thai concept of the same-sex marriage as a custom cultural and social deviation, and 3) Thai concept of the Marginalization and Discrimination on sexual diversity. Moreover, these obstacles were unconstitutional.

As a matter of fact, the draft of the 'Bill of Life Partnership Act' was first introduced to the parliament about 2 years before a Gay Natee case. The Thai cabinet approved the principle of the act in that same year but with the government and cabinet changed, the Act was paid temporary attention. In 2020, after 7 years of negotiation, the Bill of Life Partnership Act was accepted and was initiated to be officially announced. But the criticism is still continuous. But this time, the criticism was shifted from Thai Conservatives to Thai Liberals. The main issue was even the Act boosted many equivalent rights between Thai LGBT+ and straight, but some rights still prohibited e.g. The right to support the medical welfare of the civil servants' partner and the right to request Thai nationality for the same-sex partner.

One most basic explanation rooted in the philosophy of law is that all legal systems recognize, create, vary, and enforce obligations. Most philosophers have agreed that the proper laws, consisting of the nature of humanity and the morals of society, should be obeyed. Because of the state's matter, an obligation to obey the laws has been considered a civic duty. But, the obligation-correlative view of authority is not universally accepted because the concepts of nature and morality always have been contested. In short, laws may become morally fallible (Green, 2003). Hence, should we morally do as the law demands because the law demands it. Reasons may vary across various circumstances and the various domains of the laws. So, the finding for reasons to obey the law, and then investigating their strength and the domains over which they range become the most important for the political philosophy and jurisprudence academics (Flanigan, 2020). For these philosophical reasons, the disagreement in obeys the Bill of Life Partnership Act in Thailand needs the investigation to the core concept of the Act to determine how much is relevant between the state matter and humanity and morality of society. To proceed with the investigation, this article promotes Jacques Ranciere's concept of Disagreement as to the method.

RANCIERE'S CONCEPT OF DISAGREEMENT

Jacques Rancière, a French philosopher, determined the logic of the proper in human aesthetics. For Rancière (1999) humans are political animals because of the power to identify the 'useless' and 'unnecessary' and claim to 'speak correctly'. This is 'The politics of exclusion' which isn't, for Rancière, exactly 'political'. The 'political' is that activity which turns on equality to account 'of' all community parts. So, the origin of inequality was the result of, in Ranciere's concept, 'The politics of exclusion' or 'a distribution of perceptible', a proper/say-able and an improper/unsay-able, is a fundamental wrong which allowed human beings to account and miscount their 'perceptible', committed by the account/miscount of such a community. Politics should be seen as the set of procedures whereby the aggregation and consent of collectivities are achieved, the organization of powers, the distribution of places and roles, and the systems of legitimizing this distribution.

Rancière's axiom of equality will be perceived by introducing a paradoxical principle of a lack of the 'arkhe'. For him, the philosophers since Plato have constituted many 'arkhe', the proper political principle. Political philosophy has attempted to bound politics to the logic of a strict and closed to reduce political antagonism, competition, negotiation, and exercise of an agonic procedure (Panagia, 2000). As Rancière (1999) defined, that was the aesthetics process of miscounting 'the part of those who have no part' with the 'police order'. Hence, 'political' must oppose every 'perceptible' instituted by the 'police order' where 'the wrong' counts the

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community parts. The political subjectivity makes the 'egalitarianism' process encounter 'the wrong' in 'the police logic of equality because, for Rancière, 'the logic of equality in the police order' is nothing but the distribution of which is accounted as proper and miscounted as improper. Anything can become 'political' when it breaks the power of the 'police order' to 'equally disagree' between the existing political subjects in every part without leaving any 'no part' behind. For Rancière, politics is always in the first place a 'disagreement' about the existence of politics where Rancière identified 'political' as a synonym with 'egalitarian democracy', the political society where every part must be precepted.

THAI POLITICS OS AESTHETICS IN THE CONCEPT OF EQUALITY OF A MARRIAGE

Essences of the Draft of the 'Bill of Life Partnership Act' are

1. 'Partner' mean two persons who have the same sex by birth and who register as a life partner by this Act.
2. The judicative proceeding of this Act is authorized with the Thai Juvenile and Family Court
3. The register as a life partner is complete with the consent, have 17 years old, both or any have Thai nationality.
4. Juvenile(s) must have/have consent from his/her parent, adopter, guardian, or court. Juvenile(s) will become of legal age by the register.
5. Partner has a judicial administrative process authority in Section 3, 5(2), and 29 paragraphs 1 of the Thai code of criminal procedure.
6. Partner has rights in marriage property management.
7. Partners have the right to adopt a child.
8. Partners have the right of inheritance authorized by the Thai Civil and Commercial Code on Inheritance.
9. Partners are mutatis mutandis enforced with Section 1606 1652 1563 of the Thai Civil and Commercial Code.

For the Thai Government, The Act is progress in sexual equality support by authorized the same-sex partner's legal rights in building a family together. Even when comparing it with the 1st draft in 2013 which didn't authorize the right to possess the couple, e.g., healthcare decision making; adoption; civil servants' right claim; using the couple surname, this Act is a 'big growing pace'. The supporters of the Act admired and induced the confrontation that this Act has already enhanced 80 - 90% of sexual diversity's rights from the beginning. The legal process of the revision on section 1448 of the Thai Civil and Commercial Code, demanded by the confrontation, is too difficult and will take a more last-long time. For the supporter, compared to other nations, this Act is an adequate progression.

The merely conservatism view on the Bill of Life Partnership Act is somewhat supportive of the Act. One example of the conservative view, according to on Gay Natee case, is mentioned above. Drawback to the first time when the Act was introduced, Sinchai Chaojaroenrat (2015), a Thai freelance religion intellectual, whom described the global phenomenon in the same-sex marriage movement as a 'going from one extreme to another. According to him, the anti-same-sex movement was condemned as discrimination supporters. The phenomenon could be compared with the condemnation of the fundamentalists by the irreligious movement. He dismissed the same-sex marriage certification using Biological scientific discourse that the male-female marriage has a final goal for reproduction whiles the same-sex marriage certification couldn't. Because of this unreached goal, same-sex marriage is not natural. But, the discrimination of same-sex couples also can't be ignored. Without the revision of Marriage laws which will enact laws against nature, Chaojaroenrat supported the "Bill of Life Partnership" instead.

Wallop Tangkananurak, Thai juvenile rights activist and Thai parliament senator, supports that this Act will immediately enhance the right to possess, according to

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Tangkananurak's word, the 'alternative sexuality groups. The more quickly accept the Act, the faster the groups can claim the rights (Siriluck, 2020).

But as for some rights which the male-female spouse possesses with Thai Civil law on marriage still differ. The most important right which is absent in the Bill of Life Partnership Act is the rights possessed in civil servant healthcare claims and the right possessed in benefit claims in the Social Security Act. Besides this inequality of a marriage, Tunyawaj Kamolwongwat, LGBT activist and Member of the Thai House of Representative from Move Forward Party, recommended the launce of Bill of Life Partnership Act which, he confronted, was missed the point because the crucial obstacle for same-sex marriage was the definition of 'spouse' in the section 1448 of Thai Civil and Commercial Code where spouse defies only male and female. For Kamolwongwat, the simplest resolution was to redefine the concept of a spouse to cover all sexual diversity's equal right of marriage (The Standard Team, 2020). Moreover, the legal classification between 'spouse' and 'partner' has against Human Rights and un-constitutional by the official devaluation the same-sex couples under male-female couples.

According to Narupon Duangwises (2019) who criticized the discursive paradigm that underscores the politics of gay identity and the movement of legalization of gay marriage and same-sex partnership. He pointed out that the disapproval of social equality while simultaneously controlling and disciplining the population using a systematic political and economic scientific discourse to regulate and institutionalized the hetero-normative regime and monogamy. The system has been inclusively affected by the rise of modern nation-states developed in capitalist economies and democratic political systems.

Following Rancière's concepts, these examples have shown 'the wrong' in the concept of marriage based on the 'police order' in Thai society. The source of 'the wrong' is section 1448 of the Thai Civil and Commercial Code which has defined the 'arkhe' of the concept of 'spouse'. For Thai conservatives and the Act supporters, 'spouse' has been defined as a male-female couple. The spouse has been precepted as natural (as Chaojaroenrat's claimed for example) or less difficult to understand (as Thai Government and Tangkananurak's comment for example). This 'wrong' account a proper legal marriage as a male-female couple's activity while miscounting same-sex couples as an unnatural (as Chaojaroenrat's) or just alternative sexuality (as Tangkananurak's). This 'wrong' has influenced to them the perception of the Act as 'a special gift' for the LGBT+.

Then, the Thai Civil Code on Marriage has become the 'police order' which has been infiltrated in Thai conservatives' and the Act supporters' 'perceptible'. The code has been referred to as the equality standard of a normal marriage. The rights which the spouses possess are proper according to the Code. In contrast, the other forms of couples have been labeled as an improper, unnatural, alternative, or against the laws. With the rise of the modern paradigm, following Duangwises' explanation, the revision for more 'equality' has brought out the discourses such as progression, support for the differences, an enhancement to the alternatives, or gift. The added-on equality standard of a normal marriage is nothing but a 'distribution of the perceptible' on the proper spouses who possess all proper supposed rights and the should-be-proper partners who possess a should-be-proper supposed rights. In short, the upgrade on the discourse of an 'equality of a marriage' by a reconstruction of new same-sex marriage laws, the Bill of Life Partnership Act still didn't uplift or restore any logic of equality which is still based on an 'as its was' Thai police logic of marriage.

To propel equality of marriage, by borrowing Rancière's process, is to recognize the disagreement in every part where the various concepts of a spouse have been perceived. Certainly, we have clear confidence that for the traditional and conservative Thai part, the spouse is percepted as the matter of the male-female marriage. For the supporters of the Bill of Life Partnership Act, it is somewhat assumed that the spouse is percepted in the same way with the traditional and conservative Thai part. But, to be honest, this second part's perception has an appendage. For them, the concept of a spouse has appended with the matter of the un-certifiable same-sex marriage. In other words, marriage can occur without the marriage certification, in the

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condition that some should-be-proper supposed rights have been confirmed. This second part allows the difference with some compassionate permission from the 'police order'.

The last part's perception on the equality of a marriage must be raised from, may us borrow Jacques Derrida's concept to make the simplest explanation, a 'deconstruction of the concept of the spouse, to making the egalitarian marriage, as for the third part, the concept of a spouse as the matter of the male-female marriage should be demolished. For them (such as Kamolwongwat's) the simplest resolution is to redefine the concept of spouse to cover all sexual diversity. With this solution, every couple can possess the same right to bestow upon Thai Marriage Laws without any difference or discrimination.

CONCLUSSION

By using Jacques Rancière's concepts as the method to investigate the perception of the core concept of the equality of a marriage in the final draft of the Thai Bill of Life Partnership Act. The result revealed to us the 3 parts of Thai society. First, the traditional/conservatism part where the perception of the equality of a marriage relies on the concept that only male-female couples would be considered as the spouse. This first part is normative and has become the normal standard (arkhe) of marriage in Thai' perception which confronts other diversity. The second part is the supporters of the Bill of Life Partnership Act part where it is percepted in the same way with the first part with some appendage. For this part, even some rights are collateral permits compared with the certificated male-female couple, it is no matter how the concept of spouse should be defined. The last part is the egalitarian part where they prefer to restore a new concept of a spouse to cover all sexual diversity.

We can also identify 'the wrong' in the Thai concept of spouse which has influenced the legal concept of marriage which affects Thai couples' legal rights in the first and second part. This wrong clearly discriminates LGBT+ couples in the access to the exactly devolved benefit from the Thai state. As long as the Thai community still has the perception that the spouse is the matter of male-female couple. Or even the more add-on concepts of legalized couples are constituted. So long as the discrimination on LGBT+ in the name of police logic of equality of marriage will never perish From Thailand.

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