

Abstract

It has been more than 70 years that Thai Conflict of Laws Act B.E.2481 was come into force but throughout such a long period it has never been amended. While in other countries, many conflict-of-laws principles have the dynamic in improving themselves up-to-date. Therefore Thai conflict of laws is obsolete in both choice of law and recognition of foreign decrees aspects. This thesis has focused on some Thai conflict of laws problems concerning termination of marriage to be the educated issues by using comparative study method with foreign conflict of laws and international.

Terminations of marriage by mutual consent and by the court judgment are recognized in article 26-28 of Conflict of Laws Act B.E.2481. The choice of law rules in these areas laid in Thai conflict of laws may be concluded as follow:

1. Divorce whether by mutual consent or by the court judgment may be granted if the law of nationality of both parties allows as such in accordance with article 26 and 27 para I, these are *lex patriae*.

2. Grounds of divorce governed by the law of the forum in accordance with article 27 para.II. This is *lex fori* which overlaps with *lex domicilii* or *lex causae* as a result of Civil Procedure Code article 4(1)

3. Annulment governed by the law regulates the conditions of marriage which is the law of nationality of both parties in accordance with article 28 para.I unless in case of mistake, fraud or intimidate will be governed by law of the place where the marriage is celebrated, in other word *lex loci celebrationis*.

The problem arises in choice of law is that the usage of *lex patriae* or *lex fori* in those three articles may not reflect the connections between both parties and legal system that will be governed the cases. For example, in case of spouses have resided in a country other than their own for a long period of time or in case of spouses enter into Thailand intentionally to exploit Thai grounds of divorce like a forum shopping manner.

While foreign choice of laws rules shall consider the connections between parties and the law that will be chosen to govern the cases. In Common Law world,

although they are likely apply *lex fori* similarly in Thai law, the considerations of such connections are presented in the law of court jurisdiction which considers the nationalities, domicile or habitual residence of both parties in the country. In Civil Law world, there is the new usage of real and close connection doctrine to determine which law should be governed by means of placing consequences of connecting factor that will be chosen and considering whether they have any linkages with the spouses. If it has not, the next factor will be considered one after another.

In the subject of recognition of termination of marriage, Conflict of Laws Act B.E.2481 article 26-28 are still applied and may be summarized as follow:

1. Divorce by mutual consent may be recognized if the law of both parties allows it.

2. Divorce granted by foreign judgment may be recognized if the law of both parties allows it and the ground of divorce is governed by the law of that forum.

3. Annulment may be recognized if it is governed by the law regulates the conditions of marriage. But, in case of mistake, fraud or duress, it may be recognised if it is governed by law of the place where the marriage is celebrated.

The problem in this matter is that if the divorce is not granted whether by mutual consent or the court judgment, such as the divorce by handing talakuama document in Islamic law whether be recognized or not and why it is so. Moreover, if the spouses have no connection with their own countries, whether abiding the law of their countries is still reasonable.

In the foreign recognition of termination of marriage rules, including Common Law, Civil Law countries and Hague Convention on the Recognition of Divorces and Legal Separations 1970, divorce by any means has the same condition which is presence of the court jurisdiction to terminate marriage relations legally by considering the connection between parties and the state of origin. While they also define the refusal of recognition rules obviously since the ideal of recognition of termination of marriage in foreign conflict of laws is to open the recognition widely so it

will be refused only if the termination violates the public policy manifestly or denies the justice to any party.

So this study has some proposals to amend Thai conflict of law in termination of marriage, those are:

1. In choice of law rules, the law that the termination of marriage will be governed should also consider for real and close connections with both parties and more connecting factors should be added, i.e. *lex patriae*, *lex domicilii* or the law of habitual residence to be the alternatives for court so that it can choose the most appropriate law to any cases.

2. In recognition of termination of marriage, Thai court should be opened to recognize any form of termination widely by considering the jurisdiction of the state of origin and no more regarding *lex patriae*. While defines the refusal of termination of marriage rules legibly according with Thai public policy and natural justice.