

PROTECTION AND ADOPTION OF ORPHAN UNDER THAI CHILD PROTECTION ACT, 2003: ISSUE AND CHALLENGES

Sulaiman Dorloh¹

Abstract

Thailand is a democratic country with the king as Head of the State. There are many provisions in the revised constitution of the Kingdom of Thailand, 1997(CKT,1997) and CKT, 2007 that provide the principles of protection of the interests of a child. By virtue of CKT,1997, the Thai Child Protection Act, 2003 (TCPA 2003) was promulgated and was subsequently enforced on 24 September, 2003. The objectives of the study are to investigate the provisions of TCPA, 2003 concerning the children right and orphans' right of living in the orphanage centers and the current scenario on the status of the children at risk in Thailand. This is because the children in the southern region of Thailand are subjected to ongoing unrest. The data illustrated the presence of high level of victims are among the children aged 6 to 10 years old, about 4,304.00 children are orphans. Since the Act of 2003 is new, it faces many challenges and obstacles, the challenges facing the Royal Thai Government in relation to the issue of adoption and nationality for orphans and the conditions of living in the orphanage centres in southern region. The historical background and modern development of child protection laws in Thailand and the protection and care of the orphans under TCPA, 2003 are also discussed. It is suggested that article 7 of TCPA, 2003 concerning child protection committee members need to be revised, and Children Protection Committee Member may involve elected representative from central Muslim religious council and Muslim magistrates from the four southern border provinces of Thailand. The study also suggested that the government, civil society and communities need to complement each other and work towards creating a protective environment for children and orphans. Also, support systems must ensure fulfillment of basic needs of the families of widows and orphans without any discrimination.

Key words: Thai Child Protection Act 2003, adoption, orphan, children, nationality, southern region.

Current Scenario on the Status of the Children and Orphans at Risk in Thailand

Knowing that there occurs violence in the southern region which causes the loss of life, the children, orphans and widows are also among the victims of the unrest. The turmoil is creating loss of lives and causing significant damage to both private and public properties (A Center for the Coordination of Assistance to Persons Affected by the Unrest in the Deep South, 2011).

¹ Faculty of Shariah and Law, Sultan Sharif Ali Islamic University (UNISSA), Negara Brunei Darussalam.

Many children became orphans overnight due to the trail of murders and killings. According the government statistics, Pattani has seen the highest number of orphaned children -1,691; followed by Narathiwat with 1,586 and Yala with 1,027. The unrest in Songkhla has been responsible for 150 orphans, widowed up to 2,295 women over the past eight years (Expat Forum,2011). This is because, the southern region has a population of 9 million, 6 % of the national population are Muslims. They are the second largest minority next to the Chinese (Aphornsuvan,n.d.,p.3). There are 5 provinces of which three have borders with Malaysia. The survey data indicate that Pattani Population, as of 31 December 2001, is about 635,730.00 persons, females population is up to 330,665.00 whereas males population is about 305,065.00 persons. And the total of the Narathiwat population is about 707,171.00 persons and 468,252.00 persons for Yala province (Melvin,Neil.J 2007,p.vi).

Table 1: Shows the numbers of children victims affected by ongoing unrest in Pattani province:

Age	Total	
0 – 5 years	80	persons
6 – 10 years	135	persons
11 – 15 years	127	persons
16 – 25 years	201	persons
26 – 35 years	96	persons
> 36 years	40	persons

Source: Asian Social Science, Vol.5, No.9/ September, 2009

Proportion (135) of the victims in Pattani province is among children aged six years old to ten years old. A second larger proportion (127) of the victims aged eleven years old to fifteen years old. According to the Ministry of Education, at least 30 school students were killed and 92 injured due to violence in the affected provinces between January 2004 and December 2007. (Keenapan, N. 2009). Just like many child laws in other countries, the future of child protection in Thailand is very much depended on the governmental organizations. Support from institution such as Islamic organizations, mosques and Islamic centers are vital especially at the growth stage. Currently, there are about 6 private run orphanage care centers with approximately 800 orphans operating in the four southern border provinces, only Narathiwat province has two centres.

These private run orphanage centres must apply for license from the Director-General before operation (Section 7, TCPA,1979). If a centre which has been granted license under section 7 violates the conditions stipulated in the license or performs an act detrimental to the peace and order or good moral of the public or to the welfare of a child, the Director-General is authorized to revoke its license, and the provisions of paragraph one shall apply *mutatis*

mutadis (Section 8, TCPA, 1979). In Pattani or Patani (Che Man,W.K. 1990,p.45), the Southern Orphanage Centre estimates 90% of orphan are Muslims.

The Provincial Orphanage Centre of Narathiwat or Bangnara (Che Man,W.K.,1999,p.45), Yala, Pattani, and Songkhla have successfully collaborated with the four northern states in Malaysia. The success of this cross-border collaboration is attributed to having Islamic value in common.

A significant number of children who have lost parents due to causes other than those related to the ongoing conflict in Pattani, Yala and Narathiwat. Although the State claims to provide for some such "orphans," the magnitude of the problem is so immense that only a small proportion of these children gain any substantial or meaningful state support to carry on with their lives.

According to Mr. Wsin Samoh, the Deputy director of Dar al-Aytam wa al-Masakin li al-Banat Sungai Pandang, Pattani province, 9 Kilometers southeast of Pattani city, said most center attendance are local people. The situation in the centre is crowded. Presently, there are approximately 203 orphans resident in the orphanage, who are all Muslims (Zuraida et al., B.E.2543,p.2).

The children range from the very young to the late teens. The younger children have special wardens who ensure that each child is looked after, given due attention and cared for from a young age. This gives the child the opportunity to develop in a secure environment. Healthy environment is of necessary.

Most of them have had little or no formal education. Some of them are enrolled in local religious private schools -- just to mention a few, for example- Amanasak school, Pattani province, Ma'had al-Tarqiyyah al-Islamiyyah , Narathiwat province. Their school fees are waived off (Article 48(2) of CKT, 2007) and they are provided free boarding and lodging in the orphanage. At Dar al-Barakah school, known as "Pannya Lert Orphanage Foundation", located at Ban Bana of Pattani's Muang district, Pattani province are currently occupied with more than 100 children.

Narathiwat Abu Hurayrah Dar al-Aytam located at Phijit Bamrong road whereas Nida' Al-Khair is located at Jakan village, 10 Kilometers southeast of Narathiwat Municipality, Narathiwat province, are also private-run orphanage center. These centres are more familiar with "*rumah anak yatim*" than with orphanage centre. This orphanage center was funded jointly by Ihya' al-Turath al-Islami and local Muslim community. Presently, there are approximately 400 orphans resident in the orphanage. The children range from the very young to the late teens. The younger children have special wardens who ensure that each child is looked after, given due attention and cared for from a young age. This gives the child the opportunity to develop in a secure environment (Interview, 2010. Muhammada Radhi Dera'i, orphanage warden).

Some private orphanage centers are run by NGOs or other private charities (both religious and secular). Examples of this type include the Thai Red Cross Children Home and the Friends for All Children orphanage (both in Bangkok), Pattaya Orphanage in Chonburi, and the Agape Home in Chiang Mai. Some foster care programs exist, where children live with foster families until adoptive placement. Examples include the program (focused primarily on adoption of young/healthy children), and foster care for some children who are in the care of the “Friends for All Children Foundation”, particularly in the Chiang Mai area. Thus, it seems appropriate to study the relevant laws and regulations must be studied carefully to find ways and solutions to the current problems affecting victims especially the children and orphans in those areas.

Children’s Rights in Thailand under Thai Constitution and other relevant laws

Rights which were recognized by Thai constitution include many rights which have never mentioned by previous constitution, some of them were the right of the children and the youth to be protected from violence and unfair practice and right to receive an education from the state if they have no guardians and child’s right to health services and care (Section 50 CKT,2007). By virtue of section 50 CKT, 2007, the Eighth Five-year National Health Development Plan (1997-2001) was formulated by the Ministry of Public Health (MOPH), the government agency responsible for national health development planning.

The Plan emphasizes decentralized health management and greater collaboration between the public and private sectors. Public participation and community involvement in all decision-making processes are sought, based on the determination of local administrative bodies(Economic and social Commission for Asia and the Pacific,2000,p.58). One of the mechanisms of the protection is through appointment of the permanent committee members. This committee was appointed since the introduction of the TCPA, 2003. By virtue of CKT,1997 it provides, *inter alia* that:

“The state must provide health services and care for every person as a constitutional right. This includes children and other vulnerable groups. In order to protect the interests of a child, a child protection committee was set up”(Section 82, CKT 1997).

The committee consists of the Ministry of Social Development and Human Security as Chairperson, the permanent secretary to the Ministry of Social Development and Human Security as Vice-Chairperson. The members of Child Protection Committee comprise of the Permanent Secretary to the Ministry of Interior, the Permanent Secretary to the Ministry of Justice, the Permanent Secretary to the Ministry of Education, the Attorney General, the Chief of the Royal Thai Police, the Director-General of the Department of Provincial Administration, the Director-General of the Department of Mental

Health, the Chief Judge of the Central Juvenile and Family Court, and the Director of the Office of Welfare Promotion and Protection and Empowerment of Vulnerable Groups and the distinguished members appointed by the Minister from experts who have seven years professional experiences in the fields of social welfare, education, psychology, law and medicine. Below is the organizational structure of the Child Protection Committee (CPC).

Figure 1 The Organizational Structure of the Child Protection Committee (CPC)

A Minister of Social Development and Human Security

Chairperson

A permanent secretary to the Ministry of Social Development and Human Security

Vice-Chairperson

The committee members are as follows:

1. Permanent Secretary to the Ministry of Interior,
2. Permanent Secretary to the Ministry of Justice,
3. Permanent Secretary to the Ministry of Education,
4. Attorney General,
5. Chief of the Royal Thai Police,
6. Director-General of the Department of Provincial Administration,
7. Director-General of the Department of Mental Health,
8. Chief Judge of the Central Juvenile and Family Court,
9. Director of the Office of Welfare Promotion and Protection and Empowerment of Vulnerable Groups,
10. Distinguished members appointed by the Minister from experts who have seven years professional experiences in the fields of social welfare, education, psychology, law and medicine (Article 7 TCPA 2003) .

For the purpose of protection, the appointed committees are obliged to advise the Minister on all aspects of child protection. The secretariat of the committee shall have the following duties:

1. To perform administrative tasks (Article 8 (1) TCPA, 2003),
2. To coordinate and cooperate with the other government agencies, and public and private organizations (Article 8(2) TCPA, 2003),
3. To develop system, modules, procedures, and to provide services in connection with child welfare, safety protection and behavioral promotion (Article 8(3) TCPA, 2003),
4. To compile research results, studies and analysis in connection with the monitoring, and evaluating of the implementation of policies and plans

for the provision of welfare, safety protection and behavioral promotion of children (Article 8(4) TCPA, 2003).

The mission of the Plan states that all Thai citizens, regardless of sex, age, occupation, religion, locality, race, education and economic status should have the following:

1. Be born and grow up in a well-prepared and warm family environment,
2. Be adequately developed physically, mentally and intellectually to be capable of adjusting to a rapidly changing world, and to be able to make rational consumer decisions, maintain good health behavior and live happily, with peace of mind,
3. Have health security, and access to appropriate health care services, which are rational, accessible, of good quality, equitably distributed, and provided at a reasonable cost,
4. Live in a well-organized community where resources are pooled and responsibilities are shared, particularly the health care of individuals, families and communities, with an emphasis on children, the elderly, the underprivileged and the handicapped,
5. Maintain good and safe living and working conditions, and
6. Live a long, good quality life, free of preventable illnesses, and dying with dignity(Economic and social Commission for Asia and the Pacific,2000,p.59).

The committee members listed above is not representing the Muslim population. However, as data illustrated above shown that Muslim children are the victims of the regional unrest. Moreover, Thailand is a multi-religious country and Islam is the second largest religion with over six million followers. Majority of them reside in the southern provinces of the country which is located at the Malaysian border. Therefore, special consideration must be given to the Muslims in the south to be appointed as a committee member of CPC.

Child Protection Law in Thailand: Historical Background and Modern Development

The history of child protection laws started with the introduction TCPA, 1979 and TCPA, 2003. As for TCPA, 2003 it was enacted by King Bhumibol Adulyadej on 24 September 2003. This Act stipulated that *inter alia*, all provisions relating to the restriction of rights and liberties of individuals which contains in sections 29, 31, 34, 35, 36, 39, 48 and also section 50 of the CKT,2007 were reaffirmed by this Act.(Preamble, TCPA, 2003) This Act shall be called as the Child Protection Act of 2003 (Article 1, TCPA ,2003).

The rationale for the promulgating of this Act is to provide detail governing the procedures and measures for providing welfare assistance, protecting safety and promoting behavior of child which previously are not suited to the present social conditions. Thus the Thai government under the leadership of Pol. Lt.Col. Thaksin Shinawatra deemed appropriate to define

procedures and amended methods in dealing with the child to enable them to be taken care of by appropriate organizations and institutions which in turn will promote the stability of the family institution and prevent the child from being abused, exploited or discriminated. It is also deemed expedient to improve the ways and means to foster collaboration amongst the government agencies and private organizations in providing protection to the child so as it will be in line with the present constitution (Article 87, CKT,1997).

As party to the Convention on the Rights of the Child, Thailand fully adheres to basic rights and principles for the best interests of the child. The National Economic and Social Development Plan have given priority to human development, including child protection and participation. Indicators such as Social Indicators (Basic Minimum Needs), Indicators on Child and Youth Development and Indicators on Child Rights were introduced as guidelines for the effective protection of children's right (Ministry of Foreign Affairs,2004, Thailand).

Contents of the TCPA,2003

The TCPA, 2003 comprises of 88 articles arranged in introduction and eight chapters. Generally TCPA, 2003 discusses on several aspects, which includes the right to live, survive, protect, develop and participate in children development. The first chapter is concerning with child protection committee (Starting from article 7 to article 21). The second chapter generally discusses about the treatment of the child (From article 22 to article 31.). The third chapter talks about social welfare and fourth chapter is discussing about safety protection(From article 32 to article 39).

In this chapter, it further divides into five titles viz., abused children, neglected children, paralyzed children, illegal children, children who are living in a poor family and children out of wedlock. Fifth chapter discusses about child's safety protectors(Article 40 to article 47). Sixth chapter is about nursery, gatehouse, welfare center, safety protection centre and development and rehabilitation centre.(From article 48 to article 50.) This chapter divides into four titles. First chapter deals with legal issue, tribal and minority issue of the children and the third title deals with child exploitation and the last title is about the children who are in vulnerable condition. In this chapter, it found that special attention is provided in the TCPA, 2003. It deals with Muslim Child in the southern five provinces Thailand. It includes Narathiwat, Pattani, Satul, Yala and Songkhla province. Seventh chapter discusses about behavior promotion of pupils and students.(From article 63 to article 67). Eighth chapter discusses about child protection fund and last chapter discusses about penalties (From article 78 to article 86).

According to the TCPA, 2003, the term Child means "a person below 18 years of age"(Article 1 of the Convention on the Rights of the Child), but does not include those who have attained majority through marriage. On the contrary, there are several definitions given in Thai law currently in force in the country. In

the Royal decree for the establishment of Child and Family Court B.E. 2534 defines child as a person below 7 years of age but not above than 18 years of age. The Royal Decree for the Promotion of Child B.E. 2521 defines child as "a person below 25 years". A quite similar definition is given in the Thai Dictionary B.E. 2525 where child is defined as a person below 14 years of age. The age of criminal responsibility is not more than 7 years (Section 73 Thai Criminal Code, 1956).

Analyzing the definition of child as stated in the Thai laws, it is observed that the Thai laws are inconsistent in determining the minimum age for a child. This is due to the fact that each of Thai law has different purpose in term of its application. Thus the question may arise as to what law is applicable. Therefore, it is suggested that a standardized the minimum age of child should be adopted. This would eliminate any doubt as to child minimum age. In relation to minimum age of child, it is necessary to follow the TCPA, 2003. This will prevent maltreatment towards a child.

Protection of Children under TCPA 2003

It is provided in the TCPA 2003 that the guardians of a child are forbidden to abandon a child at a nursery or health care facility or with a person employed to look after the child or at the public place or any other place with intention of not taking him or her back (Article 25(1) TCPA,2003) Several articles relevant to the protection of abandoned children were mentioned in this Act. Before the introduction of the Act 2003. It was governed by Thai Criminal Code,1956(TCC 1956). Sections 306,307 and section 308 stating inter alia that it becomes a duty for the parent take care the children who are below eighteen years. The state takes initiative to help them by taking care of them(Article 51(2) CKT, 2007). This includes a person who is over 60 years of age and has insufficient incomes shall have the right to receive aid from the state.(Article 52 CKT, 2007).

A study conducted by sub-committee on child's right revealed that one of the most important preventive measures in child abandonment is to stop the pregnant out of wedlock and pregnant during the schooling. However, steps have been taken by the Department of Social Development and Welfare to encourage the public to lodge a police report of child abandonment by setting up telephone lines. This department also provides welfare services to needy and distressed people, including trafficked woman and children throughout the country. The welfare services offered are remedial, preventive, curative and developmental in nature.

Those services were (1) to provide assistance and welfare to the child and his or her family or any person providing care for the child so as to enable them to take care of the child in a manner pursuant to article 23(Article 33(1) TCPA,2003) (2) To submit the child into the care of an appropriate person who consents to provide care for the child for a period as deemed appropriate but not exceeding one month in the case where it is not possible to act according to

clause 1(Article 33(2) TCPA,2003) (3) To facilitate the adoption of the child by accordance with the law on child adoption (4) to send the child to be cared for by an appropriate foster family(Article 33(4) TCPA,2003) (5) To send the child to be cared for at a gatehouse (Article 4 TCPA,2003) and (6) To send the child to be cared for at a welfare centre.(Article 33(5) TCPA,2003) .

The following children are warranting for welfare assistance under TCPA,2003 namely:

1. Street children,
2. Abandoned or lost children,
3. Children whose guardian are unable to take care of, for example his or her being imprisonment, detained, disabled, and chronically ill,
4. Disabled children,
5. Children in difficult circumstances, and
6. Children in situations warranting welfare assistance as stipulated in the ministerial regulations.

From the above mentioned provisions, it is also observed that there is no single provision in the TCPA,2003 discusses specifically about the orphan children and their welfare. On the other hand, the TCPA,2003 may create negative implications in the sense that that it may leave some important aspects of the Act. Because of this weakness, the contents of the TCPA,2003 is subjected to review.

Adoption and Eligibility for Adoption under Thai Child Adoption Act, 1979(TCAA,1979)

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that it is expedient to have a law relating to child adoption. This Act shall be called the " Child Adoption Act B.E. 2522 (1979)".

The Board shall have the following powers and duties:

- (1) To issue regulations, rules and procedures relating to adoption of children to be observed by the Adoption Center, the licensed Child Welfare Organizations and other agencies concerned;
- (2) To consider and give decision to adoptions of children
- (3) To resolve problems concerning adoption of children;
- (4) To give consultations concerning adoption of children to the Adoption Center, the licensed Child Welfare Organizations and other agencies concerned.(Section 14,TCAA1979)

Most Thai children waiting for adoption live in orphanages. Many of these are government-run, such as the large Pakkred, Bangkok area and Viengping, Chiang Mai area babies' homes and many other babies' and children's homes throughout the nation. According to TCAA,1979 it was provided that " No person shall take or send any child out of the kingdom for the

purpose of arranging its adoption, directly or indirectly, unless with a permit from the Minister in accordance with the principles, procedures and conditions stipulated in Ministerial Regulations" (section 18,TCAA,1979). The Child Adoption Board of Thailand (which includes key officials of the Thai Department of Social Development and Welfare(DSDW) must sign off on all adoptions of Thai children, including adoptions of children in care of the DSDW, children in care of designated NGOs, and children who are relatives or acquaintances of the prospective adoptive family. If birthparent(s) are known, children must have been legally relinquished under Thai law. If the child has been abandoned, Thai officials make an effort to find genetic family before allowing the child to be adopted.

The slow speed of the investigational and signoff process is one main reason that infant adoption is virtually non-existent in Thailand, and even the youngest available children are usually 1 to 2 years old. Many children in Thai orphanages have one or both parents still living; parents may be impoverished, imprisoned, or otherwise unable to care for a child, but may never have signed relinquishment papers. Therefore, though thousands of children live in Thai orphanages, a high percentage of them are not eligible for adoption, either domestically or internationally.

As for family requirements, Thai law does not stipulate a long list of family requirements. Adoptive families must be legally qualified to adopt in their home states/countries. Married couples must consist of a man and woman who are both at least 25 years old. Single women (not men) can petition to adopt special-needs children only; however, the Thais' definition of "special needs" remains somewhat unclear. (For instance, it is not clear whether the definition automatically includes waiting children who are basically healthy, but older. Consult your agency for the latest details. The upper age limit for parents is not codified by Thai law. Rules will vary depending on where your agency is going to submit your dossier (to DSDW or an NGO). NGOs and adoption agencies can both impose their own rules (beyond Thai federal law) defining what parent ages are considered "too young" or "too old." It is important to specify the age that you want and discuss it with your agency. All adoptions in Thailand must be processed through the Child Adoption Center of the Department of Public Welfare (DPW), which is the sole governmental social welfare agency responsible for adoption of Thai children. Four non-governmental organizations (NGOs) are licensed to deal with DPW's Child Adoption Center in cases where a child is to be placed abroad, but only three of these NGOs process cases for prospective adoptive parents who reside in the United States.

In general, parents in their late 20s and in their 30s will encounter no difficulty regarding their ages and should be eligible to adopt both young and older children. (However, a minimum 15-year age gap between the younger parent and the child is required by Thai law.) Parents in their early 40s may be asked to adopt a somewhat older child (older toddler or preschooler). Parents in their late 40s may be qualified to adopt school-aged children or (possibly) younger children with special needs. Couples where both parents are over 50

are much less likely to be allowed to adopt. Again it is very important to discuss your individual situation with each agency you are considering. All of the following should be taken as generalities based on agency experience and observed patterns of practice, rather than hard and fast rules. For instance, small families are generally preferred (two existing children or fewer), but this preference may be waived, particularly for waiting children. Some families with a handful of children at home (only 3, in one case, all previously adopted in Thailand) have been denied requests to adopt; however, some other, larger families have been approved. The DSDW is apparently considering all requests from larger families on a case-by-case basis. The number of children currently in the household (vs. older children no longer living there) would also be weighed by DSDW.

For a married couple, a total of two divorces (one per spouse, or two for one spouse) are apparently acceptable. Length of marriage, and length of remarriage after a divorce/s are not codified by the adoption law, but a family that's extremely newly married, especially after divorce, might encounter some difficulties, so you must consult your agency for opinions on your specific situation. Couples need not be infertile, though fertility documentation may be requested, and a pregnancy during the process will delay, and may derail, a Thai adoption. (Thai officials may agree to put your application on hold for a while if you are seeking to adopt an unidentified child, but will probably not approve a request to adopt an identified special needs child if you become pregnant during the process).

The Thai authorities carefully scrutinize family income and seek evidence that a family can provide for its children. Detailed income documentation is required, and families should be prepared to provide it but wealth is not a program requirement, and the Thai law does not specify income levels. Serious illnesses of the parents would be evaluated on a case-by-case basis and could prevent an adoption. The Thais do not have a codified weight limit for parents as some sending countries (eg Korea, China) now do. However, recent (2006) anecdotal reports indicate that the DSDW/Child Adoption Center is increasingly concerned about this and has rejected a few families for being unacceptably overweight (and thus, presumably, more likely to have serious health issues that would interfere with parenting) (Thai Embassy,2007)

Issue of Adoption and Nationality for Orphans

According to TCPA, 2003 the term "orphan" means a child whose father or mother has died, or who has no evidence of parents or whose parents cannot be traced.(Article 4,TCPA, 2003) From this definition, we may infer that there are two issues, first was the issue of a child whose father or mother has died and the second issue was the issues of orphans whose are known to have been born in Thailand but their parents are unknown. In the later case the orphan has a connection to Thailand under *ius soli*, but it was unknown whether the orphan has a connection to any state under *ius sanguinis*. In such a case, the orphan

cannot get the right to Thai nationality automatically under *jus sanguinis* because of unknown of his parent nationality.

In order to protect the interest of the orphan, there are three possible legal presumptions have to be made about the parent of the orphan. Firstly, assuming the parent had possessed the Thai nationality. In such a case the orphan shall require Thai nationality automatically by *jus sanguinis*. Secondly, assuming the parent was a permanent residence. In such a case the orphan will entitle to acquire Thai nationality automatically by *jus soli* and; thirdly, the parent was not a permanent residence, in this case the orphan has a right to apply for Thai nationality by birth under *jus soli*(Saisoonthon,P.K.2003, pp.4-5). However, the orphan who was born in Thailand whose parent was unknown or his/her parent who are not granted either Thai nationality or residence, may still have a right of domicile in Thailand under private law of the child.

Challenges for TCPA, 2003

It is expected that TCPA, 2003 are able to provide protection and care not only to Buddhism but also to Muslim orphans. It is the hope of the Thai government that by allowing the TCPA, 2003 to apply in Thailand, the following points must be taken into consideration:

- (a) The TCPA 2003 shall meet the protections and cares of the Muslim population in Thailand and it must be in conformity with the Malay (Mudmarn,S.1996,p.32) custom and beliefs,
- (b) To include in the steering committee members from the office of the Central Islamic Committee (Thai Royal Act concerning Muslim mosque,1947) and four Islamic magistrates (Dato Yuthitham)(Dorloh,S.2006),
- (c) To formulate legal measures along with social tools in preventing the act of abandonment,
- (d) To establish coordinating council in every province to take the interest of the orphan children,
- (e) Significant efforts will also be required to raise awareness among Muslim leaders of the new law on child protection,
- (f) Ad hoc committees must be set up to study and review some provisions in the TCPA,2003,
- (g) To improve the ways and means to further collaboration amongst the government agencies, and private-run orphanage center in the southern region in providing protection to orphan children.

Conclusion and Implication.

From the discussion above it shows that Thailand has taken measures to ensure the interests of the child and orphans are protected, particularly the orphan's right to the nationality, life, residence, development and well-being. Local and central government should be responsible for children and orphans, but the responsibility may be shared by different agencies of the law. Voluntary organizations should also be involved in their welfare. More orphanage centres should be established through local and central government to provide training and education to children and orphan victims. These institutions should be provided funds so that they are able to provide the required facilities to children and orphan victims. In term of study implications, the discussion of this study is able to provide an overview of the TCPA, 2003. Nevertheless, this article is an eye-opener for practitioners and academicians about TCPA, 2003. At least it provides guideline in promoting how does the Thai child law should be looked like. However, there are two main issues remaining unanswered, which need to investigate in the future study. These issues are about a limited evident of empirical results about the usability of Islamic ethics in orphanage center and the issue of the conditions of life of widows and orphans after the death of their husbands and fathers, respectively; to know the nature and amount of support provided by the local and central government to them; to make an assessment of their well-being and future prospects with regard to health, education, personality development, income and gender; and also to provide a platform for the government and non-government organizations for formulation of policy and programmed implementation. Therefore, this limitation can be overcome by pursuing a survey to the topic of study. It is the target of researcher to plan to survey the Islamic and private run orphanage centers in southern region of Thailand. All the preliminary stage, the study will be conducted in Pattani, Narathiwat, Yala, Satul and some areas of Songkhla province. Choosing these four provinces and some areas of Songkhla province are due to existence a large number of Muslim population.

References

Statutes

Constitution of the Kingdom of Thailand, 2007

Constitution of the Kingdom of Thailand, 1997

Thai Child Adoption Act ,1979

Thai Family Register Act B.E. 2478

Thai Criminal Code, 1956

Thai Commercial and Civil Law Code,1993

Thai Child Protection Act, 2003

Thai Child Protection Act, 1979

Thai Royal Act concerning Muslim mosque, 1947

Aphornsuvan,Thanet.(n.d.). *History and Politics of the Muslims in Thailand*, Bangkok:Thammasat University. *Adoption Procedure*.(2007). Retrived February 2009, from <http://www.thaiembassy.com/thailand-adoption-procedure>

A Center for the Coordination of Assistance to Persons Affected by the Unrest in the Deep South. (2011).(Brochure).Pattani

Che Man, W.K.(1990). *Muslims Separatism: The Moros of Southern Philippines and the Malay of Southern Thailand*, New York: Oxford University Press.

Dorloh, Sulaiman.(2006). The Position of Islamic Law in the Four Southern Border Provinces of Thailand, *Journal Shariah*, 14, 6-17.

Economic Social Commission for Asia and the Pacific. (2000). *Youth in Thailand: A Review of the Youth Situation and National Policies and Prorammes*. New York: United Nations.

Interview.(2010). Muhammada Radhi Dera'i, Narathiwat orphanage warden.

Keenapan, N .(2009). Everyday Fears: Children's problem of living in the southern border area of Thailand. Retrived December 2011, from <http://www.unicef.org/info country/Thailand>

Melvin, Neil J.(2007). *Conflict in Southern Thailand: Islamism, Violence and the State in the Patani Insurgency*, Sweden: CM Gruppen, Bromma.

Mudmarn, Seni.(1994). Social Science Research in Thailand: The Case of the Muslim minority”, in Omar Farouk Bajunid(eds), *Muslim Social Science in ASEAN*, Kuala Lumpur: Yayasan Penataran Ilmu.

Saisoonthon, P.K. (2003). Children With Problems of Proving Rights to Thai Nationality, *Thailand Human Rights Journal*, 42(1), 1. *Thousands left orphaned and widowed in south.*(2011). Retrived December 2011, from <http://www.expatform.com>

Zuraida, Fatimah and Wea Song.(B.E.2543). *Academic Report*, Pattani: College of Islamic Studies, Prince of Songkhla University.