



Volume 3: June 2018

CHIANG MAI UNIVERSITY LAW REVIEW

Chiang Mai University, Faculty of Law

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239 Huay Keaw Road, Suthep, Muang, Chiang Mai 50200 Thailand

LAW REVIEW ARTICLE

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Sadayu Suppaya

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Chiang Mai University Law Review

The vision of Chiang Mai University Law Review (CMULR) was designed to improve the quality of legal and social research at Chiang Mai University and in Thailand. CMULR may be the only Thailand Law Review with faculty/peer review of articles and notes, and a collaborative review of the publication process. Potential employers recognize that CMULR student members have learned how to conduct large amounts of legal research, to write a persuasive document to support a legal argument, and have proven editing skills, which shows their commitment to an intellectually demanding activity.

CMULR understands that its members and its readers are well-educated and that a purpose of the CMULR is to attract new and brilliant students to the Faculty of Law by providing them a unique legal education in Thailand which endorses the learning of the law in English, research without plagiarism, and excellent academic writing, all which surpasses other legal educational facilities.

CMULR is committed to initiating and encouraging legal scholarship in Thailand. CMULR provides the opportunity for the students to build connections within the legal community that may lead to important work after graduation. The role and position of Thailand's premier law review was the hope to foster a culture where the publication process is not an end in itself but a stepping stone to other scholarly endeavors.

CMULR is committed to the development of law and society in Thailand and Southeast Asia. Its objective is to promote critical thinking and social progress and to maintain itself as an objective and accurate source of legal information. Law Review membership is a prestigious one and students may strive to become a part of this scholarly organization.

CMULR is now a faculty and student-run legal journal. It focuses on articles, notes and comments relating to Thailand and international comparative law. The publication is distributed online at the Chiang Mai University Faculty of Law website.

In summary, the long term vision is that students would join CMULR if they feel proficient in English, have a desire to improve research and writing skills, footnote accurately, understand uniform citations and prepare a document that the student can be proud of and publish.

A Note from the Faculty Advisor



As Faculty Advisor, I am delighted to introduce Chiang Mai University Law Review (CMULR) Volume 3. It is a vehicle for delivery of timely and thoughtful information and opinion on many areas of law. CMULR is a faculty and student-run legal journal that focuses on articles relating to Thai law which are of interest to the students in the Faculty of Law.

Additionally, our focus this year is team work of student members along with preparing newer members for the next year. More importantly, this Law Review is a stage and an opportunity for people in the legal community to express their vision and contribute to the Thai legal community. Therefore, we welcome all readers to explore these issues.

CMULR looks forward to future submissions from members of the legal community including lawyers, judges, academia, researchers, experts and students. Submissions may be in the form of articles, essays, notes and comments on legal, social, cultural, political, human rights and international relation issues affecting Thailand.

Finally, I would thank Dean of the Faculty of Law, Assistant Professor Dr. Pornchai Wisuttisak who granted us this special opportunity. Also, Assistant Professor Dr. Usanee Aimsiranun, Assistant Dean for Foreign Affairs – ASEAN Legal Studies Unit, for her support and encouragement, and the Advisor Board and Faculty Editors for comments and suggestions to members of this Law Review. Let this Law Review be a path for the next generation members to express their knowledge of the law and solutions for the future.

Thank you,
Susan Billstrom, Faculty Advisor

The Significant Obstacle for Foreign Investment in Thailand

by

*Sadayu Suppaya**

Abstract

Thailand's economy has dropped in the past few years. Economically, Thailand mainly relies on Foreign Direct Investment (FDI); however, it is questionable whether the Foreign Business Act (FBA) as the primary law effectively supports the economic policy. In fact, such laws have not been revised in the past few decades, which are in discord with the current economic digital policy. The laws should be amended to attract more foreign investors to Thailand (e.g. a foreigner is restricted from operating any service business in Thailand unless the foreign business license is obtained). This is a good example of incongruity between the laws and current economy. There are many service businesses in which Thai businesses are ready to compete with foreigners. Why should such business be reserved only for Thais? In order to reform the laws and develop economic growth, it is very important to understand the current situation of Thailand's economy and problem with the laws governing FDI.

Introduction

The laws governing Foreign Direct Investment¹ (hereinafter known as “FDI”) in Thailand has not been revised and changed in the past few decades. Recently, Thailand has launched the new economic growth

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¹ *Foreign Direct Investment*, https://en.wikipedia.org/wiki/Foreign_direct_investment (last visited Mar. 25, 2018).

strategy; however, the Thai law does not effectively support such economic strategy. This context will therefore explain the current problems (e.g., the Thai nominee problems and the incongruity between laws and economic policy, etc.) and how the laws should be amended. As a result of legal reforms and development, the Thailand economy will significantly improve.

According to Thailand's economic strategy, the country heavily relies on FDI as the major source of external financing. Regardless of many laws governing FDI being enacted to promote the economic growth strategy, the gross domestic product (hereinafter known as "GDP") still significantly dropped. In this context, the important aspect to be considered is the laws governing FDI, which is enacted to support the economic policy as well as the impacts caused by the laws and economic strategy.

FDI is an investment in the form of a controlling ownership in a business in one country by an entity based in another country. FDI can make a positive contribution to a host economy by not only supplying capital but also technology transfer, development of capital resources and creation of employment, which contributes to the growth of GDP resulting in Thailand's economy growth. However, according to the UNCTAD World Investment Report 2017:

In South-East Asia FDI inflows dropped by one-fifth to \$101 billion. Flows to Singapore, the leading recipient country in ASEAN, remained sluggish, down by 13 per cent to \$62 billion in 2016. In Indonesia, Malaysia and Thailand, FDI plunged due to significant divestments by foreign multinational enterprises.²

² *Foreign Direct Investment To Developing Asia Fell 15% In 2016, Yet China Became The World's Second-Largest Investor, Says UN Report*, United Nations Conference on Trade and Development (2017) <http://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=412>.

**FDI flows to Thailand declined sharply in 2016 to
USD 1,554 million from USD 5,700 million in 2015**

FDI Flows	2013	2014	2015	2016
FDI Inward Flow (<i>million USD</i>)	8,441	4,809	5,700	1,554
FDI Stock (<i>million USD</i>)	179,292	196,380	183,277	188,651

SOURCE: UNCTAD, World Investment Report 2017:
<http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Country-Fact-Sheets.aspx>

In 2016, Thailand chose to improve the economy by focusing on key infrastructure to increase the connectivity, e.g., develop double-track rail (“inter-city rail network”), improve efficiency of airports, build highway networks, develop ports and improve the transportation in Bangkok. Meanwhile, a new investment promotional policy, the International Headquarters and Trading Center was launched together with the incentives, e.g. income tax exemption for out-out transaction, income tax reduction for domestic transaction from 20% to 10%, and personal Income tax reduction from 35% to 15%.³

In the same year, many business activities were temporarily “slowdown[ed] and postponed during the period of mourning over the passing of King Bhumibol Adulyadej...[furthermore]...Thailand faces headwinds from uncertain economic prospects in the euro market following Brexit and U.S. elections”.⁴ Considering these aspects, it was not surprising that the Thailand economy in 2016 dropped significantly.

³ Kobsak Pootrakool, *Current Economic Situation in Thailand and 2016 Projection 7* <http://www.eabc-thailand.eu/uploads/files/Presentation%20of%20Dr%20Kobsak.pdf> (last visited Feb. 14, 2018). An out-out transaction is sales income from international trade business to its overseas customers when goods are delivered outside Thailand.

⁴ *Thailand Economic Monitor – December 2016: Services as a New Driver of Growth*, The World Bank, <http://www.worldbank.org/en/country/thailand/publication/thailand-economic-monitor-december-2016> (last visited Dec. 7, 2017).

However, recently, Thailand aimed to boost economic growth by launching “Thailand 4.0” as the new direction of the country, to be conducted along with economic reform, in accordance with the 20-year national strategy. In other words, “Thailand 4.0” is a new economic model to develop Thailand into a valued-based economy. The new model will change the country’s traditional farming to smart farming, traditional SMEs to smart enterprises, and traditional services to high-value services.⁵ Thus, the Board of Investment (hereinafter known as “BOI”) has promoted creativity, innovation and technology in various economic activities as well as prioritized R&D and human resources in order to support the new economic policy. Despite the fact that Thailand’s economic policy was launched to drive economic growth, do the laws governing FDI support the economic policy and how should the laws be reformed and amended?

The important laws governing a foreign company in Thailand established under the Foreign Business Act B.E. 2542 (1999) (hereinafter known as “FBA”)

There are many respective laws and regulation governing FDI; however, FBA contains the most important laws governing FDI in Thailand, which reserves certain business activities for Thai nationals, and limits the ability of foreigners to engage in those activities.

In the FBA, a “foreigner” is defined as follows:

- (1) a natural person who does not have Thai nationality;
- (2) a juristic person (including a company) that is not registered in Thailand;
- (3) a juristic person (including a company) registered in Thailand that possesses the following characteristics:
 - (a) a juristic person with fifty per cent or more of its capital held by persons under (1) or (2), or with one- half or more of its capital invested by persons under (1) or (2);
 - (b) a limited partnership or a registered ordinary partnership whose managing partner or manager is a person under (1).

⁵ *Thailand 4.0 means Opportunity Thailand*, vol. 27 no. 1 (Jan. 2017) Thailand Investment Review, http://www.boi.go.th/Upload/Content/TIR_Jan_32824.Pdf (last visited Dec. 7, 2017).

(c) a juristic person registered in Thailand with one-half or more of its capital held by persons under (1), (2) or (3) who invest in at least one-half of the total capital of such a juristic person.⁶

The FBA prescribes the categories of restricted businesses into three lists:

List 1 covers businesses which are strictly prohibited for non-Thais, and includes, among other things, newspapers, radio broadcasting, operating a television station, rice farming, and land trading.

List 2 stipulates businesses concerning national security or safety that could have an adverse effect on art and culture, customs, or native manufacture/ handicrafts, or with an impact on natural resources and the environment, which covers businesses that are prohibited for non-Thais, unless they receive permission to operate from the Minister of Commerce with the approval of the Cabinet. Businesses included in List 2 involve, among other things, national security, the arts, and the exploitation of natural resources, such as mining.

List 3 sets out businesses in which Thais are not ready to compete in undertakings with foreigners, which cover businesses that are prohibited to non-Thais, unless permission is granted by the Director-General of the Department of Business Development with the approval of the Foreign Business Board. Restricted businesses under List 3 include, among other things, the provision of professional services, operating restaurants, and wholesale and retail where minimum capital thresholds have not been met.⁷

⁶ พระราชบัญญัติการประกอบธุรกิจของคนต่างด้าว พ.ศ. ๒๕๔๒, (มาตรา ๔) Foreign Business Act, sec. 4 (TH 1999).

⁷ Tilleke & Gibbins, *Jurisdictional Comparisons 2016*, http://www.tilleke.com/sites/default/files/2017_Feb_Foreign_Direct_Investment_Thailand.pdf (last visited Mar. 25, 2018).

In 2013, the Ministry of Commerce issued a Ministerial Regulation removing certain categories of business activities that were under the scope of the FBA. Under the Ministerial Regulation, foreign individuals and companies will no longer need a FBA license to conduct certain service businesses in Thailand that were regulated under List Three of the FBA, including securities dealing, investment advisory services, securities underwriting, securities borrowing and lending and related business activities under the Securities and Exchange Act, trustee business under the Trust for Transactions in Capital Market Act, derivatives dealer, derivatives advisor and derivatives capital manager according to the Derivatives Act.⁸

As stated in the above definition, if Thai nationals hold the majority of the company's shares, it shall be considered as a Thai limited company; therefore, it is not subject to the FBA. A foreigner can legally own 49% shares of the company in order to operate any business. On the other hand, any company with a majority of foreign shareholders is required to obtain a Foreign Business License (hereinafter known as a "FBL") if it engages in a restricted business under FBA. However, there are some exemptions allowing a foreigner to register the company with majority of foreign shareholders, e.g., U.S. nationals can establish a foreign-owned company under the Thailand-United States Treaty of Amity. Moreover, if the Thailand government desires to promote any specific projects, the Thailand BOI may allow foreigners to operate their business under the Investment Promotion Act. In such case, such foreigner-owned company is not restricted under FBA.⁹

Why is FBA considered as the barrier for FDI in Thailand?

⁸ Alessandro Stasi and Tan Weng Chiang David, *Protectionism Past, Present and Future: Addressing the Legal Issues of Foreign Investment Treatment in Thailand*, 178 (2017) <https://www.tci-thaijo.org/index.php/lawnujournal/article/view/106356/84204>.

⁹ Siam Legal International, *Foreign Business License*, <https://www.siam-legal.com/Business-in-Thailand/Thailand-Foreign-Business-Act-FBA.php> (last visited Mar. 25, 2018).

1. The incongruity between FBA and economic policy

(a) FBA stipulated the List 3 of restricted businesses (Thais are not ready to compete in undertakings with foreigners) are too broad. In List 3 (21) of FBA, a foreigner cannot operate other service businesses, unless a FBL is obtained, which means that any service activities operated by a foreigner is required to obtain the FBL prior to operating the business. However, the law implicitly allows a foreigner to engage manufacturing export without a FBL. Economically, FBA tends to support the FDI in manufacturing sector but not service sectors. And yet, Thailand's economic structure mainly relies on not only manufacturing but also on service.

Pursuant to the report for Gross Domestic Product (Q3/2017) provided by Office of the National Economic and Social Development Board, stated that most of service sectors recently slowed down covering hotels and restaurants; transports and communications; financial service; real estate and renting; health service; and other community service.¹⁰ Therefore, FBA as the important law governing FDI needs to be reformed to comply with the recent economic policy.

(b) Besides, the essential content of FBA (list 3) has not been revised for the past 40 years¹¹ even though the list of restricted businesses shall be reviewed according to Section 9 of FBA:

Any amendment or revision of categories of businesses in the Lists annexed hereto shall be by a Royal Decree, save for the businesses in List One or in List Two, Chapter 1, where such amendment or revision shall be by an Act.

¹⁰ *Gross Domestic Product: Q3/2017* 1, Office of the National Economic and Social Development Board, http://www.nesdb.go.th/nesdb_en/article_attach/article_file_20171120103304.pdf.

¹¹ ผู้จัดทำและวิวัฒนาการของพ.ร.บ.ประกอบธุรกิจคนต่างด้าว ก่อนแก้ต้องระวัง!, *The origin and evolution of the Foreign Business Act. First, be careful!*, iLaw, <https://ilaw.or.th/node/3369>, (last visited Feb. 14, 2018).

The Commission shall consider and review categories of businesses in the Lists annexed hereto at least once every duration of one year as from the date of the entry into force of this Act and shall prepare an opinion for submission to the Minister.¹²

2. The difficulty of the FBL Application

Compared to Singapore as the world's second-easiest country in which to do business, a foreigner can set up the entity, the application is usually processed within 15 minutes after the name application fee is paid.¹³ In Thailand, if foreigners apply for a FBL application, they may experience the difficulty in applying for the license as the application process may be very time consuming. The process commences with filing the application to the Commercial Registration Department, which would then be reviewed by the Cabinet or Foreign Business Committee. Such committee will consider the application, in which several criteria being used to consider the impact of the proposed business operation according to FBA:

In permitting the foreigners to operate the businesses under this Act, the advantages and disadvantages to the nation's safety and security, economic and social development, public order or good moral, art, culture and tradition of the country, natural resource conservation, energy and environment, consumer protection, size of the enterprises, employment, technology transfer, and research and development shall be taken into account.¹⁴

¹² พระราชบัญญัติการประกอบธุรกิจของคนต่างด้าว พ.ศ. ๒๕๔๒, (มาตรา ๙) Foreign Business Act, B.E. sec. 9 (TH 1999).

¹³ *Registering a Foreign Company*, ACRA, <https://www.acra.gov.sg/components/wireframes/howToGuidesSummary.aspx?pageid=1048> (last visited Feb. 12, 2018).

¹⁴ FBA, *supra* note 13, sec. 5.

Approval of business license application is more likely when the authorities view the business as providing significantly more benefits, meanwhile protecting and promoting Thai interests. For example, the application stating the technology transfer plan to Thai people, increasing employment and supporting the local supply chain has a high chance of approval. However, the result is unpredictable and the rejections are commonplace.

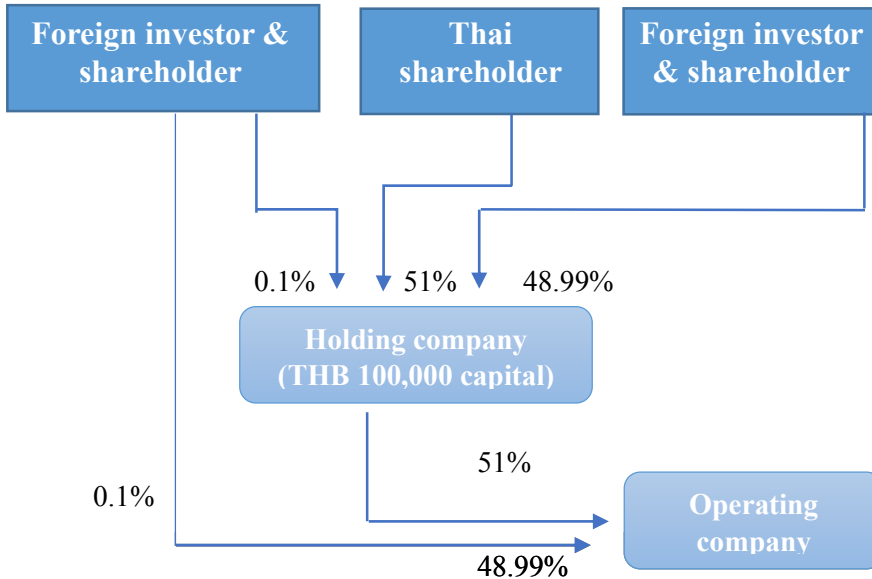
3. The increasing of Thai nominee shareholder

As per the abovementioned reasons, most foreign investors will seldom go through a FBL application process even if the application has a high chance of approval. Instead, they may choose to set up a company by engaging a Thai nominee shareholder to hold 51% shares in the company on their behalf. According to Thai laws, a foreigner is defined as a juristic person registered under Thai laws with fifty per cent or more of its capital held by a foreigner, which means the number of more than 50% shares owned by Thai nationals is considered as Thai juristic person. Neither voting rights nor dividend rights are considered.

In practice, a foreigner holds the lower number of the shares, but such shares have the superior right attached. For example, the company is setup with two classes of shares, i.e. ordinary shares and preference shares; each of them conferring different rights to shareholder: foreign investors hold 49% shares (called ordinary shares: 1 vote per each share), and a Thai citizen holds 51% shares (called preference shares: 1 vote per each four shares).

Optionally, foreign investors may choose to establish a company with a holding structure in order to give greater flexibility in controlling the company. For instance, a foreigner investor will initially register the first company, the so called 'holding company', which will have the majority voting rights over the company. After that, the holding company will subscribe the shares in the second company, the so called 'operating

company'. By default, foreign investors have full control over the company. For a better understanding, see the diagram below:



However, “the law makers have made several attempts to modify FDI” in order to “close the loophole which allows foreign investors to use preference share schemes in order to gain control of Thai companies despite not having the majority shareholding”. “More precisely, Section 3 of the 2014 draft aimed to modify the definition of “foreigner” in Section 4 of FBA in order to include any justice person having “...more than half of the voting powers controlled, held or exercised by a foreign natural person or juristic person whether in application of the law, or of the Articles of Association of said juristic person or through an agreement.”¹⁵

The amendment of definition would make a crucial impact on FBA and exiting company. The Thai company which foreigners hold the voting rights engaging the business under List 2 and 3 of the FBA shall be considered as foreign companies, and they are required to obtain the FBA.

¹⁵ Stasi and Tan, *supra* note 8 at 187.

Without careful study and review of its impact, it may affect the number of FDI in Thailand.

Example of Thai nominee case in Thailand

Given the information by Department of Business Development (hereinafter known as “DBD”) in 2016, approximately 17,000 companies which operated the business pertaining tourism, land trade and agriculture in the tourist city (e.g. Phuket, Krabi, Chonburi, Trad, Chiang Mai, Chiang Rai) were investigated as the companies, which Thai nominee shareholders held the shares on behalf of foreign investors.¹⁶ Chiang Mai can be a case study for ‘nominee case’ as the city is a famous tourist destination, and many companies are associated with foreign investors. Based on the database of DBD, Chinese investors hold the more than 50% shares of the total investment, which is greater than 580,000,000 THB.¹⁷ In such case, Chinese investors take advantage of engaging in the businesses related to the construction of commercial and residential buildings, tourism, etc.

In this interview between a Thai PBS reporter and a Thai shareholder, it was mentioned that the Thai shareholder held more than ten thousand shares, equaling to approximately ten million baht, since 2011. However, the invested funds were suspicious as the Thai shareholder mentioned that he had been working as a construction worker.¹⁸ Recently, the Thai government has been stricter in investigating many Thai companies with the minority of foreigners engaging in the activities reserved for Thai citizen only (e.g., tourism activities, agriculture, farming, etc.) In many companies it was found that Thai nationals are the nominee. Consequently, the DBD therefore ordered the company dissolution and later reported the criminal charges for the Thai shareholders to the inquiry official.

¹⁶ สุ่มตรวจนอมินี 17,000, *The Investigation of 17,000 Thai Nominees*, Thai Post (Feb. 1, 2017), <http://www.ryt9.com/s/tpd/2593802>.

¹⁷ นอมินี คนสำคัญของเชียงใหม่, *Naomi, A Major Chinese Business in Chiang Mai*, Thai PBS (June 7, 2559) <https://news.thaipbs.or.th/content/252907>.

¹⁸ *Id.*

Solutions

1. In order to attract foreigners to invest more in Thailand, the FBA should allow foreign investors to operate any business, which Thai nationals are able to compete with foreigners. Therefore, the FBA should be amended, and such procedures are as follows:

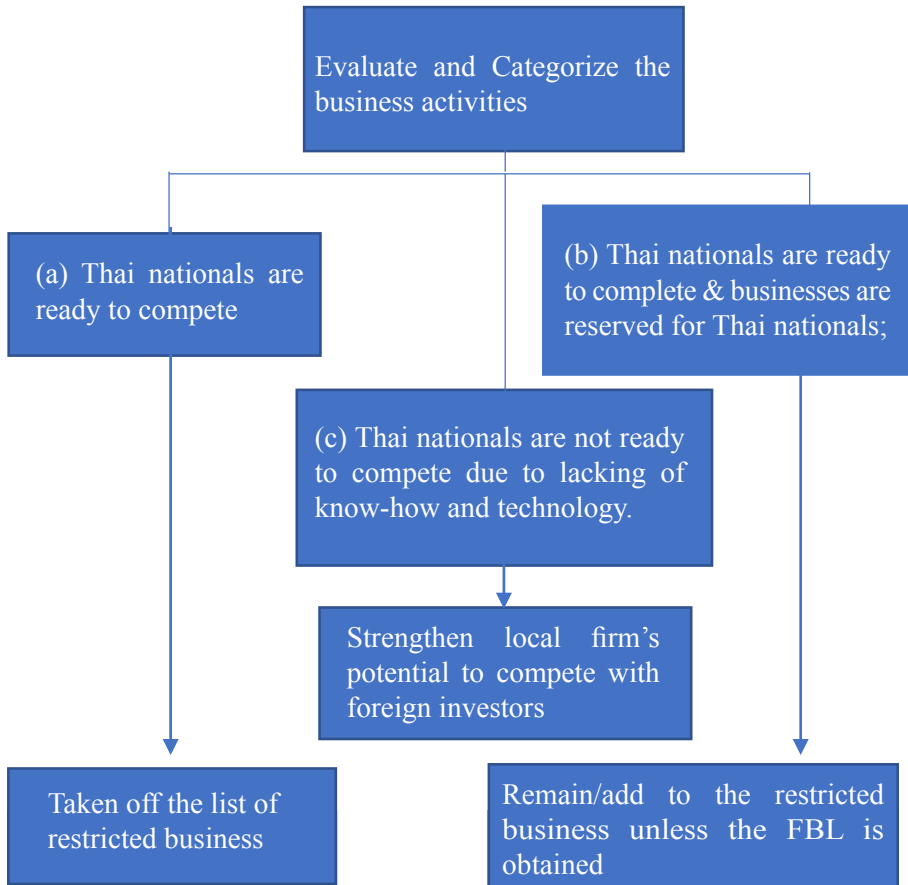
Firstly, the local authorities need to evaluate and categorize the following business activities:

- (a) Any business, which Thai nationals are ready to compete in undertakings with foreigners;
- (b) Any business, which Thai nationals are ready to compete in undertakings with foreigners; however, such business should be reserved for Thai nationals;
- (c) Any business, which Thai nationals are not ready to compete in undertakings with foreigners due to lacking of know-how and technology.

Secondly, the authorities should conduct a survey and ask the private sector's opinion pertaining to the impacts on local competitiveness. If such businesses in which the local firms are not able to compete with foreigners, the authority that is specialized in the specific area will strengthen the local firm's potential to compete with foreigners, e.g., apply know-how and technology from the more technologically developed firms (multinationals corporations) to the local firms,¹⁹ and provide the business strategy and training for local firms through the introduction of new methods and services and management practices as the improvement of labor force. After that, the authority will reevaluate the business under the FBA, and

¹⁹ Rui Moura and Rosa Forte, *The Effects of Foreign Direct Investment on the Host Country Economic Growth-theory and Empirical Evidence* (Jul. 2009), https://www.fep.up.pt/investigacao/workingpapers/10.11.02_wp390.pdf (last visited Feb. 14, 2018).

only businesses which Thai nationals are ready to compete in undertakings with foreigners will be taken off the list of restricted business.



Thirdly, the board and ambiguous restricted business - list 3 (21) “Other service businesses...” needs to be taken off the lists, which means the FBA stating clearly which exact service activities are required to obtain a FBL.

Finally, upon the amendment of laws, the authority must strictly enforce the laws. If a foreigner is involved with the business restricted for Thai nationals, the authority must investigate the company, including all Thai shareholders.

Same-sex Marital Rights in Thailand

by

*Virach Thongkliangket**

Abstract

Same-sex marriage has been widely debated in many countries for too long a time. Same-sex marriage is one of the most controversial problems in modern time because people have started to realize that they are entitled equally to basic human rights, which provides equal rights to all of humanity, including the right to marry. Thus, homosexuals are demanding the right to have same-sex marriage. Many countries, mostly in Europe, including Germany, have legalized same-sex marriage. On the other hand, Taiwan may be the only country in Asia, which legalized same-sex marriage. Taiwan once was a dictatorship country, the same as Thailand is today and Thailand may utilize the Taiwanese model. Homosexuality has been accepted by many countries and now is the time for same-sex marriage to also be accepted by all countries. Therefore, the purpose of this essay is to show the problems in Thailand regarding same-sex marriage and the reasons why Thailand must legalize same-sex marriage even though it presently has a dictatorship government.

Introduction

Same-sex marriage is the marriage between two people of the same-sex.¹ In the past, marriage has been recognized as the cohabitation between man and woman, however, there are many people who are “homosexual” and who are sexually attracted to people of the same-sex and not people of

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¹ *Same-sex marriage*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/same-sex-marriage> (last visited on Apr. 4, 2017).

the opposite sex.² In most cultures across the world, same-sex marriage was forbidden and homosexuality has been discriminated against by society.³ Today, the world has changed. Many couples have come out and expressed their sexual choices. Although many people are against the legalization of same-sex marriage, same-sex marriage should be legalized based upon the inherent human right to determine one's own sexual preferences.

In 2018, there are 197 independent states in the world, including fully recognized 193 members of the United Nations, including 2 states: Vatican City and Palestine, have the status of permanent observers in the UN. Another 2 states are Kosovo (recognized by 111 UN members) and Taiwan (recognized by 22 countries).⁴ There are presently 26 countries which have legalized same-sex marriage.⁵ In contrast, there are 72 countries in which same-sex marriage is still criminalized. Meanwhile, in the other 97 countries same-sex sexual acts were decriminalized or never penalized.⁶

LGBT stands for Lesbian, Gay, Bisexual and Transgender.⁷ There is also another abbreviation QIA which is shorthand for the people who are Queer, Intersex, and Asexual.⁸ All of these people have untied for their basic and equal human rights under the law. Thailand is one of UN members and has signed the UDHR in 1948 and which Thailand adopted to be implemented in the country. Therefore, all laws in Thailand should reflect their affirmation of equal rights for all of its citizens.

² *Homosexual*, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/homosexual> (last visited on Apr. 4, 2018).

³ Claire Felter and Danielle Renwick, *Same-Sex Marriage: Global Comparisons*, Council on Foreign Relations (Dec. 8, 2017), <https://www.cfr.org/backgrounders/same-sex-marriage-global-comparisons>.

⁴ Countries-of-the-World.com, *List of countries of the world*, <https://www.countries-of-the-world.com/all-countries.html> (last visited on Apr. 5, 2018).

⁵ Grace Donnelly and Alex Scimecca, *The 26 Countries That Have Legalized Same-Sex Marriage – And Photos of the Celebrations*, Fortune (Dec. 7, 2017), <http://fortune.com/2017/12/07/countries-that-legalized-same-sex-marriage/>.

⁶ ILGA, *Map Sexual Orientation Laws*, <https://ilga.org/maps-sexual-orientation-laws> (last visited on Apr. 5, 2018).

⁷ American Psychological Association, *Lesbian, gay, bisexual, transgender*, [http://www.apa.org/topics/LGBT and QIA/index.aspx](http://www.apa.org/topics/LGBT%20and%20QIA/index.aspx) (last visited on Apr. 5, 2018).

⁸ Lily Edelstein, *LGBT and QIA glossary: Common gender and sexuality terms explained*, ABC News (Apr. 7, 2016), <http://www.abc.net.au/news/2016-04-07/sexuality-gender-glossary-definitions/7287572>.

Although, Thailand does not allow same-sex marriage because Thailand has not enacted written laws in the constitution or statute to support same-sex marriage, the Thai people may engage in same-sex sexual activity and also have sex reassignment surgery even there are no written supporting laws.⁹ Moreover, Thailand is 94.6% Buddhist¹⁰ and Buddhist do not have specific religious laws which teachings to forbid homosexual transsexuals or same-sex marriage.¹¹

Thailand is now governed by a military dictatorship which does not have the democratic processes which can be lengthy. Therefore, this government may enact new laws or legalize same-sex marriage easily without permission from parliament. In contrast, a democratic country faces the necessity to enact a bill, discuss in the senate and house of representative and vote in order to enact legislation. In the past, when Thailand was a democracy, Thailand discussed legalizing same-sex marriage and made a proposal to the government to consider such a law, but unfortunately it was discontinued because coup d'état in 2014.¹² Today, if Thailand legalized same-sex marriage, Thailand would be the first dictatorship country that legalizes same-sex marriage. The government has announced that Thailand will have an election before February 2019¹³ and once again this issue may be discussed in a democracy.

In conclusion, the main purpose of this essay is to show the historical, ethical, religious and legal situation in Thailand regarding same-sex

⁹ ข้อบังคับแพทยสภาว่าด้วยการรักษาจริยธรรมแห่งวิชาชีพเวชกรรม เรื่อง เกณฑ์การรักษาเพื่อแปลงเพศ พ.ศ. ๒๕๕๒, Regulation of the Medical Council Concerning Ethics in the Medical Profession Rules for Treatment in Sex Change Operations 2552 B.E. (2009), <http://www.thailawforum.com/sex-change-operations-law.html>.

¹⁰ The World Factbook, *East & Southeast Asia :: Thailand*, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html> (last visited on Apr. 7, 2018).

¹¹ Prayuth Chokrungrvaranont, *The Development of Sex Reassignment Surgery in Thailand: A Social Perspective* (Mar. 19, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3977439/>.

¹² Saksith Saiyasombut, *The state of LGBT and QIAI in Thailand: Tolerated but still not quite accepted* (May 17, 2015), <https://asiancorrespondent.com/2015/05/the-state-of-lgbt-in-thailand-tolerated-but-still-not-quite-accepted-2/#KpxAwI8rSCiUBoqP.97>.

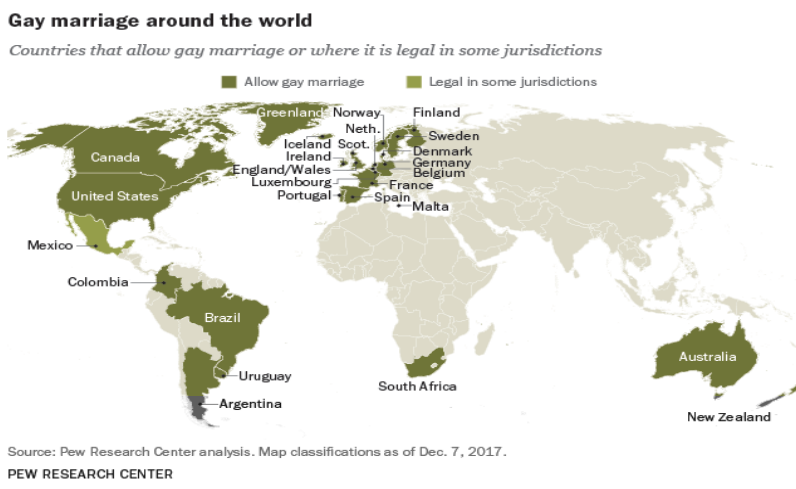
¹³ Pracha Hariraksapitak, *Thai PM now says election to be held no later than Feb 2019*, Reuters (Feb. 27, 2018), <https://www.reuters.com/article/us-thailand-politics/thai-pm-now-says-election-to-be-held-no-later-than-feb-2019-idUSKCN1GB00S>.

marriage and to present the problems in Thailand and why Thailand should legalize same-sex marriage through comparisons with other countries which have similar conditions as Thailand, such as, Taiwan or Germany with the purpose to find solutions in this case.

Countries in which Same-sex Marriage is Illegal and Legal

According to The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) map in May 2017,¹⁴ there were 197 independent states in the world¹⁵ and same-sex relations remain illegal in 72 countries and punishable by death in eight.¹⁶ In some countries, individuals may perform sexual activities without being allowed to marry, such as, Turkey, Austria, Romania, Vietnam, etc.¹⁷ In the other 97 countries, same-sex sexual acts were decriminalized or never penalized.¹⁸

Countries where same-sex marriage is legal in Dec. 2017



Source: Pew Research Center

¹⁴ ILGA, *Sexual Orientation Laws in The World – Overview*, https://ilga.org/downloads/2017/ILGA_WorldMap_ENGLISH_Overview_2017.pdf (last visited on Apr. 11, 2018).

¹⁵ Countries-of-the-World, *supra* note 4.

¹⁶ Pamela Duncan, *Gay relationships are still criminalized in 72 countries*, The Guardian (July 27, 2017), <https://www.theguardian.com/world/2017/jul/27/gay-relationships-still-criminalised-countries-report>.

¹⁷ ILGA, *supra* note 14.

¹⁸ *Id.*

Through the end of the nineteenth, many Western societies accepted the relationship between same-sex people as a romantic and loving relationship and understand the value of equal rights for all people,¹⁹ which lead to the first legalization of same-sex marriage in Netherlands.²⁰ At present, there are 26 countries in which same-sex marriage is legal, such as, the United States of America, Canada, South Africa, Sweden, Colombia, France, Germany, Spain, etc. The first country which legalized same-sex marriage was the Netherlands in 2001 and the latest country which legalized same-sex marriage is Australia, which their parliament voted on in an open referendum to legalize same-sex marriage on December 7, 2017.²¹

Same-sex Marriage in Thailand

In 2015, according to Nida Poll, more than half of Thai people support same-sex marriage to be legalized.²² However, LGBT and QIA individuals in Thailand cannot marry each other because Thai law currently does not recognize same-sex marriages. Despite the fact that Thailand does not allow homosexuals to marry each other, LGBT and QIA does have legal protection from discrimination.²³

From Thailand's religious point of view, as 94.6% of the population in Thailand is Buddhist²⁴ and in Buddhism there is no general consensus with regard to sexual orientation, it is not considered irreligious. Moreover, Buddhism in Thailand reflects that the marriage rights for a same-sex couple is a personal rather than religious right because the goal of

¹⁹ Alex G, *A Short History of Homosexuality*, Queer Grace, <http://queergrace.com/history/> (last visited on Apr. 5, 2018).

²⁰ Government of the Netherlands, *Same-sex marriage*, <https://www.government.nl/topics/family-law/same-sex-marriage> (last visited on Apr. 5, 2018).

²¹ Paul Karp, *Marriage equality law passes Australia's parliament in landslide vote*, The Guardian (Dec. 7, 2017), <https://www.theguardian.com/australia-news/2017/dec/07/marriage-equality-law-passes-australias-parliament-in-landslide-vote>.

²² NIDA, *Nida Poll: Most Thais agree with same-sex marriage*, Thai PBS (July 5, 2015), <http://englishnews.thaipbs.or.th/nida-poll-most-thais-agree-with-same-sex-marriage/>.

²³ พระราชบัญญัติความเท่าเทียมระหว่างเพศ พ.ศ.๒๕๕๘ มาตรา ๑๗, Thailand Gender Equality Act, sec. 17 (TH 2015), <http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/A/018/17.PDF>.

²⁴ The World Factbook, *supra* note 10.

Buddhism is to achieve enlightenment and encourage personal responsibility.²⁵

Comparison with other Countries which are similar to Thailand

Taiwan

Undeniably, Taiwan is one of the most successful states in Asia because of their economic and political development.²⁶ Taiwan and Thailand are both located in Asia²⁷ and Taiwan was ruled by a dictatorship government before as same as Thailand.²⁸ In the past, Taiwan was ruled by the Kuomintang, which was once a political party in China and their people wanted democratic country. Thus, the Taiwanese people fought for their government to change into democracy and they won in the end.²⁹ At the present, Taiwan is a democratic country ruled by the presidential system.³⁰ Although, Taiwan has not been accepted by many countries³¹ because China insists that a nation cannot have official relations with both China and Taiwan. Therefore, Taiwan has formal diplomatic ties with only few countries due to the fact that many countries do not want to have problems with China.³² Moreover, Taiwan is in the process to legalize same-sex marriage, which is predicted to be ratified before 2019.³³ The main reason why Taiwan has legalized same-sex marriage is because their people want to have equality in gender choice and to have laws which support

²⁵ Human Rights Campaign, *Stances of Faiths on LGBT and QIAQ Issues: Buddhism*, <https://www.hrc.org/resources/stances-of-faiths-on-LGBT-and-QIA-issues-buddhism> (last visited on Jan. 23, 2018).

²⁶ Daniel Runde, *Taiwan Is a Model of Freedom and Prosperity*, *Forbes* (May 26, 2015), <https://www.forbes.com/sites/danielrunde/2015/05/26/taiwan-development-model-freedom-prosperity/#7077e10b670c>.

²⁷ Countries-of-the-World.com, *List of countries in Asia*, <https://www.countries-ofthe-world.com/countries-of-asia.html> (last visited on Apr. 5, 2018).

²⁸ John C. Copper, *Taiwan Self-Governing Island, Asia*, *Encyclopaedia Britannica* (Apr. 15, 2018), <https://www.britannica.com/place/Taiwan/Introduction>.

²⁹ Yang Hengjun, *Taiwan's Transition: From Concentration Camps to Democracy*, *The Diplomat* (Aug. 6, 2015), <https://thediplomat.com/2015/08/taiwans-transition-from-concentration-camps-to-democracy/>.

³⁰ Copper, *supra* note 28.

³¹ Matt Rosenberg, *Is Taiwan a Country*, *ThoughtCo.* (Jan. 25, 2018), <https://www.thoughtco.com/is-taiwan-a-country-1435437>.

³² BBC Monitoring, *Taiwan country profile*, *BBC News* (Jan. 9, 2018), <http://www.bbc.com/news/world-asia-16164639>.

³³ David Green, *Ahead of Pride, Taiwan Still Waits for Same-sex Marriage*, *TheNewsLens* (Oct. 27, 2017), <https://international.thenewslens.com/article/82066>.

homosexuality. Therefore, Taiwan's highest court ruled that marriage should not be restricted to a man and woman and also ruled that the current law has to be amended or pass new legislation to legalize same-sex marriage within two years.³⁴

Germany

Germany is one of the latest countries which has legalized same-sex marriage. Both Thailand and Germany use the civil law system. Therefore, Thailand is similar to Germany in the legal system which codified its laws to use in the legal process and court decisions must interpret only the code. The main reason why Germany has legalized same-sex marriage is because same-sex partners do not have the same rights which married couples enjoy, for instance, same-sex couples cannot file joint tax returns or own land jointly as spouses and they also want the laws which support LGBT and QIA status for the same reasons as Taiwan.³⁵

In 2018, there are 49 dictatorship countries in the world: 21 in Africa, 18 in Asia, 7 in the Middle East, 1 in Europe and 2 in the Americas, including Thailand³⁶ however, none of the dictatorship countries have legalized same-sex marriage. Although, dictatorial government is able to make changes in their country, such as, enacting new laws more quickly than democratic countries because all of the government power is given to one individual or one party. Democratic governments must vet new bills, have discussions and there must be votes to change legislation in their countries. Often time law making and law enforcement in dictatorship government become brutal and violent.³⁷ However, if comparing Thailand to other dictatorship countries, Thailand's government now in 2018 is a dictatorship, though the government has given many privileges for LGBT

³⁴ Ruby Mellen, *Taiwan's High Court Rules in Favor of Same-Sex Marriage*, Foreign Policy (May 24, 2017), <http://foreignpolicy.com/2017/05/24/taiwans-high-court-rules-in-favor-of-same-sex-marriage/>.

³⁵ Andrea Woelke, *At long last, Germany's bells are ringing for same-sex marriage*, The Guardian (June 30, 2017), <https://www.theguardian.com/commentisfree/2017/jun/30/same-sex-marriage-bill-passed-germany-equal-family-rights>.

³⁶ PlanetRulers, *Current World Dictator*, <https://planetrulers.com/current-dictators/> (last visited on Nov. 21, 2017).

³⁷ Jessica Heichel, *Democracy Vs. Dictatorship: Political Opposites*, Udemy (May 29, 2014), <https://blog.udemy.com/democracy-vs-dictatorship/>.

and QIA in the country, including allowing people to have same-sex sexual activities and enacting rights to protect LGBT and QIA from discrimination.³⁸

The Legal Basis for Problems in Thailand’s Family Law

According to the Civil and Commercial Code of Thailand, Book V, Category Family Law, Section 1448:

A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having an appropriate reason, allow them to marry before attaining such age.³⁹

Therefore, Section 1448 has specified that people who can marry must be man and woman only. This section mentioned only the word “man and woman” and did not imply marriage between the same-sex. Thailand does not allow the same gender to marry each other yet.

Right to Freedom of Gender Equality in Thailand and the Constitution of the Kingdom of Thailand 2017

Even though Thailand’s Constitution includes and ratifies numerous human rights resolutions and conventions which prohibit discrimination as per Section 27, specific laws that refer to sexual orientation and gender identity do not exist.

Chapter 3, Section 27, paragraphs 1 to 4:

All persons are equal before the law, and shall have rights and liberties and be protected equally under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability,

³⁸ Gender Equality Act, *supra* note 23, sec 17.

³⁹ ประมวลกฎหมายแพ่งและพาณิชย์ พ.ศ.๒๕๖๘, มาตรา ๑๔๔๘, Civil and Commercial Code, sec. 1448 (TH 1925), <http://beta.thailawonline.com/images/thaicivilcode/book%205%20title%201-3%20thai%20civil%20and%20commercial%20code%20.pdf> (last visited on Nov. 17, 2017).

physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution or on any other grounds, shall not be permitted.

Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise their rights or liberties on the same basis as other persons or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three.⁴⁰

Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Right (UDHR) is a document in the history of human rights which Thailand adopted in 1948. The UDHR is a regulation to oppose discrimination, racism, and oppression of peoples in the world.⁴¹ However, there is controversy in the interpretation of Article 16 of the Universal Declaration of Human Rights which provides that:

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.⁴²

⁴⁰ รัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช ๒๕๖๐ มาตรา ๒๗, Constitution, sec. 27, (TH 2017), <http://www.krisdika.go.th/wps/wcm/connect/d230f08040ee034ca306af7292cbe309/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+%28B.E.+2560+%282017%29%29.pdf?MOD=AJPERES&CACHEID=d230f08040ee034ca306af7292cbe309> (last visited on Nov. 17, 2017).

⁴¹ Thomas Buergethal, *International Human Rights in a Nutshell*, (London: Oxford University Press 2nd ed. 1995) p.29-30 (last visited on Nov. 22, 2017).

⁴² Universal Declaration of Human Rights, art. 16 (1948), http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (last visited on Nov. 21, 2017).

Analysis between the Thai Constitution and UDHR

Thai Constitution ratified human rights resolutions and conventions provide the basis to treat LGBT and QIA citizens with the same rights as other Thai citizens and all citizens are entitled to receive protection from the State and must not be discriminated against for any reason. For instance, citizens must not be discriminated on the basis of gender, age, disabilities, race, birthplace, and religion. The Constitution stated, “which not contrary to the provisions of the Constitution or on any other grounds”. In other words, Thai citizen cannot have the rights if there are any regulations which conflict with the constitution and now Thailand has the regulation in Family Law which not allowed same-sex marriage.⁴³

Nevertheless, the UDHR Article 16 is not particularly the same as Thailand’s Family Law which is mentioned above. Although, there is nothing directly stated in UDHR to support same-sex marriage, it stated man and woman can have equal rights to marry. The interpretation of this Article probably means all men and women have equality in marriage. The Declaration does not explicitly advocate same-sex marriages. It implied all humans have the same rights regardless of their gender, age, disabilities, race, birthplace, and religion.⁴⁴

Solutions

The legalization of same-sex marriage in Thailand cannot be possible unless the society recognizes all homosexuality as equal. Homosexuality, including all LGBT and QIA groups and their supporters in Thailand should band together with the purpose to encourage society regarding homosexuality’s basic and equal human rights situation. In the past, in Thailand there was an NGO group called “Sexual Diversity Network” which had collaborated with the National Human Rights Commission with the purpose to legalize same-sex marriage. After their demanding efforts,

⁴³ Valentin Declercq, *Gay Marriage in Thailand*, G.A.M. Legal Alliance, <http://gam-legalalliance.com/services/family-law/gay-marriage-in-thailand/> (last visited on Apr. 12, 2018).

⁴⁴ Saikon Justin, *The Conflict of Interest From Provision of Article 16 of The Universal Declaration of Human Rights And Advocacy of The Gay Marriages*, http://www.academia.edu/4758586/THE_CONFLICT_OF_INTEREST_FROM_PROVISION_OF_ARTICLE_16_OF_THE_UNIVERSAL_DECLARATION_OF_HUMAN_RIGHTS_AND_ADVOCACY_OF_THE_GAY_MARRIAGES (last visited on Apr. 11, 2018).

they sent the proposal to draft legislation to the parliament. Unfortunately, it was rejected because during that time, Thailand's government was unstable.⁴⁵

However, in the near future Thailand may have an election for the new government, which will be governed by government from the election.⁴⁶ The following solutions should be implemented:

- The LGBT and QIA groups should resume their commitment and submit the proposal to request the government to amend the Family Law Section 1448 again based upon Section 133 of the Thai Constitution which states that ten thousand who have right to vote in Thailand can propose a bill to the house of representatives to amend or create a new law.⁴⁷
- Furthermore, a bill from the proponents should include legal reforms to recognize LGBT and QIA identity and provide necessary information to oppose discrimination to ensure that LGBT and QIA citizens will be protected by law.
- It is necessary to make certain that homosexual citizens will have equal rights as other citizens in the future.
- Thailand is a dictatorship which can make changes more quickly and easier than when Thailand was a democracy, based upon the following:
 1. Because the government can enact legislation without votes from parliament or public opinion
 2. If the government enacts the law to legalize same-sex marriage it could be effective immediately.
- Furthermore, Thailand may follow the blueprints of countries which use the same legal system, such as, Germany and the reason German people needs same-sex marriage because they do not have equal rights to other citizens can have.

⁴⁵ Staff writers, *Commission for Marriage Rights*, Starobserver (Sep. 13, 2011), <http://www.starobserver.com.au/news/thailand-commission-for-marriage-rights/61366>.

⁴⁶ Hariraksapitak, *supra* note 12.

⁴⁷ Constitution, *supra* note 40, sec. 133.

- Taiwan is also an excellent choice because once Taiwan was a dictatorship country, though presently Taiwan has changed into democratic country and they are one of the successful countries in the world.⁴⁸
- Thai people also need equal rights for homosexuality, the same as Taiwan and Germany and many other countries of the world.

⁴⁸ Shelley Rigger, *Why Taiwan Matters – Small Island, Global Powerhouse*, (Rowman & Littlefield Publishers 2011), pp. 59-94.

Euthanasia in Thailand

by

*Ploynita Dithakraphokin and
Siwakorn Inpankeaw**

Abstract

Imagine how great it would be if doctors in Thailand were allowed to perform euthanasia legally in Thailand. In 2018, euthanasia remains illegal. As a result, of the illegality of performing euthanasia, a patient who is in a terminally ill situation, must endure the torture of their suffering which may affect both physical and mental health and their right to die with dignity is not protected. It is time to raise awareness in Thai society towards the benefits of euthanasia. It is time to pass euthanasia legislation regarding the human right to die, which is recognized by the Constitution of Thailand. The authors hope that this article will act as a guide to understanding and legalizing euthanasia.

Introduction

During the last decade, advances in medical technology have decreased the number of deaths, yet some incurable diseases and unbearable suffering continues. As a means to avoid this suffering, euthanasia is presented as the best solution inasmuch as it may be a painless way to end one's life assisted by an attending physician. This document will examine

- the definition of euthanasia historically and today;
- the countries in which it has been traditionally illegal and more modernly legalized and the basis for such changes in the law, its illegality under Thai law provisions; and
- religious views on the topic; and possible solutions in Thailand.

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Euthanasia Definition

“Euthanasia” [*yoo-thuh-ney-zhuh*] is derived from Greek roots, *eu*¹, good, and *thanatos*², death. It is a term for “good death” which means the practice of ending an individual's life in order to relieve them of an incurable disease or unbearable suffering.³ In short, it is a mercy killing. This is performed by the physician acting directly causing patient death. It is different from an assisted suicide in which another person, not a physician, assists to help the patient end his/her life. Euthanasia is classified into 2 categories:

I. By voluntaries of a patient:

- *Voluntary euthanasia*: the patient’s request for taking euthanasia when he/she has conscience.
- *Involuntary euthanasia*: a form of euthanasia, wherein, euthanasia is performed on a competent person. It is performed on a patient against his/her will.⁴
- *Non-voluntary euthanasia*: euthanasia without the patient’s consent. It occurs when he/she is unconscious. The decision is made by an appropriate person.⁵

II. By manner of action:

- *Active euthanasia*: To do something to end patient's life, such as lethal injection...
- *Passive euthanasia*: To withdraw any medical treatment with the deliberate intention of causing the patient's death.⁶

¹ *Euthanasia*, Wordpandit, <https://wordpandit.com/euthanasia> (last visited Oct. 8, 2017).

² *Id.*

³ Helga Kuhse, *Euthanasia Fact Sheet*, The World Federation of Right to Die Societies (Jul. 4, 1992), <http://www.worldrtd.net/euthanasia-fact-sheet>.

⁴ *Involuntary Euthanasia Law and Legal Definition*, US Legal, <https://definitions.uslegal.com/i/involuntary-euthanasia/> (last visited Oct. 10, 2017).

⁵ *Ethics Guide: Forms of Euthanasia*, BBC, (2014) <http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml>.

⁶ *Types of Euthanasia*, Pregnant Pause, (Nov. 20, 2001) <http://www.pregnantpause.org/euth/types.htm>.

Countries where Euthanasia is Illegal and Legal

Of the approximately 200 countries in the world, there are just ten countries in which euthanasia is legalized, including but not limited to, Belgium, Colombia, India, Ireland, Luxembourg, Mexico, Netherlands and in the United States (Oregon, Washington, Montana, Vermont and California).⁷ The other countries in which euthanasia continue to remain illegal include, but are not limited to, France, the United Kingdom, Thailand, Australia, Japan, etc.

Countries where Euthanasia is Illegal



Source: Danny Wang, <https://gdblogs.shu.ac.uk/b2051658/2015/02/12/euthanasia-and-assisted-suicide-laws-around-the-world/>

A Case Example which exemplifies the Life of Pain and Suffering without Euthanasia

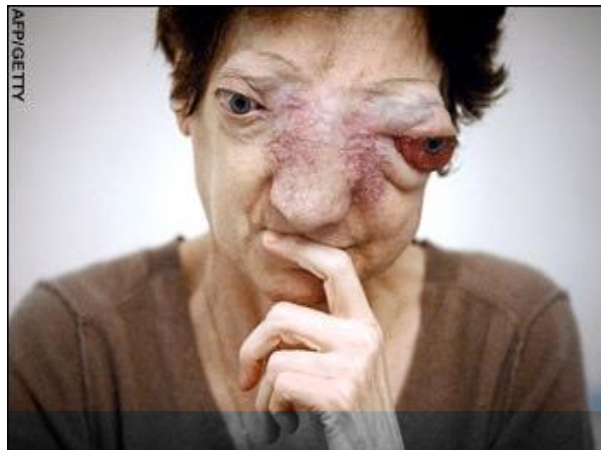
One of the countries where euthanasia is illegal is France. Even though it is a country where freedom and human rights are strong, euthanasia is still prohibited. Therefore, there are some French people who must tolerate

⁷ *Legality of Euthanasia in Different Countries and States*, New health guide, <http://www.newhealthguide.org/Where-Is-Euthanasia-Legal.html> (last visited Apr. 15, 2017).

unbearable pain unhappily because they are not allowed to have euthanasia. For instance:

Chantal Sebiré is a French woman who suffers from an incurable facial tumor that made her blind, disfigured and agony. She asked the court to have a doctor end her terminal ill life by a painless method but the court denied. She was really upset as she could no longer see properly, taste or smell. She described how children ran away from her in the street because of her ugly face. Moreover, she cannot use morphine to relief her intense pain because of its side effects which having her a difficulty in eating, sleeping, sitting and suffering hemorrhages.⁸

It can be clearly seen that she is suffering both physical and mental pain because of the law does not allow her to have euthanasia and therefore, Chantal Sebiré has to continue her tortured life.



Source: *The Telegraph*,
<http://www.telegraph.co.uk/news/worldnews/1582095/Disfigured-French-woman-loses-euthanasia-bid.html>

⁸ Henry Samuel, *Disfigured French Woman Loses Euthanasia Bid*, *The Telegraph* (Mar.18, 2008.), <http://www.telegraph.co.uk/news/worldnews/1582095/Disfigured-French-woman-loses-euthanasia-bid.html>.

In countries such as the Netherlands, Belgium, Colombia, Luxembourg, Canada, and many others, euthanasia is now legal. Steven Pleiter, director at the Levensindekliniek in the Netherlands, has a thought on practicing euthanasia, he states that “If we can help them out, these people are relieved, we are not ‘Doctor Death’ at all. We are helping out in a situation which is really, really difficult.”⁹ As a result, euthanizing is a means to help patient obtain relief. One interesting legal euthanasia case where the advantages of euthanasia can be noted is the Terri Schiavo's case:

Terri Schiavo entered a vegetative state in 1990 for undetermined reasons, possibly related to her long-term, untreated bulimia. In this persistent vegetative state she remained the last fifteen years of her life. Both Schiavo's doctors and her court-appointed doctors expressed the opinion that there existed no hope of rehabilitation. Her husband, Michael Schiavo, contended that it was his wife's wish that she not be kept alive through unnatural, mechanical means. On March 18, 2005, her feeding tube was officially and legally removed, which led to her death on March 31.¹⁰

Euthanasia and Legality in Thailand

The legal consequences of practicing euthanasia in Thailand results in both an offense regarding life and body as set forth in the Thai Criminal Code, National Health Act of Thailand and wrongful acts as set forth in the Thai Civil and Commercial Code.

According to Thailand Criminal Code section 288: “Whoever, murdering the other person, shall be imprisoned by death or imprisoned as from fifteen years to twenty years.”¹¹ Practicing euthanasia on another

⁹ Daniel Boffey, *Any taboo has gone: Netherlands sees rise in demand for euthanasia*, The Guardian (Nov. 9, 2017), <https://www.theguardian.com/world/2017/nov/09/any-taboo-has-gone-netherlands-sees-rise-in-demand-for-euthanasia>.

¹⁰ *Terri Schiavo*, NNDB, <http://www.nndb.com/people/435/000026357/> (last visited Apr. 6, 2018).

¹¹ ประมวลกฎหมายอาญา พ.ศ. ๒๕๖๐, Criminal Code, sec. 288 (TH 2017).

person is considered murder. According to Section 288, fault elements state one who has intentionally or unintentionally caused the other person's death is considered a murderer, as a result, euthanasia can be clearly seen as a murder offense. Moreover, if the euthanasia involves someone less than sixteen years old or a person who is unable to understand his/her action, it will be considered as a more severe criminal offense, according to Section 293:

Whoever aids or instigates a child not over sixteen years of age, or a person who is unable to understand the nature and importance of his act or who is unable to control his act, to commit suicide, shall, if suicide has occurred or has been attempted, be punished with imprisonment not exceeding five years or fined not exceeding ten thousand Baht, or both.¹²

Euthanasia also crosses into civil law. As stated in Thailand Civil and Commercial Code, Section 420: "A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore."¹³ Therefore, the person performing euthanasia is considered to be a tortfeasor since the person acted intentionally.

However, incongruently, under the National Health Act of Thailand, Section 12:

A person is given the right to make a living will to refuse the public health service which is provided to prolong his terminal stage of life or to refuse the services to severe his sufferings from the illness. In Thailand, the person who is ill may make an advance directive which is a written document stating the wishes of a patient regarding medical treatment which may involve decisions such as ending his life.¹⁴

¹² *Id.* sec. 293.

¹³ ประมวลกฎหมายแพ่ง และพาณิชย์ พ.ศ. ๒๕๕๘, Civil and Commercial Code, sec. 420 (TH 2015).

¹⁴ ประมวลกฎหมายแพ่งพระราชบัญญัติสุขภาพ พ.ศ. ๒๕๕๐, National Health Act, sec. 12 (TH 2015).

Comparative Religious Concerns in Thailand:

Buddhism

Thailand is a country in which the population has a strong belief in religion especially the national religion, Buddhism. Euthanasia has been considered irreligious by Buddhism since 1997. Any conduct which is done intentionally to end one's life is regarded as a sin. It violates the first of the five precepts¹⁵ which is not to kill. It also contravened *Patimokkha*, the summary of monastic rules¹⁶ defined as the first-grade offense when a monk incites others to self-destruction.¹⁷

Islam

Islam is the second largest Thailand religion.¹⁸ They believe life is given by Allah (god). According to ul Quran, Surah 4 An-Nisa, verse 29: "You shall not kill yourself." and Al bagorah, verse 129: "Do not throw yourselves into destruction."¹⁹ Therefore, this religion does not appear to allow suicide or have someone assist another in committing suicide.

Christianity

The minority religion, Christianity, has the criticism of euthanasia based on the beliefs that life is given by God, and that human beings are made in God's image and those who taking their life or others will be

¹⁵ Sunthorn Plamintr, *The Five Precepts, Urban Dharma*, <https://www.urbandharma.org/udharma2/5precepts.html> (last visited Oct. 14, 2017). See also Sunthorn Plamintr, *Getting to Know Buddhism*, pp 133-154, Bangkok: Buddhadhamma Foundation (1994).

¹⁶ *Buddhism and Euthanasia*, Clear Vision Audio-visual resources exploring Buddhism, <https://www.clear-vision.org/Schools/Students/Ages-17-18/life-and-death/euthanasia.aspx> (last visited Oct. 14, 2017).

¹⁷ Thanissaro Bhikkhu, *Introduction to the Patimokkha Rules*, <https://www.accesstoinsight.org/tipitaka/vin/sv/bhikkhu-pati-intro.html> (last visited Mar. 24, 2018).

¹⁸ *Religion Buddhism and Religion in Thailand*, Fact and Details, http://factsanddetails.com/southeast-asia/Thailand/sub5_8b/entry-3212.html (last visited Mar. 27, 2018).

¹⁹ *The Nobel Qu'ran*, <https://quran.com> (last visited Mar. 23, 2018).

condemned by God.²⁰ The Bible states in Psalm 31:15: “My times are in your hands...” and Psalm 36: 9: “For with you is the fountain of life...”²¹ Consequently, those who performed euthanasia are considered a sinner.

Thai Doctor’s Opinion toward Euthanasia

Thai doctors are mostly against euthanasia. They believe that practicing euthanasia crosses the medical ethics of the Hippocratic Oath, the father of medicine, which states, "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy. In purity and holiness I will guard my life and my art."²² As a result, performing euthanasia is morally wrong according to the Hippocratic Oath.

Reasons for Euthanasia to be Legalized

A person, who lives in a torture situation because of his incurable disease or unbearable suffering, when it affects ts the person physically and/or mentally. In this situation, some prefers to die with dignity rather than stay alive painfully. Unluckily, in Thailand, euthanasia is illegal. Practically, euthanasia is a right to die, so it should be legalized as far as it is an individual’s right and causes no harm to others.

Moreover, the Constitutional of Thailand states that every Thai’s rights will be protected, as per Section 4: “Human dignity, rights, liberties and equality of the people shall be protected. The Thai people shall enjoy equal protection under this Constitution”²³ and also in Section 25:

²⁰ *Euthanasia and Assisted Dying: General Christian View*, BBC (Aug. 3, 2009), http://www.bbc.co.uk/religion/religions/christianity/christianethics/euthanasia_1.shtml.

²¹ *Bible Gateway*, <https://www.biblestudytools.com> (last visited Mar. 24, 2018).

²² “วาระสุดท้ายแห่งชีวิตและสิทธิการตาย.” [ระบบสืบค้นออนไลน์]. แหล่งที่มา,

Amara Soontornthada and Hathairat Noise, *The end of life and the right to die*, The New York Times, p. 2, (Mar. 11, 2006)

<http://www.ipshr.mahidol.ac.th/IPSR/AnnualConference/ConferenceII/Article/Article14.htm>

²³ Constitution, sec. 4 (TH 2017).

As regards the rights and liberties of the Thai people, in addition to the rights and liberties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws, and shall be protected by the Constitution, insofar as the exercise of such rights or liberties does not affect or endanger the security of the State or public order or good morals, and does not violate the rights or liberties of other persons...²⁴

Therefore, it can be considered that euthanasia, which is a right to die, should be legalized. There is no law that explicitly states that suicide is illegal. Euthanasia is a right to die which is the right to reject any medical treatment prolonging life²⁵ and a concept that a terminally ill patient should be allowed to die naturally, comfortably and with dignity, rather than experience a comatose, vegetative state prolonged by medical, mechanical support systems.²⁶

Solutions for Thailand

Euthanasia is considered as one of the standards of human rights as it is a right to die with dignity which is recognized in the Constitution of Thailand. Yet, in Thailand euthanasia is not legal while several countries have legalized it. It is important that a right to die should depend on patient's decision, and not on the physician's decision, lawmaker's bias or morality concern.

- The government should amend the penalty in Criminal Code and Civil and Commercial Code to allow a physician to practice euthanasia legally when a patient requests to have euthanasia and the physician concurs that there are valid health issues.

²⁴ *Id.* sec. 25.

²⁵ *Right to Die*, Farlex, <https://legal-dictionary.thefreedictionary.com/right+to+die> (last visited Feb. 28, 2018).

²⁶ *Death with Dignity*, Farlex, <https://medical-dictionary.thefreedictionary.com/death+with+dignity> (last visited Feb. 28, 2018).

- The simplest way to legalize euthanasia is to submit a Euthanasia Bill by all Thai euthanasia supporters, with minimally 10,000 signatures, to the current government.
- Those supporters should raise awareness about euthanasia and its advantages and change the attitude of society on morality concerning euthanasia by looking into the reality and giving dignity to their death instead of just religious beliefs.

Thailand's Highland Minority Integration Policies

by

Munintapath Ruerueang*

Abstract

Hill tribes in Thailand have been experiencing the problems regarding lack of legal status. The changing of laws, in the past, left them to be stateless or without a nationality. Without nationality, hill tribes, as a stateless people, often do not have basic rights that citizens enjoy. The oversight problems gradually have become the significant problem. Lately, the Department of Provincial Administration provides surveys and keeps a record of hill tribes in order for them to obtain citizenship. Yet, the problem still remains to be solved due to the lack of documentation. The aims of the paper are to emphasize the lack of legal status problems of hill tribes, the minority integration policies, and the solutions by comparing the law from other countries and amending the Thai Constitution.

Introduction

Thailand being a land of vast unchartered territory, there exist many areas where modern society and culture have not spread. People in the highland areas of Thailand who fall under this category are referred to as 'chao khao'¹ or hill tribes.² They exist and lead out their lives within a society that is based on tribal values, traditions and infrastructure. They are left without a national identity. Due to this remote nature of their society, the laws of the Kingdom of Thailand are not equality enforced or

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¹ Peter Kunstadter, *Southeast Asian Tribes, Minorities, and Nations* (1967), <https://books.google.co.th/books?id=Uws1DgAAQBAJ&printsec=frontcover&dq=Southeast+Asian+Tribes,+Minorities,+and+Nations&hl=th&sa=X&ved=0ahUKEwiWgc2qtlLbAhVPVH0KH5FdBukQ6AEIJjAA#v=onepage&q=Southeast%20Asian%20Tribes%2C%20Minorities%2C%20and%20Nations&f=false>

² *Id.*

regulated, leaving the hill tribes to remain within their confined societies. This causes many issues when it comes to them requiring the assistance of government regulated benefits, such as, hospitals, education, jobs, owning property and businesses, voting, etc. The history and reasons for their isolation are many and vary on where they reside. Thus, laws and policies have been created for hill tribe people who wish to receive the same treatment as the citizens of Thailand and to integrate the hill tribe people within the current political and governmental system.

Problems

Hill tribes have experienced unsatisfied issues regarding stateless. Many of hill tribes have been facing the problem of not being issued a Thailand identification card. They are not recognized by the government. It is very difficult to access basic rights that they should enjoy. For example, “there was no legal protection and no right to vote, and they often lack access to education, employment, health care, registration of birth, marriage or death, and property rights.”³ Apart from that, “facing with discrimination against particular ethnics and injustice from people willing and ready to take advantage of your vulnerability, since, for the government, you do not exist as you have no legally registered documents.”⁴ Being stateless causes restricted employment opportunities. Some hill tribes as stateless people have rights, however the common Thai citizens may not know about the stateless people’s rights, so they choose to discriminate against the hill tribe people in the society.

The Hill Tribes

If an area of land is more than 500 meters above sea level, it is considered ‘highland’ in Thailand. The highland areas are located in the districts of Chiang Mai, Chiang Rai, Mae Hong Son, Lamphoon, Lamphang,

³ U.S. State Department, *Statelessness*, <https://www.state.gov/j/prm/policyissues/issues/c50242.htm> (last visited Mar 29, 2018).

⁴ Pim Kemasingki, *The Importance of Being Thai: giving citizenship where citizenship is due*, Chiang Mai City Life (Mar. 1, 2017), <http://www.chiangmaicitylife.com/citylife-articles/the-importance-of-being-thai-giving-citizenship-where-citizenship-is-due>.

Payao, Tak, Sukhothai, Nan, Kamphaengphet, Prae, Phitsanulok, Phetchabun, Loi, Uthaitani, Kanchanaburi, Suphanburi, Ratchburi, Petchburi, and Prachuabkhirikhan which are located in the north and west areas of Thailand and are where most hill tribes reside. The Hill Tribe Development and Welfare Program of the Department of Public Welfare here in after known as “Welfare Program” has been taking care of certain hill tribal residents and their integration into modern society, since their establishment in 1959. The Welfare Program also takes responsibility over the ethnic groups Lua, Htin, Khamu, Meo, Yao, Akha Lahu, Lisu and Karen.⁵

The nationality of a citizen is based on the law of

- “*jus soli*” which is Latin for “law of the soil” means that a child born within the border of a country are eligible for that country’s citizenship,⁶ or
- “*jus sanguinis*” which is “the principle that a person's nationality at birth is the same as that of his or her natural parents”⁷ and their eligibility is based on their parents already being a citizen of a particular country.

People who Lost Previous Thai Nationality

People who live in the remote highland areas of Thailand are entitled by the Thai national law of *jus soli* to attain Thai citizenship. However, the Revolutionary Declaration No.337 announced on December 14, 1972⁸ and

⁵ Wanat Bhruksasri, *Government policy: Highland ethnic minorities*, http://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers09-03/30854.pdf (last visited Mar. 29, 2018).

⁶ *Jus Soli*, Merriam-Webster Dictionary, <https://www.merriam-ebster.com/dictionary/jus%20soli> (last visited June 14, 2018).

⁷ *Jus Sanguinis*, Collins English Dictionary, <https://www.collinsdictionary.com/dictionary/english/jus-sanguinis> (last visited June 14, 2018).

⁸ ประกาศของคณะปฏิวัติ ฉบับที่ ๓๓๗ ลงวันที่ ๑๓ ธันวาคม ๒๕๑๕,

The Revolutionary Declaration No.337 (announced on Dec. 14, 1972), <http://www.tobethai.org/autopage2/file/ThuFebruary2011-12-56-17-001.pdf> (last visited Jun 11, 2018).

Article 7, bis., of the Nationality Act 1965⁹, as later amended, in the 1992 Acts No. 2 and 3 stated¹⁰, as follows:

A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother, or his mother was:

(1) the person having been given leniency for temporary residence in Kingdom as a special case;

(2) the person having been permitted to stay temporarily in the Kingdom;

(3) the person having entered and resided in the Thai Kingdom without permission under the law on immigration.

In case the Minister deems it appropriate, he may consider and give an order for each particular case or in general granting Thai nationality to any person under paragraph one, in conformity with the rules prescribed by the Cabinet.

The person who is born within the Thai Kingdom and has not acquired Thai nationality under paragraph one shall reside in the Thai Kingdom under conditions stipulating in the Ministerial Regulation, but principles of national security as well as human rights have to be considered concurrently. The person shall be deemed to have entered and resided in the Thai Kingdom without permission under the law on immigration unless the Ministerial Regulation is formulated.¹¹

Therefore, these people lost their entitlement to Thai citizenship. The reason for this was mainly due their nomadic behavior and undefined and unregulated highland borders. This left them to be stateless or without a

⁹ มาตรา 7 ทวิแห่งพระราชบัญญัติ สัญชาติ พ.ศ. ๒๕๐๘, Article 7 bis., Nationality Act (TH 1965), <http://www.refworld.org/pdfid/506c08862.pdf>.

¹⁰ มาตรา 2 และ 3 แห่งพระราชบัญญัติ สัญชาติ พ.ศ. ๒๕๓๕, Nationality Act B.E. 2508 as amended by Acts B.E. 2535, No. 2 and 3 (1992), http://www.burmalibrary.org/docs3/THAILAND's_Nationality_Act.htm.

¹¹ *Capacity building on birth registration and citizenship in Thailand: Citizenship manual*, (2008), <http://unesdoc.unesco.org/images/0016/001621/162153e.pdf>.

nationality. Although, they were left without a nationality this law contained within it a clause that stated that they would be still allowed to reside in these highland areas.

Legal Assistance for Highlanders of Thai Nationality

Regulation of the Central Registration Bureau on the Consideration of Legal Status Registration for Highlanders¹² had made it possible for people living in the highland areas of Thailand who are under *jus soli* or *jus sanguinis* or by marriage. This was passed in the year 2000. Although this is possible, hill tribe people must present documentation to prove that they are eligible under the national law of *jus soli* or *jus sanguinis* or by marriage. They are as follows:

- Proof of their father or mother being a Thai citizen.
- Proof that they were in fact born within Thai's borders.
- Proof that their spouse is of Thai nationality.¹³

Surveys and Information

Due to the nature of these tribal societies there exists evidence that could further assist them in attaining citizenship. The Department of Provincial Administration conducts surveys and keeps a record of highlanders and their households.¹⁴ This can be used by these people as strong evidence in obtaining citizenship; therefore, making the whole process simpler for these individuals. This is the most crucial aspect of the whole situation.

A cabinet resolution passed on June 5, 1990 called for a census of hill tribe people living in 20 provinces. These people would have access to

¹² ระเบียบสำนักทะเบียนกลางว่าด้วยการพิจารณาการสถานะบุคคลในทะเบียนราษฎรให้แก่บุคคลบนพื้นที่สูง พ.ศ. ๒๕๔๓, The Regulation of the Central Registration Bureau on the Consideration of Thai Nationality and Civil Registration for Highlanders (TH 2000), <http://www.stateless4child.net/sites/stateless4child.net/files/Law-18.pdf>.

¹³ *Supra* note 11.

¹⁴ *Id.*

¹⁵ *Id.*

yellow registration forms and blue identification cards. The process to create the identification cards for the hill tribe people at that time emphasized hill tribes.¹⁵ Therefore, people living in these highland areas could apply for identification cards (highlander type) as well, without distinction from other hill tribe or highlander groups. To this end, hill tribe people who have Thai nationality may apply to be registered under the Regulation of the Central Registration Bureau on the Consideration of Thai Nationality and Civil Registration for Highlanders 2000.

The Central Registration Bureau amended the regulation for issuing identification cards in 2004. It called for a change or annulment to the previous styles of ethnic minority identification cards which were classified by blue color cards, green with red borders,¹⁶ etc. Now, every ethnic minority could hold a pink colored card. Subsequent to this amendment, every ethnic minority, i.e., highlanders, etc., would not be differentiated and be identified only by their 13- digit identification number. Hence, they would be seen as holding the same legal status.

The process of surveying, issuing identification cards and the registering undocumented people is the responsibility of the government of Thailand. It is elaborated on within the Strategy on Legal Status and Rights for Undocumented Persons under the cabinet resolution passed on January 18, 2005. This system of survey is fundamental in solving the issue of undocumented and unregistered people in Thailand and ensures their integration into our current cultured, political and modern society.¹⁷

Penalties

A hill tribe person without identification card considered an alien. They cannot work as much as they would like to work. They also are not able to move to another place to live. An alien who works in Thailand without working permit, shall be charge under section 51 of Working of Alien Act, B.E. 2551:

¹⁶ *Id.*

¹⁷ *Id.*

An alien who engages in work without having the permit shall be liable to imprisonment for a term of not exceeding five years or to a fine from two thousand Baht to one hundred thousand Baht or to both. In the case where the accused under paragraph one willfully departs the Kingdom within the period specified by the inquiry official, but not more than thirty days, the inquiry official may settle the case and causes that alien to depart the Kingdom.¹⁸

Limitations of policy

The processes outlined in this law are not entirely implemented and enforced in practice. Generally, the issue must result in a lawsuit with actions ordered by the court before the official government divisions responsible for issuing the aforementioned documents will carry out the processes. The laws and processes outlined above leaves the responsibility purely to the Thai government. Thus, they are not always put into practice and carried forward in a precise manner. The result is that the Courts of Thailand must put forward a lawsuit regarding these actions of misconduct, if there are any, towards the responsible departments of government. The law, if not followed, must be vetted by those who agree to them.

If these surveys are not carried out, then it leaves highlanders in a place of no evidence to prove that are, in fact, of Thai nationality. This is because of the already known nature of their communities. Although, they are of Thai nationality and there are existing cabinet resolutions, integration laws, etc., put into place to aid and move forward the integration of them, the issue of statelessness remains at a standstill due to no evidence proving they are eligible. The sometimes nomadic behavior of people within these communities and the inaccessibility of their residence also is to a large

¹⁸ มาตรา 51 แห่งพระราชบัญญัติการทำงานคนต่างด้าว พ.ศ.๒๕๕๑,
Working of Alien Act, sec. 51 (TH 2008),
http://www.mol.go.th/sites/default/files/downloads/pdf/WORKING_OF_ALIEN_ACT_2551_DOE.pdf.

extent a reason for the current issues of statelessness. Even if surveys were conducted and the details of householders known, the issuing of required identification cards, etc., were not completed all at once, this could lead surveys that are inaccurate and incorrectly dated.

Another point that must be realized is the trouble caused by illegal immigrants. If the need of integration is not focused upon, then this brings up issues within the basic principles of human rights, national security and relationships with bordering countries. The Thai government also approaches this situation with caution because no evidence of the illegal immigrants being Thai means that there is no evidence they are not people from bordering countries who come to Thailand as illegal immigrants. These people would be then treated under the same policy, law and regulations of illegal immigrants.¹⁹

Solutions

The fair and appropriate actions of law and state policy, as well as, execution of such is essential in solving statelessness. It would lead to a situation that would resolve various human rights issues, social discrimination and national security. Law reform, measures and guidelines put into place would wipe away the whole issue faced by highlanders and lead them to a brighter future. Equal opportunity would be faced by every person not merely of Thai nationality but those who deserve Thai nationality as well.²⁰

The issue of illegal immigrants does still occur but within the current regulatory environment, it should be seen and enforced as a completely different violation that the country must administer. Undocumented, unregulated and stateless people do still reside in the various highland areas of Thailand. However, some of them do not have evidence or proof to verify their birth and nationality. Helping undocumented, unregulated

¹⁹ *Id.*

²⁰ สถานการณ์และแนวทางแก้ไขปัญหา คนไร้รัฐไร้สัญชาติในประเทศไทย: กฤษณา บุญราช (ปลัดกระทรวงมหาดไทย), มติชนออนไลน์ (Jul. 11, 2017), <https://www.matichon.co.th/news/599580>.

and stateless people by creating a United States type of Immigration and Nationality Act, 1952, Title III, Chapter 1 – Nationality at birth and by collective naturalization, Act 301 - nationals and citizens of the United States at birth:

Sec. 301. [8 U.S.C. 1401] The following shall be nationals and citizens of the United States at birth:

... (f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States... ”²¹

The Constitution of the Kingdom of Thailand, B.E. 2560 has required at least ten thousand people, who have the right to vote, to change the law, amend, or create the new law under section 133, as follows:

A bill shall be first submitted to the House of Representatives and may be introduced only by the followings:

(1) Council of Ministers;

(2) Members of the House of Representatives of not fewer than twenty in number;

(3) persons having the right to vote of not less than ten thousand in number who submit a petition to introduce a bill under Chapter III Rights and Liberties of the Thai People or Chapter V Duties of the State and in accordance with the law on the public submission of a bill.

If a bill introduced by persons under (2) or (3) is a money bill, it may be introduced only with the endorsement of the Prime Minister.²²

²¹ US: Immigration and Nationality Act, sec. 301 (1952), <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9696.html> (last visited Jun 11, 2018).

²² มาตรา 133 รัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช ๒๕๖๐, Constitution of the Kingdom of Thailand, sec. 133 (TH 2017), <http://www.krisdika.go.th/wps/wcm/connect/d230f08040ee034ca306af7292cbe309/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+%28B.E.+2560+%282017%29.pdf?MOD=AJPERES&CACHEID=d230f08040ee034ca306af7292cbe309>.

The Kingdom of Thailand should continue its efforts daily to integrate these people into national jurisdiction, ensuring them a nationality, education, medical treatment, right to work, etc, and upholding the country's integrity. The more this integration is enforced the stronger Thailand would be as a nation due to increased manpower and educated personnel. A country is only as strong as all of its people.

The Law Enforcement Regulating Street Vendors in Thailand

by

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Abstract

Thailand is well known in the world for its street vendors who sell inexpensive and delicious foods and other goods. In some ways however, street vendors are a reflection of failure. They started from walking on the street to sell their food and goods and developed into being located on footpaths throughout Thailand cities. There are advantages for Thailand in tourism but also the street vendors cause problems in Thai society. Two obvious problems are that street vendors cause dirty and unhygienic footpaths and pedestrians are not safe while attempting to use footpaths due to these conditions and vehicular traffic on the street. Moreover, as these problems continue, this reflects the ineffectiveness of the law and its enforcement. Thailand may have laws and policies to solve the problems but they have not been effectuated. These are chronic problems and it is necessary to study the underlying reasons and include how other countries have created and enacted new effective solutions. Thailand should solve and manage the problems in suitable ways today. This paper will present street vendors and their problems including policies from other countries, to recommend solutions by balancing the needs of the state, citizens and street vendors.

Introduction

Street vendors are very common in Thailand. Their origin begins in the local culture in agricultural society. It is a lifestyle of selling food and

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agricultural products on the street or the community to people walking on the street. While Thai society developed from an agricultural society to a modern society, the distribution of street vendors has changed from agricultural products into a wide range of products and services, such as, food, clothes, crafting and horoscope services. In addition, street vendor's locations are not limited to only rural areas. They have expanded into urban areas because there is a demand for a variety for products and services, therefore street vendors are not restricted to the countryside. Every day there are more people who use street vendor's services. Because of that, their economic value is increasing. This pattern has developed from walking on the street or small area to full service shops on the road which may be permitted by Thai law, however some are not allowed.

Pertinent Definitions

“Road means roadway, pavement, wayside, hard shoulder, crossing under the law on land transport, alley, lane, bridge or private road that an owner allows the people to use as a transport path;”¹

“Local official” means a mayor for the area of municipality and other officer² (hereinafter known as the “officer”)

“Competent official” means a municipal clerk and deputy municipal clerk for the area of municipality and other officer³ (hereinafter known as the “official”).

“Street vendor is someone who sells food or other goods in the street, sometimes illegally.”⁴

¹ Section 4: Act on the Maintenance of the Cleanliness and Orderliness of the Country, B.E.2535, (TH 1992) , Office of the Council of the State, <http://www.krisdika.go.th/wps/wcm/connect/1017da804e2c332d9d15ff798fdc4669/Act+on+the+Maintenance+of+the+Cleanliness+and+Orderliness+of+the+Country%2C+B.E.+2535+%281992%29.pdf?MOD=AJPERES&CACHEID=1017da804e2c332d9d15ff798fdc4669> (last visited on Nov. 7, 2017).

² *Id.* sec. 3.

³ *Id.*

⁴ Street vendor, *English Dictionary*, Cambridge Dictionary <https://dictionary.cambridge.org/dictionary/english/street-vendor> (last visited on Nov. 7, 2017).

Law in Thailand

In Thailand, the act which regulates with the street vendors is Act on the Maintenance of the Cleanliness and Orderliness of the Country, B.E.2535 (1992) (hereinafter known as the “Act”). This act is primary law. The purpose of this act at the beginning is preserve cleanliness and orderliness of the country.

Section 20. No one shall:

- (1) cook food, sell or distribute goods on the road or in public establishment;
- (2) use a sedan car or wheeled vehicle as a cooking place for selling or distributing to persons on the road or in the public establishment;
- (3) sell or distribute goods contained in a car, motorbike or wheeled vehicle on the road or in public establishment.

The paragraph one shall not be applied to the cooking or the sale of goods under (1) or (2) in a private road or in the area where the local official or the competent official has made an announcement allowing such activity during a specified day and time with the approval of the traffic officer.⁵

Section 21: “No one in a sedan car or a rider or passenger of a motorbike shall buy goods sold or distributed in public establishment or on the road except such road is a private road.”⁶

According to said Act, there are prohibitions and sanctions against street vendors and people who use their services. Street vendors are not permitted

⁵ Act, *supra* note 1 sec. 20.

⁶ *Id.* sec. 21.

to conduct their business on ‘impervious roads’⁷. If they violate the law, they are fined approximately 2,000 baht.⁸ Moreover, people who pass the street vendors area are not allowed to use their services or buy foods or goods. There is a fine if someone violates the law of approximately 1,000 baht.⁹ This Act applies to every province in Thailand. Furthermore, the Act defines officers¹⁰ who have the duty to control street vendors in any area. If the street vendor is found guilty, officers have power to terminate their business.

Legal Problems of Regulating Street Vendors

The first problem regarding enforcement of the law against the street vendor is ineffective enforcement by the officers. Officers who they have duty to deal with street vendors are given their power through local regulation. For example, the Bangkok Metropolitan Administration is the local government of Bangkok established under the Bangkok Metropolitan Administration Act 1985. It is responsible for the management of the city. It is responsible for, among other things, establishing rules governing street vending in Bangkok and issuing personal hygiene guidelines for the compliance of street food vendors¹¹

The officers in each province in Thailand cannot manage the multitude of street vendors. Some officers cannot arrest street vendors who break the laws because of the following reasons:

- The first reason is the officers’ schedule. Officers schedules may state that the officer come to check street vendors on same days.

⁷ *Impervious Surfaces*, Capital Regional District, Impervious surfaces are land surfaces that repel rainwater and do not permit it to infiltrate (soak into) the ground... or the most part this term refers to surfaces found in urban and suburban landscapes such as roads, parking lots, driveways, sidewalks and roofs. <https://www.crd.bc.ca/education/our-environment/concerns/impervious-surfaces> (last visited on June 14, 2018).

⁸ Act, *supra* note 1 sec. 54.

⁹ *Id.* sec. 53.

¹⁰ *Id.* sec. 4.

¹¹ *FACT SHEET Hawker policy in Thailand*, Legislative Council Secretariat <http://www.legco.gov.hk/research-publications/english/1314fs12-hawker-policy-in-thailand-20140612-e.pdf> (last visited on Nov. 7, 2017).

If the street vendor does not open their business on that day, the officer cannot arrest them and the street vendor will not be found guilty.

- The second reason is enforcement is not successful. Street vendors are fined at a cheap rate, 2,000 baht. The fine is not enough to make the required changes at present.
- The third reason is an inefficient policy. There are laws to enforce and punish the guilty street vendors and there are not effective policies to support street vendors in changing their locations for their businesses.

If street vendors do not have an area to conduct their businesses and careers, they will not be able to support their families if they lose their jobs. Therefore, the street vendor returns to his previous location which includes its repeat customers. Thailand has attempted to solve the problem by a policy of creating new permitted areas, however temporary areas are not a suitable solution.

Footpaths

The development of street vendors gradually extended throughout Thailand and it has not been effectively controlled. The Act¹² and policy regarding street vendors have many problems. Law and its enforcement have not proven to be practical. Officers are not able to deal with the large number of street vendors. Street vendors cause many significant problems. For example, those vendors effect the environment and the cleanness of footpaths. The footpath may become dirty with garbage and the rubbish destroys the footpath surface over a long period of time. Footpaths become covered with holes and rough surfaces which make the footpaths inappropriate for walking. Moreover, there are hygienic problems from street vending activities. Also, pollution in the street may cause food to become contaminated. Waste from street vendors may also bring rodents and carriers which cause diseases.

¹² Act, *supra* note 1.

Footpaths are designed and built for walking; however, they are being used for the wrong purposes and this results in deterioration very quickly. Pedestrians are affected from the breaking of the footpaths. They cannot walk because of the worn out footpath. Footpaths are not safe for pedestrians to walk, especially disabled people. Moreover, they cannot walk on footpaths because the street vendors are in the way. The street vendors are an obstruction for the pedestrians. Pedestrians have to walk on the street with the automobiles, motorcycles and bicycles. This may result in accidents and traffic problems. People who walk on the street are at risk of accidents and there are also many traffic jams.

However, there are advantages to street vendors. Street vendors are one of the most famous tourist attractions in Thailand.¹³ They attract tourists to visit Thailand because of their reputation for great food and inexpensive goods. They bring a lot of income to the sellers and to the country. Moreover, street vendors are convenient for people who walk passed those areas any time of day and especially during rush hour. The tourists and local people can save their income because food and goods are cheap and the quality is good.

Street Vendors in Singapore

In Singapore, street vendors were plentiful in the 1950s and 1960s. There were many street vendors because of high unemployment. The street vendors sold goods and services at cheap prices and were convenient to access. However, they were unhygienic and posed public health risks. They also caused obstruction to pedestrians and vehicular traffic. This pattern is the same in other countries.

The Singaporean government began to solve the problems of street vendors in 1968. It legalized the street vendors by establishing a managing policy. The first step was registration. Street vendors were required to

¹³ *Best 23 cities for street food from Miami to Tokyo*, CNN Travel, <http://edition.cnn.com/travel/article/best-cities-street-food/index.html> (last visited Oct. 25, 2017).

obtain a license issued by the National Environment Agency.¹⁴ Then, the government began to relocate licensed street vendors, known as ‘hawkers’ from the streets to facilities known as “market and hawker centers”¹⁵ in the early 1970s. From 1971 to 1986, it engaged in a program to construct hawker centers with amenities and infrastructure to enable hawkers to conduct their business in a clean and hygienic condition. Unlike food courts located in upscale malls, these hawker centers are not air-conditioned.¹⁶

“After many years of development, hawker centers have been part of the social landscape in Singapore. Today, there are 107 hawker centers in the country which house about 15,000 stalls altogether. They are mostly located near public housing estates or transportation hubs.”¹⁷

Singapore provides a street vendor policy, including licensing of hawkers, management of hawker centers, hawker centers’ rental policy and development plan, and the regulation of food hygiene in cooked food stalls in hawker centers.¹⁸ The unhygienic food is solved by issuing laws, providing public education, grading food outlets and a point demerit system.

No new hawker centers have been built since 1986 when all street hawkers were completely relocated to the hawker centers. In 2011, the Singaporean government announced to revive the building of hawker centers to meet the needs of the community in new population centers. It plans to build 10 new hawker centers to add some 600 cooked food stalls

¹⁴ *About the National Environment Agency*, National Environment Agency (the leading public organization responsible for improving and sustaining a clean and green environment in Singapore) <https://www.nea.gov.sg/corporate-function/about-nea/about-the-national-environment-agency> (last visited on May 31, 2018).

¹⁵ Hawker, *English Dictionary*, Cambridge Dictionary (someone who sells goods informally in public place)

<https://dictionary.cambridge.org/dictionary/english/hawker> (last visited on Feb. 1, 2018).

¹⁶ *Background: FACT SHEET Hawker policy in Singapore*, Legislative Council Secretariat <http://www.legco.gov.hk/research-publications/english/1314fs10-hawker-policy-in-singapore-20140526-e.pdf> (last visited on Nov. 7, 2017).

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 6.

in the next decade. Besides providing a source of affordable food, the overall increase in the supply of hawker stalls is expected to create a stabilizing effect on food prices by exerting a downward pressure on stall rentals over time.¹⁹ All of the aforementioned are the solutions to the Singapore street vendors' problems.

Solutions in Thailand

Street vendors have advantages and disadvantages. Thailand cannot remove all of them, therefore Thailand should be able to create the solutions that can balance the aforementioned problems in the long term. Street vendors should be able to work in the society as long as they do not affect the society adversely.

To begin with, Thailand should have effective laws and its enforcement. For example, Thailand should update and amend laws to control illegal acts. Thailand has legislation in place to manage the problems. However, legislation has many sections and provisions which need to be updated. To date, the Act has a small enforcement fine which does not result in positive changes even when the officers attempt law enforcement. Moreover, Thailand should improve law enforcement in general and officers must be strict regarding enforcement. Perhaps officers could offer incentives and rewards for people who notify the officers regarding illegal vendors.

Secondly, Thailand should have a policy to deal with problems regarding street vendors and pedestrian usage of the footpaths in the long term. The policy to solve problems between street vendors and pedestrians is a policy which preserves the interests of them, both street vendors and pedestrians. Pedestrians should have safety using the footpath. Thailand has to adjust footpaths to be proper for the pedestrians and have policy about their safety. Footpaths should be strong for walking. Motorbikes or any street vendors should not be allowed on footpaths.

¹⁹ *Id.* at 8.

Street vendors should have managed, legal places where they can conduct their business and not be fined or lose their businesses. Those places should be convenient for people who want to use their services and suit vendors' business. For example, there should be car parking, toilets, dining tables and locations near busy areas. Furthermore, the managed area should manage the vendors and their licenses and hygienic control.

Finally, Thailand should teach value regarding critical thinking for Thais. Thais should have responsibility for themselves and society. For example, if the Thai people know that public places belong to everyone, they should think critically and find solutions to the problems so that public places will be shared and preserved properly for all of society to enjoy.

Chiang Mai University Students Need to Stop Plagiarizing

by

*Auttakorn Yasakun**

Abstract

This paper aims to present the ongoing problem of plagiarism in the Thai university, particularly Chiang Mai University. Ignorance the university regulations and the non-enforcement, as well as unawareness of the principles of plagiarism, are the factors that encourage students to plagiarize despite the fact that there are the preventive measures and regulations issued by the institution. The issue should not be overlooked since it indicates the weakness of the quality of the university's oversight of its students and their research. Plagiarism detracts from the original product of the creative mind of students and their individual voice being heard. It detracts from their ability and their future businesses ability to create a profit. This unacceptable problem should be solved by every part of the educational system, raising awareness and fixing the gaps simultaneously. Importantly, this paper also presents the Chiang Mai University Regulations. These preventive measures of the university have problems which do not completely address and are actually not able to deal with the plagiarism problem. This Legal Note may act as a guideline for any person who needs to understand how the plagiarism problem happens, and what are the measures that can be implement today to solve the problem.

Introduction

Plagiarism is presenting someone else's work or ideas as your own, with or without their consent, by incorporating it into your work without full acknowledgement. All published and

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unpublished material, whether in manuscript, printed or electronic form, is covered under this definition. Plagiarism may be intentional or reckless, or unintentional.

Plagiarism is easy to occur, when the author is negligent and does not concentrate while conducting legal research, making proper notations and writing a legal document in compliance with *The Bluebook: A Uniform System of Citation* under the regulations for examinations, intentional or reckless plagiarism is a disciplinary offence.¹

Lawyers typically use *The Bluebook: A Uniform System of Citation* in order to help practitioners cite a range of sources and improve cross referencing.² Though stating the citation incorrectly is not illegal, incorrect citing is beneath the original student's dignity. In addition, it could happen when the student re-submits his or her assignment for one subject, to another, deliberately leading a teacher misunderstand of the originality of the work, and pretending the research and paper was created as per that teacher's assignment as a new document.³ It is Plagiarism.

The following are the effects of plagiarizing:

- First of all, it is undermining to the reputation of university.⁴ Plagiarism indicates the weakness of the quality of the university's research.

¹ *Plagiarism, Oxford Students, University of Oxford*, <https://www.ox.ac.uk/students/academic/guidance/skills/plagiarism?wssl=1> (last visited Dec. 27, 2017).

² *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n, et. al. eds., 20th ed. 2015). See David J.S. Ziff, *The Worst System of Citation Except for All the Others*, 66 *Journal of Legal Education* (2017), <https://jle.aals.org/cgi/viewcontent.cgi?article=1509&context=home> (last visited Mar 20, 2018).

³ *Preventing Plagiarism*, UMassAmherst, <https://www.umass.edu/search/#stq=plagiarism&stp=1> Practice (2015), (last visited June 19, 2018).

⁴ Vicent Naano Anney & Mary Atanas Moshia, *Student's Plagiarisms in Higher Learning Institutions in the Era of Improved Internet Access: Case Study of Developing Countries*, 13 *Journal of Education and Practice* (2015), <https://files.eric.ed.gov/fulltext/EJ1080502.pdf> (last visited Dec 23, 2018).

- Second, plagiarized work does not make any profit to the society and it is creatively useless because there is no unique knowledge which is created by new authors.⁵
- Finally and importantly, it is negative impact to the student who commits plagiarism. The student could be punished by the university regulations and he might be denied upcoming opportunities due to his background.⁶

It is generally seen when the students submit the assignments to teachers by using someone else's idea or work without referring a source, or an inadequate or improper citing. Such plagiarism show the disrespect to the schools, since the intention is trying to make teachers misunderstand, believe the copied work is the really new one. And in case of wrong citation, it shows disrespect, and that incorrect way might not be able to lead the reader who really wants to review the original sources ultimately.⁷

However, even though there is a strong ethical rule which obviously is meant to prevent a plagiarism, however, the following is only one example of the hundreds of students who continue to violate the plagiarism rules. A law student at Chiang Mai University (hereinafter referred to as "CMU") referred to her plagiarizing in the form of copying others and referring stealthily to them as her own, and submitted the copied documents to the teachers. She mentioned it was her own work and the teacher did not know she was lying. For her, it was a pretty easy way to choose the online data, change some words and make it in the credible layout form.⁸ This shows how even a student in the Faculty of Law, intentionally lies, cheats and commits fraud, hoping not to be discovered and not duly afraid of the consequences, if she was. There is a genuine failure of enforcement regarding the prevention of plagiarism regulations at CMU.

⁵ Stephanie Ballard, *Give Credit Where Credit is Due: Avoiding Plagiarism and Copyright Infringement* (2008), <http://library.alliant.edu/screens/plagiarism.pdf> (last visited Feb 23, 2018).

⁶ University of Massachusetts Amherst, *How Does Plagiarism Affect Me?*, (2009), <https://www.umass.edu/academichonesty/HowDoesPlagiarismAffectMe.html> (last visited Jan 14, 2018).

⁷ *Recognizing and Avoiding Plagiarism*, Cornell University, College of Arts and Sciences (2005), <https://plagiarism.arts.cornell.edu/tutorial/index.cfm>.

⁸ Interview with anonymous fourth year student, Faculty of Law, Chiang Mai University (Nov. 1, 2017).

Recently, there was a case related to academic plagiarism in a Thailand university. It was discovered by a researcher, Wattana had plagiarized some content for her PhD dissertation from a book titled *Architecture of Thailand*, written by Nithi Sthapitanonda and Brian Mertens in 2006. And then Silpakorn University's Faculty of Architecture, where the thesis was submitted, had investigated her.⁹ This demonstrates that CMU is not only university in Thailand faced with this problem.

Preventive Measures and Regulations at CMU:

Clauses 12, 13 and 14 of CMU Regulations Concerning Discipline and Student Disciplining B.E. 2553 (2010)

CMU has regulation to preventing plagiarism. The rule is referred in the Clause 12 of CMU Regulations Concerning Discipline and Student Disciplining B.E. 2553 (hereinafter known as “University Regulations”). This clause is in writing.

Clause 12, paragraph (7): “Forging documents either for his own benefit or for that of others.” and

Clause 12, paragraph (8): “Behaving in such a way that damages his student status or education, such as,

- a. Cheating or acting in a way that is considered cheating in an examination.
- b. Intentionally copying or plagiarizing any work for his ‘*thesis*’ or ‘*Independent Study*’”¹⁰,

shall be considered as violating the relegation. Moreover, that action is considered a serious violation of discipline, “resulting in damaging the university fame”, the according to clause 13.¹¹

⁹ *Plagiarism: Warnings after university thesis plagiarism revealed*, Bangkok Post, <https://www.bangkokpost.com/learning/learning-news/957873/plagiarism-warnings-after-university-thesis-plagiarism-revealed> (last visited Dec. 23, 2018).

¹⁰ Chiang Mai University Regulations Concerning Discipline and Student Disciplining B.E. 2553, cl. 12 (2010), <http://sdd.oop.cmu.ac.th/PDF/06discipline/01/2553-e.pdf>.

¹¹ *Id.* cl. 13.

For the sanctions, the university regulations state the disciplinary penalties of a serious violation of discipline, which would depend on how seriously the plagiarism is and its impacts. According to the clause 14, it refers to the disciplinary penalties which are:

(...) Disciplinary penalties are of 5 kinds:

(1) Execute a bond.

(2) Probation.

(3) Probation and suspension for 1-2 semesters.

(4) Suspension from the study 1-4 semesters or withholding his name to graduate for 1-4 semesters.

(5) Removing his name from the list for being a student (...)¹²

Clause 12(8) of University Regulations

CMU has the regulations to prevent plagiarism. However, there is a problem in the sanction of the clause 12(8) of the university regulations,¹³ which regards to the plagiarism issue. It covers the only copying of *thesis* and *Independent Study*. It implies this measure or regulation does not apply to the case of copying the general works, homework, book report, etc., in usual classes. It is a big gap which supports students and exonerate the official punishment when they plagiarize. For instance, if a student copies another friend's homework, he or she does not have to be punished by the official CMU's regulations because it is not the copying of a *thesis* or *Independent Study* which is defined in the clause 12 of the University Regulations.

Teachers may individually respond to Plagiarism in their Classrooms

Practically, teachers also have their own measure to deal with plagiarism problems in their own classrooms. The punishment, when it is found, can be basic, such as, asking students to complete a new assignment,

¹² *Id.* cl. 14.

¹³ *Id.* cl. 12.

or giving no points on that plagiarized work. At the Faculty of Law, CMU, there was a case of plagiarism, in the class lectured by Professor Kitpatchara Somanawat. He decided to punish students, who plagiarized on his assignment, in the compromise way by allowing the suspected students to confess their own guilty to another professor and asking the absolution from them.¹⁴ It was a technical penalty, which made students realize the plagiarism was not abandoned issue anymore. Students need to be concerned how serious the plagiarism issue is.

The Factors which encourage Plagiarism

Ignorance of the University Regulations and the Non-enforcement:

The factors which influence students to plagiarize are, as follows:

- Ignorance the University Regulations and the non-enforcement of said regulations. Because the university rarely enforces a serious punishment,¹⁵
- Teachers may not check the source thoroughly. Occasionally, teachers misunderstand and believe it was the original work of the student because of the students' innovative plagiarism skills.
- Although CMU uses a high-technology program for finding faults of plagiarism, Turnitin.¹⁶ It is a tool for finding a text that matches other sources in the vast Turnitin databases and shows those matches. It is up to a human being to determine whether those text matches are a problem or not.¹⁷

¹⁴ Interview with Professor Kitpatchara Somanawat, Faculty of Law, Chiang Mai University (Mar. 16, 2018).

¹⁵ Walaipun Puengpipattrakul, *Investigating Academic Plagiarism in a Thai Context*, 13 Electronic Journal of Foreign Language Teaching 203–228 (2016), <http://e-flt.nus.edu.sg/v13n22016/puengpipattrakul.pdf> (last visited Feb 10, 2018).

¹⁶ Student Training Turnitin On Line Tutorial, http://library.cmu.ac.th/rsc/space/online_tutorials/Turnitin-student-2018.pdf (last visited June 14, 2018).

¹⁷ *Does Turnitin Detect Plagiarism?* http://turnitin.com/en_us/resources/blog/421-general/1643-does-turnitin-detect-plagiarism (last visited Feb 10, 2018).

- Students still may not know how to write a proper citation, have not been taught how to write a proper citation and that it is necessary.
- Students simply are not concerned how serious this problem is, they are not confident that any software program will reveal their plagiarism and even if it does, that they will be disciplined.

Unawareness of the Principles of Plagiarism

Many students do not care since they think not giving a credit to the original source, in correct way, is a big deal or that it even matters. It seems a culture of plagiarism in Thailand. Many high schools never taught the correct citing ways, or giving credit as a general practice. The goals only are students need to have their own works to submit. Thus, when the students enter the university, especially in the first year, they do not know how to cite. For example, through a class in Critical Reading and Writing, which every CMU student must enroll. The teachers requires only that their students have assignments to submit. Therefore, occasionally, putting a URL, or just pasting information, is only what the students do. Students only know they need to gain data, but are not aware they need to refer the source. It is truly unacceptable ethical behavior, which schools should deeply concentrate on.

Solutions

The best way to prevent plagiarism are teachers and institutions educating the students to be critical thinkers and to be aware of the rules of proper footnotes and citations. The schools should teach the knowledge of plagiarism to the students and show them how important a reliable source is, to check data and should help the students to realize the citation is the way to show respect to the original creators. Educate the students as to what exactly plagiarism is, clearly define it as a concern. That means teachers need to actually know the ways of preventing plagiarism in the

first place and provide examples of proper citations, which students would be able to learn from.¹⁸

Moreover, students need to realize that it is not sufficient to show a teacher how much data is found by copy-and-paste means. The student must also analyze the information, paraphrase, write their own opinion, and cite properly. Even students, while conducting research on a topic, occasionally need the help of others and they may be allowed to do so, but they also need to follow the ways to avoid a plagiarism and provide credit correctly. This indeed demonstrates a respect to the original creators, teachers, and themselves honestly.

The sanctions according to the University Regulations might not be the best solutions, however they should be vetted and perhaps updated and amended. CMU should amend the clause 12(8) of the University Regulations, which regards to the plagiarism issue. It should cover to the copying of other plagiarized works, as a normal practice, not only deal with the *thesis* and *Independent Study*. Also, CMU should make the students realize how seriously the institution concentrates on the plagiarism issue, will enhance the punishment, as well as, enforcement.

The plagiarism in university seems be an ongoing issue. If educators still ignore it, overlooking the problems never make anything better. It also shows how lack of education regarding this ethic citing which schools do not seriously teach the students, and how negatively it could affect them. It should be accepted that plagiarism is not the fault of students only. They need to be taught properly and then if they continue to copy, cheat, lie and commit fraud, should be suspended or expelled from the university. Therefore, the easiest way that every part of the educational society could deal with this ongoing issue is raising awareness, and fixing the gaps in the Regulations which might be the supporting the plagiarism. It's time to be stop plagiarism for the sake of the creativity of the students and for their unique voices to be heard.

¹⁸ *How can I prevent plagiarism?* Carnegie Mellon University, <https://www.cmu.edu/teaching/designteach/design/instructionalstrategies/writing/preventplagiarism.html> (last visited Apr 2, 2018).