

PUBLIC PARTICIPATION IN ADJUDICATION IN THAILAND

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I. INTRODUCTION

The judicial power is an integral part of state sovereignty, separated from the legislative and the executive power. Exercise of the judicial power shall be in accordance with the rule of law. Under section 3 of the Constitution of the Kingdom of Thailand B.E. 2560 (A.D. 2017), “*Sovereign power belongs to the Thai people. The King as Head of State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution. The National Assembly, the Council of Ministers, Courts, Independent Organs and State agencies shall perform duties in accordance with the Constitution, laws and the rule of law for the common good of the nation and the happiness of the public at large*”. Therefore, a judge must adjudicate any cases in reliance on the rule of law. Generally speaking, a judge shall consistently comprehend the equal protection of law and equality before the law. Moreover, the court must allow the public access to fair trials and to be able to bring up any evidence to prove one’s innocence. The verdict of the court must be effective, fast and fair. Consequently, it is essential that all rights and freedoms of each individual are protected by laws. As such, each individual must have a chance to participate in the process of judgement to the fullest possible extent as long as it does not negatively impact the independent discretion of the judge.

II. PUBLIC PARTICIPATION IN ADJUDICATION UNDER THE CONSTITUTION OF THE KINGDOM OF THAILAND

Unfortunately, the latest constitution of Thailand, the Constitution of the Kingdom of Thailand, B.E. 2560 (A.D. 2017), does not clearly address public participation in the justice procedure. Section 77 reads that “...*the State should also undertake to ensure that the public has convenient access to the laws and are able to understand them easily in order to correctly comply with the laws...*”. This section provides contradiction to the Constitution of the Kingdom of Thailand, B.E. 2550 (A.D. 2007), under which it is explicitly stated in section 81 that “*The State shall act in compliance with the law and justice policies for ensuring the compliance with, and the enforcement of, the law to be correct, quick, fair and thorough, enhancing the provision of legal assistance and knowledge to the public, providing an efficient public service system and other State affairs in relation to the administration of justice with due regard to the participation of the public and the profession organizations, and providing legal aid service to the public.*” In the writer’s point of view, the state shall statutorily uphold the alternative of public participation in the administration of justice in order to protect their rights and freedoms.

III. CURRENT FORMS OF PUBLIC PARTICIPATION IN ADJUDICATION IN THAILAND

A. Witnesses in Court

The ability of a witness to give testimony in any judicial setting or to cooperate with legal investigations without fear of intimidation or reprisal is essential to maintaining the rule of law. This considers a general duty of a civilian to act as a witness in court because all nations have a common goal of creating peaceful societies. If the person witnessing the offences refuses to testify to such circumstance in court, the facts of such incident will not be determined by the court. In the end, the offender will not be punished.

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B. Court Mediators

Several years ago, a mediation programme was established in every court of first instance in Thailand. This programme was designed to be separated from the hearing process. If the mediation is not accomplished, the mediation dockets are not attached to trial dockets. Furthermore, mediation is conducted in a conference room, not a courtroom, in order to provide an appropriate atmosphere for definitive mediation. Additionally, in the first hearing session, parties may agree to use the mediation programme and, upon agreement, a designated judge of the case will refer the case to the mediation centre conducted by a mediator who shall not be a judge. The law provides that people have an opportunity to become a mediator in the court according to the President of the Supreme Court Regulation on Mediation B.E. 2554 (A.D 2011) of which article 51 stipulates that an applicant to become a mediator shall have the following qualifications and shall not have the following prohibited characteristics:

- (1) be at least thirty years of age;
- (2) be a graduate student with at least a bachelor's degree and a minimum of five years of work experience and has experience in various branches of work that will benefit mediation for not less than ten years;
- (3) be a trainee in a technical course or mediation procedure administered by the Office of the Judiciary;
- (4) having experience in mediation work in the court or in the Dispute Resolution Office, Office of the Judiciary, of not less than ten cases;
- (5) be ready to devote time to performing the duties of a mediator;
- (6) not being morally impaired;
- (7) not being in an occupation or profession or conducting any business which may affect acting as a compromise advisor or may be disgraceful to the honour of the institute of justice;
- (8) not being insolvent;
- (9) not be a person who has been determined by the court to be an incompetent or quasi-incompetent person;
- (10) not being a person who has been sentenced by a final judgment to imprisonment, except if the offence is committed negligently or is a petty offence.

There are many advantages when the mediator is selected from among people who are not judges, such as having different professional experience which may match the case and can help to find the true needs of parties rather than the judge, who has many limitations. It also gives people more opportunities to participate in the justice process.

C. Lay Judges in the Special Court

Only special courts in Thailand require lay judges to be denominated in a judicial committee thereof. Examples of special courts are the Juvenile and Family Court, Labor Court, and Intellectual Property and International Trade Court. Lay judges are people who have been selected by the Office of the Judiciary through written examination and interview. They have the power to jointly consider any relative cases with the judge. In court proceedings of juvenile cases, the lay judges will jointly consider criminal cases in which juvenile offenders are accused of crimes, and in the civil cases or family cases in which juveniles have interests involved. Moreover, lay judges are responsible for providing rehabilitation for violent children and juveniles. But, the current law does not require the presence of a lay judge in the normal criminal case in which the defendant is 18 years old or older.

IV. THE PROBLEMS OF PUBLIC PARTICIPATION IN THE JUDICIARY IN THAILAND

A. Implementation of a Jury System for Criminal Cases

The jury is composed of people who have been selected to hear testimony in court to determine whether the defendant committed an offence. This system is often used in countries where the common law system is used. However, in Japan, the jury system has been adapted in the form of *saiban-in*, who are citizens selected to participate as judges in trials for certain severe crimes¹. In the writer's opinion, public participation in criminal cases is important. However, nowadays, there is no legal support for the use of the jury system in

¹ https://en.wikipedia.org/wiki/Lay_judges_in_Japan, accessed 6 Nov. 2017.

criminal cases of Thailand. It is considered an arduous task to establish the jury system in Thailand so far as most people in Thailand are not well educated on the hearing of evidence and criminal proceedings which may affect rights and freedoms of people. Also, an escalation of corruption in Thailand has become more problematic. Additionally, most people are likely to perceive the case with bias created from social media and their own experiences or personalities. Those factors are the main obstacles for setting up the jury system in Thailand.²

B. Appointment of Thai Judges

The recruitment of judges in Thailand is conducted through a proper examination, and they are selected from qualified candidates. The qualifications of academic excellence, capacity and experiences of candidates are statutorily specified by the Judicial Commission. There is less room for the citizen to participate in judge recruitment because there is no statute imposing the law related to the participation of the citizen. Practically, when a candidate passes the examination, a list of candidates will be announced to the public and any individual can oppose such concerned candidate. Nowadays, people in Thailand have raised concerns over the participation of public verification during the process of judge recruitment. This is because some judgements made by previous judges were thought to be unacceptable by certain groups of people. This issue still becomes more challenging for the court of justice to find the means to reach a compromise between the participation of citizens in the appointment of judges and the independence of the judicial power.³

C. Lack of Knowledge

With the fact that the greater part of people lack knowledge on public participation related to crime prevention and criminal justice, the public involvement in the judicial system, as a result, seems inconceivable. Due to the foregoing reason, accessibility to the judicial system is limited to certain groups of people. Without strengthening of public verification, this will result in the corruption of relevant officers.

V. RECOMMENDATIONS ON THE NOTION OF PUBLIC PARTICIPATION IN ADJUDICATION

A. Establishment of a Lay Judge or Jury System in Thailand

It is recommended that Thailand draw attention to the lay judge or the jury system and consider whether such a system should be applicable to the criminal procedure of Thailand. Generally, in many countries, the lay judge or the jury system is adopted because this system creates trust and righteousness to the public and, most importantly, participation of the public in the trial process of the judiciary itself promotes public confidence. Additionally, this is a democratic notion. The application of the jury system will give more opportunity to explore an external jury which may possess experiences different than a judge. To sum up, the establishment of a jury system would be better than reliance on the mere decision of the judges.

B. Right of the Public to Interpret the Laws

The right to interpret the laws belongs to the public especially in relation to the criminal law as it governs appropriate behaviour of not only individuals but also the society. To avoid criminal punishment, it is the duty of everyone to promote awareness of the existence of laws and the details thereof. If the Criminal Code is able to be properly and legally interpreted, the interpreter will easily become aware of criminal offences and prevent any violations of laws. In any circumstances, a court shall not construe any laws beyond its context and the spirit of the law, specifically, when criminal enforcement is involved.

C. Knowledge Relating to Public Participation

Certain people are not able to access justice because of their lack of knowledge related to the laws and the justice procedure. It is necessary to encourage people to participate in the justice process and to redesign the justice system. Nurturing public goodwill by actively participating in the dissemination of knowledge on the legal and justice system, as well as creating tools for equal access to justice, is something the state should take into account.

² Study report by the cooperation between the Office of the Judiciary and Chicago - Kent College of Law, Illinois Institute of Technology, United States, during 7-14 June 2016. (http://www.jti.coj.go.th/doc/data/jti/jti_1478490903.pdf) accessed 5 Nov. 2017.

³ Ibid.

D. Promoting a Community Justice System

A community justice system is an optional form of justice administration which generates reliance of the community on criminal surveillance and also enhances public empathy when there is involvement of society. This system can relieve congestion of prisons, enhance the role of the community to protect the rights of offenders and create an understanding among offenders, victims and communities. Community justice is one channel that is used to create a mechanism for the public to participate in and monitor the work of police officers, prosecutors, attorneys, and court institutions, which will result in benefits to the nation. In addition, this system reduces the risk of reoffending which will reduce the number of lawsuits going to court.

E. Participation in the Recruitment Process of Judges

It is recommended that there should be systematic research on how the people in Thailand think of the recent working procedure of judges, how considerable the participation in judge recruitment is expected be, and to what extent the public should be required to take part in the recruitment process of judges.

F. Tools for Public Participation

There should be tools for public participation during the court procedure. For example, in an environmental lawsuit which is affecting a great number of people, it appears that there are not many people who possess adequate knowledge. The state should assist the people in hiring attorneys and technical experts for finding and verifying evidence, finding for environmental litigation, and exemption of the court fee. Even in Thailand there are some agencies that support legal aid in environmental cases such as the Lawyer's Council, the Office of the Human Rights Commission, the Department of Protection of Rights and Freedoms, and the Ministry of Justice. However, because of a limitation imposed on the number of lawyers and experts, budget troubles, and lack of potential development, the protection of people in such environmental cases is not as good as it should be.

VI. CONCLUSION

To have a more effective criminal justice system which is compliant with the rule of law, Thailand should begin to reform its legal system in order to increase public participation in adjudication and to create trust in the justice system by reintroducing the lay judge or the jury system in criminal cases. The victim and witness protection programmes need to be strengthened. The state should create tools to assist public participation in adjudication, including community justice, which is one channel through which the public can participate.