

Chapter One

Legislative Process in Thailand: A Statistical Overview

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The aim of this chapter is to provide a statistical overview of legislative process in Thailand. It will start from a brief consideration of the forms of Thai legislation, as well as the features of Thai parliament system. Then, it overviews how the number of legislation has changed since Thailand established the parliamentary in 1932.

I. Forms of Legislation in Thailand

Despite the frequent constitutional changes, the fundamental framework for the legislative power remains unchanged. Section 3 of the 2007 Constitution provides that “[t]he sovereign power belongs to the Thai people. The King as Head of the State shall exercise such power through the National Assembly, the Cabinet and the Courts in accordance with the provisions of this Constitution.”¹

Any statute that is enacted by the National Assembly takes a form of “an Act” (*phrarachabanyat*). A bill of an Act or Organic Act may be enacted as law “only by and with the advice and consent of the National Assembly and, when signed or deemed to have been signed by the King under this Constitution”, then be promulgated in the Government Gazette (s. 90).²

Organic Act

An Organic Act is one example of the legislative reform under the political reform movement in the 1990s. The concept of organic act was introduced into Thai law

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¹ The English text of the 2007 Constitution in this chapter is taken from Pinai (2007) with some modification by the author.

² Sections that are referred in this chapter are those of is those In this chapter, the numbesections is that of the 2007 Constitution, other legislation referred

by the 1997 Constitution based on the study of the organic act systems in some European continental countries.³ The legislative process of an Organic Act is designed more difficult than an ordinary Act, but easier than the Constitution. Such framework is supposed to serve as deterrence against a powerful figure's arbitrary law-making; as well as to enable an Organic Act to cope with the changes of the time (Somkit 1995: 6-7).

Under the 2007 Constitution provides that there should be nine Organic Act (s. 139): Election of the Member of the House of Representatives, and the Acquisition of the Senators: Election Commission; Political Parties; Referendum; Constitutional Court Procedures; Procedures for the Criminal Cases for the Persons Holding the Public Office. The Constitution also provides the period time for some particular legislation including Organic Act to be enacted, to secure that such legislation that is important for the implementation of the Constitution to be enacted in a timely manner.⁴

The legislative process of an Organic Acts differs from that of an ordinary Acts in the scope of the persons who have the right to submit a bill to the parliament, and the period of time in which each House should be finalize the deliberation of a bill. Furthermore, the 2007 Constitution requires any Organic Act bill should be submitted to the scrutiny by the Constitutional Court, whether or not there is any complaint on the constitutionality of such bill (s. 141). In 2008, the Constitutional Court exercised the review under this provision, and declared three Organic Act bills as unconstitutional because of the lack of quorum at the time of voting in the National Legislative Assembly, which worked as the National Assembly under the Interim Constitution of 2006.⁵

Another legal issue relating to an Organic Act that is dealt by the Constitutional Court is whether the Organic Acts promulgated under the 1997 Constitution lapsed when the 1997 Constitution was abolished by the coup in 2006. The Constitutional Court held that the Organic Acts remained in force.⁶

³ There are some similarities in the experience of the modernization of legal system in late nineteenth century between Thailand and Japan, such as the receiving European legal tradition with foreign legal advisers' assistance. Compared with Japan, Thai royal family members played important roles in the early process of modernization of legal system. This fact may explain well the continuity of some aspects of the traditional legal system such as the names of legislation.

⁴ One reason to introduce an Organic Act is to prevent Thai Constitutions from becoming big. by providing detailed provisions (Somkit 1993).

⁵ Constitutional Court Decisions: No. 2/2551 (Bill of the Organic Act on Ombudsman); No. 3/2551 (Bill of the Organic Act on the Prevention and Counter Corruption (No.)); and No. 4/2551 (Bill of the Organic Act on Auditing).

⁶ Constitutional Court Decision No. 5/2551 (June 30, 2008).

Emergency Decree

From a foreign lawyer's perspective the system of Thai legislation seems a little complicated, because, other than an Act, which is enacted by the National Assembly, there are two other forms of statutes that are enacted by the political institutions other than the National Assembly, but have the same legal force with an Act. One is an Emergency Decree (*phrarachakamnot*), and that is enacted by the Executive on the name of the King for the purpose of "maintaining national or public safety or national economic security, or averting public calamity" (Section 184), as well as when the cabinet "is of the opinion that it is the case of emergency and necessary urgency which is unavoidable." (s. 184, cl. 2). This is the prerogative of the King under the Constitution (s. 184). An Emergency Decree has and continues to have a force as an Act, on the condition that it is approved by the National Assembly later (s. 184). As will show later, the number of Emergency Decrees that have been enacted is small, compared with the number of Acts.

Second, there are some enactments with the name other than "Act" such as the "Code" (*Pramuan kotmai*), "Statutes of the Court of Justice".

Third, the major forms of legislation use the name coming from Thai tradition legal system, though their usage may be different from the traditional usage. The major forms of legislation use the "phraracha" that means "Royal": *Phrarachabanyat* (Act); *phrarachakamnot* (Emergency Decree); *phrarachakrusadika* (Royal Decree); and *phararach rongkan* (Royal Order).

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The legislative process of an Organic Acts differs from that of an ordinary Acts in the scope of the persons who have the right to submit a bill to the parliament, as well as the period of time in which each House should be finalize the deliberation of a bill. Furthermore, the 2007 Constitution requires any Organic Act bill should be submitted to the scrutiny by the Constitutional Court, whether or not there is any complaint on the constitutionality of such bill (s. 141). In 2008, the Constitutional Court exercised the review under this provision, and declared three Organic Act bills as unconstitutional because of the lack of quorum at the time of voting in the National Legislative Assembly, which worked as the National Assembly under the Interim Constitution of 2006.⁹

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Code and Charter of the Courts

There are some statutes which are given special names. The first is Code of Laws (*pramuan kotmai*). There are six Codes: Civil and Commercial Code; Criminal Code; Military Criminal Code; Civil Procedure Code, Criminal Procedure Code, Land Code, Revenue Code. Recently they proposed the Code on Local Governments. Second, the Statute of the Court of Justice (*phrathammanun san yutitham*) and the Statute of the Military Court (*phrathammanun san than bok*) are another example of the special

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¹⁰ Constitutional Court Decision No. 5/2551 (June 30, 2008).

nomination of legislation.

Legislative process for of a Code of Laws or Statutes of the Court is not different from other statutes; They are promulgated or amended by the Act like “Act Amending the Code...” or others.

Proclamations after a Coup

A proclamation that is issued after a military coup is a unique feature of Thai legislation. Such proclamation does not have any constitutional basis, as it is issued by a coup group after the constitution was abolished and the parliament was dissolved. Such proclamations have force as an Act even after the interim Constitution come into force. The name of proclamation depends on the name a coup group (Table 1). It was General Sarit’s coup in 1958 that such proclamation was used at first.¹¹ The longest period in which the proclamation of this sort was used is the coup of 1971.

After the pro-democratic movement in the mid-1970s, the period of no-Constitution period tends to be short, and thus the number of proclamations issued by a coup group decreased except for the coup in 1991. Fifty six proclamations were issued only in six days from the coup to the promulgation of the Interim Constitution 1991. This suggested that the proclamations of various coups were used as pushing a bill to become a law without political interventions.

Table 1 Proclamations issued by coup groups

Coup Date	Interim Const.	No Const. Days	Title	Total	As Act	As Royal Decree
1958/10/20	1959/1/28	100	Proclamation of the Revolutionary Party	57	36	4
1971/11/17	1972/12/15	394	Proclamation of the Revolutionary Party	364	193	153
1976/10/6	1976/12/12	67	Order of the Council of Reforming the Governing Kingdom	47	34	0
1977/10/20	1977/11/9	20	Proclamation of the Revolutionary Party	27	19	0
1991/2/23	1991/3/1	6	Proclamation of the Council for the Maintenance of Order and Peace	56	22	1
2006/9/19	2006/10/1	12	Proclamation of the Council for Democratic Reform Having the King as Head of the State	36	13	0

(Source) AuthoBased on the database of Government Gazette (<http://www.ratchakitcha.soc.go.th>)

¹¹ At the time of the coup by Phibul Songkhram in 1947, the interim constitution was promulgated at the time of the coup, thus such type of proclamation was not used.

Subordinate legislation

Subordinate legislation includes a Royal Decree (*phrarachakrusadika*), a Ministerial Regulation (*kot krasuang*); Rules and Regulations (*khobangkhap*).

Under the Constitution, “the King has the prerogative to issue a Royal Decree which is not contrary to the law” (s. 187). As the fact that this provision is located in the chapter of the Cabinet in the 2007 Constitution shows, a Royal Decree is as a matter of fact, prepared and enacted by the Executive, usually based on the provision of the law that empowered Royal Decree is enacted on behalf of the King, a Minister responsible for the matter at issue, will countersign the Decree.

The 2007 Constitution provides that certain matters shall be prescribed in the form of Royal Decree. They include: the calling for a general election (s. 107), the dissolution of the House of Representatives (s. 108, cl. 2); the convoking the parliament (s. 128); emoluments and other remuneration of MPs, Senators and other public offices (s. 196).

A Royal Command (*phraboromarachaongkan*) seems to be used for various notifications proclamations used to the appointment of public offices such as a Prime Minister or a Minister, but it is not used as prescribing a general rule. Local governments are empowered to issue by-laws (*khobanyat*).

II. Parliament

Parliamentary politics in Thailand started in 1933 when the first parliament was established. Due to the frequent political change by a military coup, the number of the written constitutions counts fifteen. In general, these constitutions are divided into two categories: an interim constitution and a permanent constitution.

Interim Constitution and Permanent Constitution

An interim constitution is promulgated usually by a coup group to set the interim framework for their governing. Interim constitutions contain small number of provisions. They lack human rights clauses or the bill of rights. Usually it adopts a unicameral parliament selected by the government. The governance under the interim constitution is supposed to be short; however, in the past, the time of its application was quite long. The Sarit administration and its successor Thanom administration extended the application of the 1958 Interim Constitution to almost ten years. The period of time of applying the Interim Constitution tends to be reduced after the pro-democratic

movement in 1970s.

Permanent constitutions have the full set of provisions for the government. The number of provisions is high, they include human rights clauses.

National Assembly (Bicameral)

Thai parliament has changed due to the political change especially military coups. The 1932 Constitution adopted a unicameral parliament, the People's Parliament. Since 1946 Constitution, the permanent constitutions adopt the bicameral National Assembly consisting of the House of Representatives¹² and the Senate.¹³

The most controversial issue since 1990s is whether the Senator should be elected or not. The 1997 Constitution was the first Constitution that prescribes that Senators should come from the election. Thus the first Senators election was conducted in 2000. However, the 2007 Constitution promulgated after the coup in 2006 maintained the election of Senators, but a portion of Senators shall be appointed by the King. In the past, the government had substantial autonomy to select the member of Senators, but the 2007 Constitution prescribed the detailed selection process of Senators so that they reflect the various interests and professions in Thai society.

Interim Assemblies under the Interim Constitutions

Interim Constitutions in the past adopted a unicameral parliament consisting of only appointed members. All the members are nominated by the government. The name of the parliament under the interim constitutions may vary, but the recent constitutions called the National Legislative Assembly. Sometimes the Constitutional Drafting Assembly was established and had a duty of Legislative National Assembly. However, this section does not consider the constitutional drafting here.

III. Legislation in Statistics

1. Scope of the Data

How legislation has changed in Thailand? Relying on the database of the Thai

¹² The term *sapha phutean rasadorn* is used as not only for the lower house of the bicameral National Assembly, but also for a unicameral parliament under the 1932 Constitution, which will be translated as the People's Assembly.

¹³ Except for 1952-57 in which the 1932 Constitution was promulgated again with amendments.

government gazette, we will review the number of the legislation since the Constitutional Revolution in 1932.

Figure 1 shows how the numbers of Acts, Emergency Decrees, and Proclamations after coups changed from 1932 to 2009. The year is used the date of promulgation to the Government Gazettes. The Act includes an Organic Act. Acts are divided into two groups depending on the nature of the parliament that enacted them: the National Assembly (bicameral) and the parliaments under the Interim Constitution like the National Legislative Assembly (herein after called Interim Assembly). The latter parliament consists of only appointed members. In case an Interim Assembly continued to work as the National Assembly in accordance with the transitory provisions of the Constitution, the Acts enacted by the interim Assembly are included to the group of the interim Assembly. As for the date of enactment, the date of publication to the Government Gazette is used instead of the date that Act passed the Assembly. There was a time lag between the publication date and the passage date. The royal approval of an Act may take time.

Proclamations by a coup group are limited only to those having force as an Act. Only the Emergency Decrees that were issued after 1932 was included in this Figure. The number also include the Emergency Decrees that were not approved by the National Assembly thus lapsed afterward. Some Emergency Decrees may include those that do not set general rules.

2. Observations

It is interesting that Acts enacted by interim Assemblies amount almost half of the Acts enacted during the period reviewed.

First, when the military's power is strong, the National Legislative Assembly under the interim Constitution worked very long. For example, the National Legislative Assembly under the 1958 interim Constitution worked almost a decade.

Even after a permanent Constitution was enacted, the interim Assembly under the interim Constitution worked long than we expect. The good example is the interim Assembly appointed under the 1972 Interim Constitution, which continued to work as the National Assembly under the 1974 Constitution.

Figure I shows well that there were rapid increase of Acts enacted especially in the period of interim Assemblies, especially in 1991 and 2006. It seems that the government rushed to introduce many government sponsored-bills to the interim

Assemblies that consisted of only appointed members, because they were substantially free from party politics or political influence. Anan Panyarachun administration (1991-1992) was regarded as having powerfully preceded institutional reforms in many sectors. It seems that the Anan administration's works were highly supported by the 1991 interim Constitution. Similar phenomenon seems have happened in 2006-7 in the National Legislative Assembly.

By the way, the members of the National Legislative Assembly under the 2006 interim Constitution selected from various sectors.¹⁴ The NLA may have given much emphasis on social aspect in its work, but we need to look into the details of the Acts enacted.

Proclamations

The proclamations that were issued by a coup group are utilized in the period when the military had much power, especially in 1971 to 1972. Like the case of Interim Assemblies, the government may have takes advantage of using this form of legislation to pursue their policy smoothly without political interference from the actors outside the government. There was almost no political intervention from outside the government. The importance

Emergency Decree

According to the data from Government Gazettes, the total number of Emergency Decrees amounts to 216.¹⁵ Half of the Decrees are relating to custom duty (25%) and other taxes (21%). If we add the Decrees relating to banking, currency, and finance (21%), the 67% of the Emergency Decrees are on financial issues.

The first peak of the number of Emergency Decrees was in the World War II period, and the many of them were not related to financial issues. The utilization of Emergency Decrees increased under the 1978 Constitution. Economic turmoil may have needed the Emergency Decrees, but that might be related to the pro-democratic gradual change in Thai politics. The Economic Crisis in 1997 was major factor that increased the number of Decrees. Thaksin administration (2001-06) less utilized the Emergency Decrees, but that they used the Emergency Decree as the method to amend the fundamental legislation like the Criminal Code was controversial.

¹⁴ Professional and regional representatives was taken into consideration in the selection of Senators under Banharn administration in 1995.

¹⁵ <<http://www.ratchakitcha.soc.go.th/RKJ/announce/search.jsp>>

Figure 1 Legislation in Thailand

Figure 2 Emergency Decree in Thailand

Conclusion

The statistical overview of Thai legislation in this chapter has revealed very unique features of Thai legislative process in the past. The most striking fact is that almost half of the Acts were enacted by the Interim Assemblies, or took the form of the coup proclamations

The democratic procedure takes cost and time. Any democratic government has to manage the tensions between the efficiency and democracy in law-making and policy decision. Thai government in the past seems to have enjoyed a substantial advantage to use the legislative process like Proclamations of a coup group and the Interim Assemblies in pursuing their policies. Even after the pro-democratic political change occurred, the Interim Assemblies may remain the attractive way-out from a political difficulty that may hamper the bill from passing the parliament. At the same time, such irregular legislative process seems to contain a risk that any law that is not well studied becomes a law without adequate parliamentary scrutiny.

This chapter has not identified yet how the way of selecting members of the Assemblies or their background affect the law-making. There are two concurring views on the appointed members: one considers that appointed members will take a more supportive attitude toward government bills, and the other views that appointed members, as consisting of experts in each field, can monitor and scrutinize the bill more. More detailed analysis will be more

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