Chapter Five

Legislative Process of Thailand: An Historical Perspective

Chanchai Boonyawan*
Apirach Phetsiri**

In order to understand Thai legislative process it is usefull to begin with their historical background.

I. The History of Thai Justice Process

1. Thai Justice Process before the King Rama V Era

Thai justice process can be traced back to Sukhothai period when written inscription was firstly introduced.

Sukhothai Judicial System

During the *Sukhothai* period, Thai society was not complex and less populated. The kingdom was governed under "paternal system" whereby the king was considered as father and people as children. Not only was the king a governor, but he was also responsible for delivering justice. According to the Stone Inscription No.2 of King Ramkamhaeng the Great, the king exercise his judicial power by himself as stated on line 31 on the first side, to line 2 on the second side.

> "… There is under the portico a bell hung up for the use of people, the royal subjects, in the centre of each village, in the centre of each town. If in quarrels or injuries of any kind, they wish to speak their mind before the lord or complain to the nobleman, it is not difficult. They go and ring the bell, which has been hung up there for them. The father-benefactor Ramkamhang, the father of the country, takes it up, he has the matter

* Legal Expert, Foreign Law Bureau, Office of the Council of State
** Associate Professor, Faculty of Law, Chulalongkorn University.

enquired into and the names of the parties searched out…"

Although judiciary power has not yet applied by court of justice back then, judgment rule had already been applicable according to the Ramkamhaeng's inscription.

> "…Whenever disputes arise between common people and members of the nobility, they will be examined into and decided with justice, both parties being equally regarded as subjects. The judge must not side with the person who clandestinely steals and defrauds. He must not harm the property of the litigations and take from it by his greediness. …"

In principle, the judge must adjudicate with honesty, fairness and impartiality regardless of any gifts or rewards. Despite the inexistence of court of justice during Sukhothai period, the father-benefactor or the king, with his judiciary power, can mandate any person to adjudicate the disputes. This shows that the ancient Thai law corresponded with 'natural law' which defines a relationship between the king and his citizens where the king must rule his country with justice.

Ayutthaya Judicial System

As Ayutthaya society was considered more complex, development of judicial system was necessary. King Ramathibodi I of Ayutthaya (so-called King Ou-Tong), the first king of Ayuthaya period, ordered the Brahmin, administration and royal custom experts, to issue laws as a core for justice. Dhammasastra (an ancient Hindi literature) was taken as a model. The Brahmin's laws were later appeared in many chapters of "Three Emblems Law" – law books written at the beginning of the Chakri Dynasty- including evidence part, admission of charges, burden-proof by water submergence or walking through fire and qualification of judges etc.

H.R.H Prince Damrong Rajanupab once mentioned about Ayuthaya's judicial system that

> "Ayuthaya adjudication system had continued until the establishment of the Ministry of Justice by King Rama V. The system was rather uncommon since it was a mixture of Indian and Thai adjudication. Another unique point is that the judiciary was formed by 2 groups of people. The first group consisted of 12 foreign Brahmin who were legal experts. They were called "the Jury of Royal Court" and leaded by the great master Purohit and the great master Mahithorn, who ranked the highest of Thai nobility – Jaopraya.

> The Jury of Royal Court was responsible for applying the law. However, they could not make any order. This duty lied merely on Thai officers…"

More importantly, judicial duties were decentralized and distributed to different bodies, including the department of charges, the jury, Tralakarn (judges) and executors. That is to say, claims shall be filed to the department of charges and then handed over to the Jury. After the claims were examined, they would be distributed to different courts of divisions depends upon type of cases, for example, court of Wang division, court of Na division. Each division has its own Tralakarn to cooperate with, the Jury and executors of from other bodies in adjudication.

King Rama V once mentioned about the Jury and the Executors in the book called "Royal speech of King Rama V" that

> "The Jury is a large department, as it was responsible of disputes of the whole country. However the main objective to establish the jury remained unclear. Moreover, the word "Jury of Royal Court" itself could not be seen in any old book of law which contained core legal principle, but it rather appeared in by-laws or subordinate laws. However, as the Jury was not responsible to hear the case, there must be Tralakarn perform that duty. Whether Tralakaen was controlled by the Jury or by government divisions as in present is still questionable. …"

Under the reign of King Songdham, procedural law was enacted namely the Law of Court Organization 2165 B.E., so-called "Pratammanoon" as in the Law of Three Seals. Prathammanoon provided that there were 14 types of courts in Ayuthaya period.[1]

In general, appeals were not allowed under Ayuthaya judiciary system unless Tralakarn, examiner or any witnesses questioned about their malfeasance or injustice which could be appealed to the Royal Court. As there was no Supreme Court, the unsuccessful appeal shall be tendered to the King in the form of petition.

Later appellate procedural law was made by King Prasarttong in 2176 B.E. to

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[1] Fourteen types of courts are: (1) Court of Appeal or the Royal Court; (2) Criminal Court; (3) Ayajakr Court; (4) Metropolitan Court: (5) Wang Civil Court; (6) Central Civil Court; (7) Kasem Civil Court; (8) Probate Court; (9) International Court or Central Harbour Court; (10) Na court; (11) Treasury Court; (12) Education Court; (13) Registrar Court; and (14) Court of Medicine.

deal with Tralakarn and judicial officer accusation cases. If they were found guilty, any compensation or court fees would be borne by them and they would be removed from the original case.

Thonburi Judicial System

Due to a short-term throne and excessive wars, Ayuthaya judicial system continued in this period.

Ratanakosin Judicial System

Ayuthaya judicial system remained a prominent system since the Kingdom was under reconstruction along with unceasing wars.

2. Thai Justice Process after the King Rama V Era

As the society became more complex, an ancient judicial system of Ayutthaya became out-of-date and significantly deterred Thailand from future prosperity for many reasons.

Unsuitability of court system

Distribution of courts to several government bodies and involvement of multi-agencies decelerated adjudication process and create more jurisdictional problems.

Unsuitability of the old justice process

Justice process and punishment was clearly unsuitable and unfair for modern community. Furthermore, it could be seen an extensive number of disputes brought before the court.

External pressure

Back then, foreign countries very much enjoyed their extraterritoriality in Thailand and their consuls arbitrarily interpret treaties regardless of Thai law or Thai judiciary. The problems at hand led to the reform of Thai law and Thai judiciary by King Rama V. The Ministry of Justice was established, with Krompra Sawatdi Wattanawisit as its the first minister , to centralize all ministry courts. He reorganized Thai judicial system by combining 16 courts into 7 courts as follows;

- Renaming the Supreme Court as the Royal Appeal Court
- Renaming the Appeal Court of the Ministry of Interior as the Appeal Civil Court
- Combining the Metropolitan Court and the Local Criminal Court to the Royal Criminal Court
- Combining the Kasem Civil Court, the Wang Division Court and the Na Division Court to the Kasem Civil court
- Combining the Central Civil Court, the Central Harbour Division Court, the Left Harbour Division Court, the Right Harbour Division Court, the Education Court and the Royal Family Court to the Central Civil Court
- Combining the Revenue Court and the Probate Court to the Revenue Court
- International Court remained unchanged

In 1908 (B.E. 2451), court organization law and civil procedural law were promulgated aiming at altering and improving administration of the Ministry of Justice and Courts of Justice and discontinued ministry courts by the proclamation establishing court of justice. Nevertheless, the Supreme Court continued to be responsible to the King and two further courts were established, namely the Bangkok Court of Justice which included the Court of Appeal, the Royal Criminal Court, the Civil Court and the International Court, and the Police Assembly Court (former District Court) and Provincial Court.

Later, the Regulation on Justice Administration was promulgated in 2455 B.E., dividing affairs of Ministry of Justice into 2 issues; first, the administration of affairs under the supervisory of Minister of Justice and second, the judiciary affairs under the supervisory of Krommaluang Pichitpreechakorn, the first appointed chief justice of the Supreme Court. Albeit a clear separation of power, the Minister of Justice was empowered to opine on judicial affairs. If any conflict arose, the issue could be tendered to the King for his opinion or royal custom.

The Supreme Court was responsible for judicial affairs including regulating, appointing, promoting and transferring judiciaries. Any legal matters would be considered by the Chief Justice of the Supreme Court. Should the royal custom is required, chief justice was responsible to ask the King. Later, the 2455 B.E. regulation was repealed and replaced by the regulation of 15 December 2471 B.E. which empowered the Minister of Justice to control the government officers, general affairs officers and the judiciaries outside adjudication duty due to the principle of autonomy of judiciary. Additionally, the Minister of Justice was empowered to control the conduct of

the courts for the efficiency the Ministry of Justice. Later, Judicial Service Act and the Judiciary Act of 2477 B.E. were promulgated to improve and modernize judicial services, enhance judiciary efficiency as well as restrict rigid discipline and ethics with an aim to ensure justice and public confidence. In achieving aforementioned goals, the Judiciary Act of 2477 B.E. discontinued the ministry supervision over the courts, renamed the courts as the Courts of Justice and categorized them into the Court of First Instance, which are subdivided into court in Bangkok and local court, the Court of Appeal and the Supreme Court. The Act also required every court to be under the supervision of the Ministry of Justice. Therefore, the Act was also applicable to the courts established by other Acts, except the Military Court which was under the supervision of the Ministry of Defense.

As can be seen, judicial system of Thailand was gradually developed throughout several amendments of the Judiciary Act and the establishment of new courts and judicial regulations made by the Chief Justice, with the permission of the Minister of Justice, in order to serve true justice to Thai society.

3. Thai Justice Process after the State Administration Reform

The administration of the Ministry of Justice was originally under the Executive's control. This was considered to be a great hinder of court independency, roles of the court and development of the agency. For instance, the intervention by the Executive and political bodies, the generality of administrative regulations which are also applicable to the specialist judiciaries, the bad image of Thai court of justice due to the lack of real independency. It is clear that if the Court of Justice is still supervised by the Ministry of Justice, whether it was influenced by the administrative is unsurprisingly more or less questionable.[2] As a consequence, there was as resolution of the Cabinet on 4th February 2540 B.E. to utterly separate the Court of Justice from the Ministry of Justice and require an independent body to take care of general affairs namely, the Office of Judiciary. The Constitution of Thailand 2540 B.E. also affirmed the autonomy of the Courts as provided in section 275, 253, 273, 274 paragraph 2, 249 and 236.

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[2] Academic Division, Department of Judiciary Support, the Separation of Court of Justice from the Ministry of Justice, Journal of Justice, p 12-20

4. Transformation of Single Court System to Dual Court System

One fundamental principle of democracy is the principle of legal state, the state governed by the rule of law. Any government act must be legitimate. Rights and freedom must be protected from any arbitrary act of the Executives. Legitimacy shall be examined by an independent and neutral body. Although each democratic state has its own type of body in examining legitimacy of executive acts, it is believed that the most powerful and efficient system is "the Dual court system" whereby the administrative court is the sole body responsible for administrative disputes adjudication, apart from the Court of Justice.[3]

The Administrative Court is said to be a new entity in Thailand as it was recently established by virtue of the Constitution of Thailand 2540 B.E. The Constitution strikes 3 important issues of the Administrative Courts.

Power of Administrative Courts

> **"Section 276** Administrative Courts have the powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organization , or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between a State agency, State enterprise, local government organization , or State official under the superintendence or supervision of the Government on one part and another such agency, enterprise, organization or official on the other part, which is the dispute as a consequence of the act or omission of the act that must be, according to the law, performed by such State agency, State enterprise, local government organization , or State official, or as a consequence of the act or omission of the act under the responsibility of such State agency, State enterprise, local government organization or State official in the performance of duties under the law, as provided by law."

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[3] King Prajadhipok's Institute, Report on the Follow-up and assessment of the affairs of the Administration Court, p 1-3

Appointment and Qualification of Administrative Judges

"Section 277 The appointment and removal from office of an administrative judge must be approved by the Judicial Commission of the Administrative Courts as provided by law before they are tendered to the King.

Qualified persons in the field of law or the administration of the State affairs may be appointed as judges of the Supreme Administrative Court. Such appointment shall be made in the number of not less than one-third of the total number of judges of the Supreme Administrative Court and must be approved by the Judicial Commission of the Administrative Courts as provided by law and by the Senate before it is tendered to the King.

The promotion, increase of salaries, and punishment of administrative judges must be approved by the Judicial Commission of the Administrative Courts as provided by law."

"Section 278 The appointment of an administrative judge as President of the Supreme Administrative Court, shall, when already approved by the Judicial Commission of the Administrative Courts and the Senate, be tendered by the Prime Minister to the King for appointment."

The Office of the Administrative Courts

"Section 280 The Administrative Courts shall have an independent secretariat, with the Secretary-General of the Office of the Administrative Courts as the superior responsible directly to the President of the Supreme Administrative Court.

The appointment of the Secretary-General of the Office of the Administrative Courts must be approved by the Judicial Commission of Administrative Courts as provided by law.

The Office of the Administrative Courts shall have autonomy in personnel administration, budget and other activities as provided by law."

The aforementioned sections are the consequences of a strong attempt to establish the Administrative Court of Thailand. As far as the sections are concerned, the administrative court is a specialized court with an office dealing with general affairs of the court apart and independent from the court itself. The Administrative Court has the

powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between themselves. Its important roles draw an intention of both public and private sectors as its rulings can provide a guideline for public administration and also protect constitutional rights and freedom of the public. Therefore, in adjudicating administrative disputes, both public and private interest must be taken into account to strike an appropriate balance of justice, to protect individual rights and also to facilitate the administrative works. In other words, the court shall examine whether the rights ostracized by public officers and public interests gained are proportional. In reaching this ultimate objective, various factors including the suitability of the court structure, the court jurisdiction, the court procedure, qualifications of the administrative judges and the principle of administrative law are involved.

Subsequently, the Constitution of Thailand 2540 B.E. and 2550 B.E. transform Thai single court system which rely all cases solely on the Court of Justice to the dual court system whereby the administrative court takes an active role apart from the Court of Justice. The Administrative Courts have the powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between themselves.

II. Legislative Process of Thailand

Before illustrating current legislative process in Thailand, the previous process must be provided to facilitate the understanding of its background and development. As legislative process and political regimes are closely connected, its historical background will be divided into 2 periods.

1. Legislative Process under Absolute Monarchy (Pre 1932)

Prior to the Siamese revolution by the People's Party in 1932 (B.E. 2475), Thailand was governed under absolute monarchy regime influenced by the Bhramin

who believed that the King hold an absolute power [4], govern the State with justice which is holy and unchangeable[5]. Justice derives from Dhammasattra and Prarachasattra. The former is a literature regarding a set general principle of justice which later become a source of the king-made-law and justice process. Such king-made-law is called Prarachasattra or a Royal Enactment or a Decree.[6]

There was no clear procedure or a body responsible for legislation.[7] Every step of legislative process was borne by the King. Once he initiated the law, he would directly, or via an officer, order a scrivener to prepare a draft which would later corrected, amended and declared by the King. These laws were effective until they are amended or repealed by successive kings. A great number of laws were made and some of them were overlapped. Although these laws were recorded in a written form by scriveners, many of them were destroyed and burnt during the siege in 2112 and 2310 B.E., creating an inaccurate interpretation of law. As a result of Amdang-Pom case in early Rattanakosin period, King Rama I initiated to revise existing law which was later called, the Book of Three Seals.[8]

King Rama IV exercised his legislative power[9] by collecting written law into the Royal Thai Government Gazette in 2401 B.E. Later, King Rama V promulgated the Council of State Act on 24 June 2417 B.E. The role of the Council was to supervise the King on government administration and legislation and also settle any disputes. The notification of 8 May 2417 B.E. regarding the establishment of the Council of State provided that

> "Once the king initiated any important issues which should be enacted as law or royal customs, he then asked for the council's advice. If it is mutually agreed and signed, it will be drafted as a royal decree which would be later read before official meeting and once agree, it would be signed and declared as a law…"

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4 Chaianan Samuttawanich**,** Politics-and Thai Political Reform, 2411-2475 B.E., 1st Edition (Bangkok: Bannakit Publisher, 2523 B.E.), p.168

5 Under legal philosophy, this school of thought is synchronized with Natural School of Law

6 R. Langa, Thai Legal History I , (Bangkok : Thai Wattanapanich Publisher), p 42-48

7 The Office of Council of State, 60th Anniversary The Office of Council of State, p 1-2

8 Wisanu Krueangam, 60th Anniversary The Office of Council of State, p 312- 329

9 R. Langa, Thai Legal History I , n.8, p 50-51

It could be construed that the Council of State was the first body under an absolute monarchy system to be responsible for drafting and examining the bill. The masterpiece of the Council of State was the proclamation of Abolition of Slavery dated 18 October 2417 B.E., setting the maximum redemption price and lowered the redemption price of household slaves born in 1867 (his ascension year) and freed all of them when they had reached 21.[10]

Since 2434 BE, King Rama V started his modernization scheme by improving administration system, establishing twelve Ministries to be responsible for each function of the State, having ministers as leaders of each ministry. This also changed legislative process which was previously dependent solely on the King's pleasure with the advisory of the Council of States to the law lodged by the Ministers, for instance, Regulation on cases transfer by the Minister of Justice 111 R.E. (Rattanakosin Era), Regulation on *sue in forma pauperis* by the Minister of Justice in 111 R.E. , Regulation on Donated Land for Joss Houses 2463 B.E. by the Minister of Metropolis.

In 1984 (B.E. 2437), King Rama V promulgated the Ministers Act 113 R.E. discontinuing the role of the Council of State in advising, amending and initiating new law because the Council of State was then reluctant to give any opinion.[11] Many laws between 113 R.E. and 114 R.E. had been determined by the Ministers. Due to an inadequate meetings of the Ministers, the need to improve Thai legal system to abolish unfair treaties and extraterritorialities, the Law Revision Committee was established in 2440 B.E., with Kromluangrajburi Direkrit being a president and Thai lawyers as members. This Committee was responsible for revising and drafting criminal code. Later, further committee, with foreign specialist involved, was established in order to revise and draft other branches of law.

Under the reign of King Rama VI, he believed that the existence of the Ministry of Justice and court system reorganization was inadequate to successfully abolish unfair treaties and extraterritorialities because the Revision Committee was not well-accepted by foreigners. Later, in 2466 B.E., the Legislative Redacting Department was established in the Ministry of Justice by the Royal Proclamation of King Rama VI, responsible for revising existing laws, giving legal opinions, legislative drafting affair

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[10] The Office of Council of State, 120 years the Council of State, People Publisher2537 B.E. , p 11

[11] Satien Lailuk, Legal Meeting of the year, (Bangkok: Dailymail Publisher, 2478), vol 14

and examining the bill before tendering to the King for signature. [12]

In conclusion, the development of legislative process of Thailand before the Siamese revolution in 2475 B.E. can clearly be seen during the era of King Rama V and King Rama VI, 2417-2466 B.E. It is seen a change to the king-made-law with the advisory from the Council of State in 2417 B.E. Even the legislative process remained unclear, it was considered the first step of legal modernization. Until 2440 B.E., a significant progress was taken place upon the establishment of the Revision Committee as a distinctive body responsible for revising and drafting criminal code. It could be said that once the Revision Committee was promoted by King Rama VI to be the Drafting Division which was solely responsible for legal drafting, Thai legislative process was then considered most solidly established.

2. Legislative Process After Siamese Revolution (2475 B.E. – Present)

The Siamese revolution had a great impact on Thai legislative process. Parliamentary democracy under Thai Constitution considers sovereign power belong to the Thai people and the king shall exercise legislative power through the parliament. Therefore the power to enact the law which has long been absolutely owned by the King is transferred to the parliament. Moreover, forms and means to legislate are more prominent.

Nevertheless, after the revolution, there were some periods in which the Constitution was ineffective, that was when revolution or coup d'etat. occurred. Revolutionary committee or the council of government reform made law instead of the parliament. It is obvious that the legislative processes are different.

Legislative process under constitution law

Person Eligible to Lodge the Bill for Consideration

After the 1932 Revolution, Thailand has been under parliamentary democratic system, duplicating the system of the United Kingdom. Legislative body is unsurprisingly the Parliament. However, the Parliaments under each piece of the

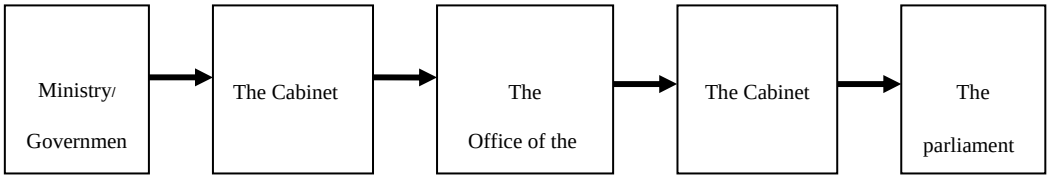
[12] The Office of Council of State, 60th Anniversary The Office of Council of State, p 2-5

Constitutions are different including the unicameral system[13] and bicameral system in which members both derives from election and appointment.

Bill Making Process

In making a bill by the Executive, the Ministries or any divisions as responsible agencies would prepare the bill and submit it to the Cabinet for policy approval. At this stage, if the bill is approved, the bill shall then be sent to the Office of the Council of State, the central legal drafting agency of the government consisting of legal drafting experts and administrative academia, for technical examination. After completion, the examined bill will be sent to the Cabinet again for its approval on the texts of the bills. Upon approval of the Council of Ministers, the bills will be sent to the Parliament.

Details of Thai Legislative Process appear in the following chart.[14]



Regarding the bill lodged by the House of Representatives, each member of the House has its privilege to introduce the law. Therefore, legislative process of the House of Representative is not explicit and concrete as of the Executive. For instance, the bill might be made with an advisory of lawyers or academia.

At the outset, the Constitution requires the House of Representatives to lodge the bill without any conditions, provided that it shall not be a money bill in which further approval from the Prime Minister is needed. Later, the Constitution of Thailand 2521 B.E. provided further conditions that the member of the House may introduce the bill, provided that his political party must agreed upon and with the acknowledgement of at

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[13] Unicameral system was provided under the Constitution of Siam 2475 B.E., Charter for Administration of the Kingdom 2502 B.E., the Constitution of Thailand 2519 B.E. Charter for Administration of the Kingdom 2534 B.E

[14] Full research on the Reform of Legislative Process of Thailand, Legal Research Foundation (presented to the Office of the Council of State (2549 B.E.)) p11

least 20 of its members. If it is a money bill, the bill shall be introduced only if the Prime Minister has approved. The reasons for the aforementioned conditions are as follow;[15]

A. Law is considered as a tool for the government to implement its policy. In general, the Executive is in the best position to know whether each law is conformed to its policy. The party with majority vote should be eligible to lodge the bill to reflect its policy. Nevertheless, even the rights to present the bill is borne by the Executive, any legislative process is not effective without approval of the parliament since any bill shall be amended or repealed by the parliament at all time.

B Since once the bill is approved and effective as the Act, it will have a great impact on the public, the condition requiring the party of the member representing the bill is needed to ensure the importance of the bill and the responsibility of political parties to the public.

C. Conditions are required to prevent the parliament from superfluous lodges of the bills which might overload the work of the government and to prevent misuse of lodging the bill for political reasons such as campaigning or advertisement.

It should be noted that the Constitution 2521 B.E. has set standard conditions for lodges of the bill by the House of Representative, which is still effective up until present.

III. The History of Bill Drafting

1. Legislative Bill Drafting Organization

Thai bill drafting organizations can be claimed as a product of the Reform of State Administration, the scheme to modernize the country as a defense of colonization threat during King Rama V period. Development of the organizations is illustrated chronologically.

Thai Legislative Bill Drafting Organization After the Reform of State Administration 2475 BE.

Prior to the establishment of the bill drafting organization, all laws were borne by

[15] Thai Parliament System, Database Centre of the Secretariat of the Parliament, p 320-323

the King. Once the King initiated the law, he would order a scrivener to prepare a draft which would later be corrected, amended and declared by the King. When laws become more complicated, the Jury who also served judiciary position would review the law. They repealed the out-of-dated or inappropriate law, remained the proper ones, and reorganized them to be more easily understandable for the public. The revision of laws was held from time to time and the latest major law revision was held during King Rama I era, when laws were organized into codes called "the Law of Three Seals". It is clear that, in the past, Thai legislative bill drafting process was merely involved by related people who were not necessary specialists. Moreover, the tradition that the King reviewed those laws remained unchanged until King Rama the VII era.[16]

Later, King Rama V promulgated the Council of State Act on 24 June 2417 B.E. The role of the Council of State was to supervise the King on government administration and legislation and also adjudicate disputes like Conseil d'Etat which appeared in civil law countries in the Continental Europe. They were also responsible for selecting proper legal terms in legal drafting and revising the laws for the King. For important laws, the King would consult with the Ministers before an endorsement. Since legislative bill drafting organization was not yet established, the Ministers Act 113 R.E. was enacted in 1895 BE, aiming at enhancing effectiveness of law revisions by setting a group of Revision Committee, so called "the Parliament of Ministers".

In the reign of King Rama VI, the King established the Revision Committee in 2462 BE (1919 AD) appointing Praya-Manawarajasevee (Plod-Vichian Na Songkla) as the Secretariat of the Revision Committee. Later on 27th October 2466 BE (1923 AD) the Legislative Redacting Department was established[17] under supervision of the Ministry of Justice by the Royal Proclamation of King Rama VI. The Department was responsible not only for revising existing laws but also giving legislative drafting affair and examining the bill initiated by ministries and departments before tendering to the King for signature.

In 2469 BE (1926 AD), King Rama VII ordered the Minister of Justice to serve an *ex officio* head of the Revision Committee instead of a direct appointment. He also enacted new regulations for legislative bill drafting process. In case of bills, their basic principles must be considered by the Parliament of the Ministers or the Council of State

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[16] History and Works of the Office of the Council of State, 60 years of the Office of the Council of State, Bangkok 2536 BE, Page 2

[17] Ibid, page 3

for approval while in other laws, the principles must be agreed by responsible ministers before submitting to the Legislative Redacting Department.

After the Siamese Revolution in 2475 BE (1932 AD), there was a royal declaration on 15 August 2475 BE which transferred the Legislative Redacting Department under the supervision of the Ministry of Justice to the Revolutionary Committee.

Modern Legislative Bill Drafting Organization (After Siamese Revolution 2475 BE)

After the Siamese Revolution in 2475 BE (1932 AD), the government then intended to establish an organization which adjudicated disputes between the State agencies and private individuals as seen in the Conseil d'Etat of France and the Continental Europe. Such organization would perform dual significant functions, firstly as a supervisory of the Executives and secondly as the Administrative Court which settled disputes between State agencies and private individuals. The Parliament therefore consequently enacted the Office of the Council of State Act 2476 BE (1933 AD). The Office of the Council of State was responsible for legal drafting and giving legal opinions to the government and also empowered to adjudicate administrative cases under its determined jurisdiction.[18]

Later in 1979, the Office of the Council of State, 1979 was enacted to replace the 1932 Act and established the Petition Council to adjudicate administrative disputes, supervise the Executives on solving and preventing culprits of petitions. They were also aimed at enhancing better understanding of an acquaintance with characteristics of administrative disputes, power and jurisdiction of the Administrative Courts to State Agencies, State Officials and the public before the establishment of the Administrative Court[19] in 2542 BE (1999 AD) by virtue of the The Act on Establishment of Administrative Courts and Administrative Court 2542 BE.

At present, core duties of the Office of the Council of State are to draft bills, to give legal advice to State agencies or State enterprises or upon direction of the Prime Minister or resolution of the Cabinet and to submit opinions or remarks to the Cabinet

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[18] As appeared in the Report of the Extraordinary Meeting of the House of Representatives 39/2476, Wednesday 6th December 2476 BE.

[19] 120 years of the council of state 2417 BE to 2537 BE, journal of administrative law, special edition (vol 13 part 17), editorial

on the need for new legislation or revision and amendment or the repeal of existing legislation.

2. Thai Legislative Bill Drafting Process

Drafting process of Bills, Royal Decrees and Regulations will be elaborated herein, while the process of Constitution drafting which is more complicated and detailed will be left unmentioned.

Generally speaking, legislative process is initiated by state agency which requires laws or regulations for its operation or the government's policies. The initiator is usually a public servant who has much savvy of the proposed law. Then, such initiation will be presented via the head of its agencies to the Secretariat of the Cabinet and later submit to the Cabinet for policy approval. The approved bill shall then be sent to the Office of the Council of State, the central legal drafting agency of the government, for technical examination. Normally, the bills will be examined by the Committee of Council of State who is specialized in the field of law related to the nature of the bill while by-laws will be examined by officers of the Office of the Council of State. After completion, the examined bill or drafts of by-laws will be sent to the responsible agencies for confirmation before submitting to the Cabinet via the Office of the Council of State again for its approval on the texts of the bills. Upon approval of the Council of Ministers, the bills will be sent to the Whip and then the Parliament. In general, officers of the Office of the Council of State and the officers of the responsible agencies are normally appointed to the committee or sub-committee in order to explain, clarify the bill or draft of by-laws under the Parliament consideration and prepare information for the government for Q&A sessions during the meeting of the parliament. Once the bill is approved by both the House of Representatives and the Senate, the Prime Minister will tender the bill to the King for signature.

It can be stated that duties of the Office of the Council of State in legal drafting and law revision can be considered in three forms.[20]

(1) When any state agency initiates new bills or amend existing laws, such agency is itself responsible to present the bill to the Cabinet. In this case, if the Cabinet

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[20] The Office of the Council of State, Legislative Drafting Manual, publisher- unknown, Bangkok 2551 BE, page 22

approve the principles of the bill and require the bill to be submitted to the Office of the Council of State for revision, the Secretariat of the Cabinet will send the bill and all related documents to the Office of the Council of State who will take the approved principles into consideration while revising, amending and improving the bill.

(2) If the initiating agencies merely advise the principles of the bill but do not present any drafts to the Cabinet, the Office of the Council of State will be the responsible body to draft such law based on the approved principles.

(3) If the State agencies advise the Cabinet to enact other laws, the agencies must present the draft to the Cabinet. Therefore, the power and duty of the Office of the council of State is not merely technical examination but also to correct the context and content of such draft, and certify the conformity of the bill to Thai legal system and other related laws.

In conclusion, as a result of complicated legislative process, the lack of expert officers in legal drafting, process of the consideration for approval, Thai legislative process normally takes very long period time. Therefore, the laws may not synchronize with up-to-date situations which apparently reflect in an ineffectiveness of legal enforcement.

Nevertheless, the government has eagerly attempted to solve such legislative process.

According to Thai constitution convention, even the members of the Houses and the Cabinet are empowered to lodge the bill to the Parliament for consideration, but more than 98 percent of the bills are submitted by the Executive. The paper is therefore mentioned to the bills sponsored by the Cabinet.[21]

There are three kinds of the executive bills, which are

- Bills under the Legislative Plan;
- Bills under the Legislations Development Plan ; and
- Out-of-plans bills

[21] The following descriptions were taken from a comprehensive legislative fact book issued by the Council of State, please see the Council of State : Fact Book, Foreign Law Division, Office of the Council of State, 2008

IV. Bills under the Legislative Plan

What is the Legislative Plan?

After the Government states its policy to the National Assembly, the Royal Decree on Good Public Governance, B.E.2546(2003) requires the Secretariat to the Cabinet, the Office of the Prime Minister, the Office of National Economic and Social Development Board and the Budget Bureau to translate, within 90 days, the government policy to be the State Administration Plan (SAP) which identify strategies, objective and missions to be implemented for the achievement of the stated policy. SAP is 4 years plan. Generally speaking, SAP seems like corporate plan of private company.

When the SAP is the published in the Government Gazette, the Royal Decree require the Office the Council of State and the Office the Prime Minister to jointly make the Legislative Plan which composes of names and substances of bills which may directly support the strategies, objectives and missions as specified in SAP. Name of the responsible agency to each bill as well as time table for processing the bills shall also be identified therein.

What's next?

The responsible agency shall have to make the bill and submit it to the Cabinet via the Secretariat to the Cabinet for policy approval. At this stage, the Cabinet does not approve the texts of the bill but its approval is given only to the principle of the bill. The principle approved bill shall then be sent to the Office of the Council of State, the central legal drafting agency of the government, for technical examination. Normally, the bills will be examined by the Law Committee specialized in the field of law related to the nature of the bill. After completion, the examined bill will be sent to the Cabinet again for its approval on the texts of the bills. Upon approval of the Council of Ministers, the bills will be sent to the Whip and then the Parliament.

V. Bills under the Legislation Development

What is the Legislation Development Plan?

The Legislation Development Plan (LDP) emerged in 2009 upon the policy of the government of that day to reform the existing laws to meet with present social and economic conditions. In this regard, all Ministries, Sub-Ministries and Departments

were assigned to review all existing legislations under its responsibilities (both Acts of Parliament and subordinate legislations) as to whether which should be amended or repealed for the compliance with the current situation. The responsible agency shall then name such legislations in its LDP and submitted to the Plan Scrutiny via the Secretariat to the Cabinet.

What's next?

After the LDP has been approved by the Plan Scrutiny Committee, the responsible agency has to make the bills or draft subordinate legislations as specified in the LDP and submit them to the Plan Scrutiny Committee, via the Secretariat to the Cabinet , for assessment in term of quality of the draft Acts and subordinate legislations , upon the approval of the Cabinet, shall then be sent to the Office of the Council of State for consideration as same as the bills under the legislative plan. In case of subordinate legislations, they shall be published in the Government Gazette at once come into force since then.

VI. Out-of-Plans Bills

In addition to the bill under the Legislative Plan and the LDP as mentioned above, there are some kinds of bills that are proposed by the responsible Ministry for the fulfillment of its routine work or in case of urgent necessity (such as taxes bills , national security bills etc.) All these bills are normally called "out of plans". The process for making of this kind of bill commence at the making of the bill by the responsible Ministry before submitting the bill to the Council of Ministry for policy approval. After that the bill is going to the Office of the Council of State, Whip and the National Assembly according to normal process.

Role of the Council of State in the decision making process of the Cabinet

Due to the fact the Office of the Council of State is central legal advisory body to the government, Secretary-General of the Council of State always participle in decision making process of the Cabinet, in particular, on "point of law". In this regard, the Secretary-General has long been attended the Cabinet meeting to deliver opinion on

point of law of the matter under consideration of the Cabinet as it counselor. Furthermore, the Office of the Council of State has the duty under section 62 of the Council of State Act of 1979 to submit opinion on the need for new legislation or the amendment, revision or repeal of existing legislation as entrusted by the Cabinet or the Prime Minister.

It should be noted that despite the Secretary-General is a government official and the Office of the Council of State is the government agency, but the government has never intervene the performance of work of the Secretary-General and the Office of the Council of State on account of trustworthiness which is fully devoted to the impartiality of Secretary-General and the Office of the Council of State as explicitly shown through their past work.