

# IDE Research Bulletin

---

Research project summary based on papers for academic journals  
with the aim of contributing to the academic community

## **The Legacies of the Past in the Modern Rule of Law in Thailand**

Project Leader

**Thongchai Winichakul**

March 2020

**IDE-JETRO**

## The Legacies of the Past in the Modern Rule of Law in Thailand

Project Leader: Thongchai Winichakul

This project argues that the modern Thai legal system since the early 20th c. has been a hybrid between the normative rule of law, developed in the European historical context, and the legacies of the legal traditions in Siam that reflect its historical development in the past 150 years. The hybridity appears most evidently in the laws, institutions, apparatuses, and the ideology regarding the national security. In order to identify the characteristics of the hybrid legal system that is different from the normative one in the developed countries, in this project we will examine four issues in particular, namely, the impunity privilege, the ab/use of the lese majesty law, the judiciary, and the professional society of lawyers.

One of the strands of this hybridity is the concept of the “legal privileged state ” that gives privileges to the state to expand its power to encroach the individual rights and property for sake of public good, such as forest reserves, the labor laws, and so on. This concept has been the basis of most Thai legal institutions and professions up to today. The most important privilege for the state is impunity. It is an integral element for the Thai state formation at least since the 1950s. It is also the pillar of the culture of seeking other kinds of privileges among people of power in Thailand.

Thailand’s rule of law has deteriorated during the political crisis over the past 10-15 years during which we saw the lese majesty charge skyrocket, especially as the consequences of the two military coups in 2006 and 2014. Unlike other crimes, most people who are arrested for lese majesty confessed to the crime. Thongchai’s paper entitled “Confessions to lese majesty: A lens into the rule of law in Thailand” examines: Why? What happened to them and what are the conditions that led to their confessions even though most of them were not physically abused or tortured by the police? The answers are telling about the state of the rule of law in Thailand.

“Judiciary as a Guardian of the NCPO Regime” (by Somchai Preechasinlapakun) reviews the role of the judiciary after the May 2014 coup and considers how we can cope with the left-over inheritance of authoritarian regime. The 2014 coup is significantly different from the previous coups in the past four decades, as the NCPO (National Council of Peace and Order),

the coup makers of 2014 coup, stayed in power for a longer time until the new Constitution was promulgated in April 2017. It also vigorously exercised its power compare with the past coup makers. The NCPO exercised the power through promulgating large number of Orders and Announcements after the coup, and also under the Article 44 of the 2014 Interim Constitution, and sometimes even without any legal basis. The 2014 coup left large numbers of Orders and Announcements that affected the rights and freedom of the people, as well as the government. In order to cope with the problematic inheritances of laws and regulations left under the authoritarian regime, some approaches are identified through exploring the existing recommendations. To nullify such left-over inheritance may affect to the stability of legal system severely. Furthermore, since the 2006 coup, Thai society has been divided deeply; thus, it is difficult to build common understanding on the negative impacts of the coups. The long process will be needed to gain open perspective along with the strong heart and mind with thoughtful and peaceful way. Cooperation of the various groups in formal and informal way will get Thai society out of the trap that lasted more than a decade.

“Specialized Court System in Thailand” (Shinya Imaizumi) examines the historical development and institutional features of the specialized court system in Thailand. Thailand has five specialized courts as part of its Court of First Instances: The Juvenile and Family Court, the Labor Court, the Tax Court, the IP & IT Court, and the Bankruptcy Court. There was no blueprint to design the current form of specialized court system when it started creating such courts in 1951. Each specialized court is created in order to respond to the emerging needs in each period, which is accompanied with the efforts to find an adequate solution by studying the judicial systems of foreign countries. New institutional “invention” that is adopted in one specialized court provides the basis for the other specialized court later. The Associate Judge system is most important device for specialized courts. It was first adopted in the Court of Child and Youth Cases in 1951, then it was transformed into the tripartite form in Labor Courts, and further upgraded to the method to utilize the non-judge legal experts in the IP & IT Court. Actual function of Associated Judges varies depending on the courts. The prestigious status of Associated Judge as being appointed by the King seemingly has encouraged the semi-voluntary participation of experts and resource persons to judicial process. Another

feature of specialized court system was the direct appeal to the Supreme Court, skipping the Court of Appeal. It was crafted in the Labor Court, and subsequently copied in other specialized courts. It was once considered very useful approach to secure the prompt handling of cases in the specialized courts; however, it was abolished and replaced with the appeal to the Court of Appeal for Specialized Cases in 2015. This may reflect the recent attempts to change the role of the Supreme Court which would concentrate its resources to more important cases they think.