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# **International Journal of Crime, Law and Social Issues**

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*International Journal of Crime, Law and Social Issues* (ISSN: 2351-0854) is an international double blind peer reviewed journal published biyearly by the Political Science Association of Kasetsart University, Thailand in cooperation with the Criminal Justice Department, Midwestern State University, USA. This journal aims to promote new discoveries in the various disciplines of knowledge, within and across criminal justice, law, and interdisciplinary studies in social issues, which are contributed by researchers and experts from all over the world. Therefore, the editors dedicated to providing a venue for both academics and practitioners to publish their original research articles and reviews in English.

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Example:

**Table 5** Output shortfall in DHs in 1389 and 1390

<b>Variables</b>	<b>1389</b>		<b>1390</b>	
	<b>Actual</b>	<b>Shortfall</b>	<b>Actual</b>	<b>Shortfall</b>
Number of Outpatient Visits	3,782,351	326,922	4,195,618	611,256
Number of Inpatient Admissions	158,190	13,537	174,978	6,963
Number of Patient Days	391,984	17,119	426,221	13,793

Table 5 shows summary of outputs shortfall for 1389 and 1390.

- 7) Figures and Schemes: Number figures consecutively in accordance with their appearance in the text. Place a figure’s caption and description below the figure body. A minimum resolution of 300 DPI is required.

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## Editor's Note

I am delighted to introduce the *International Journal of Crime, Law and Social Issues* (IJCLSI). This journal is a joint collaboration between the Political Science Association at Kasetsart University, Thailand and the Department of Criminal Justice at Midwestern State University, U.S.A. The journal has continuously been publishing leading-edge studies and gaining international recognition among scholars over the five years. The IJCLSI has earned the status of an international academic journal according to the *Thailand Higher Education Commissioner's 2013 Regulations on Criteria to Consider Academic Journals for Releasing Academic Papers*. Additionally, Elsevier-Social Science Research Network has approved the status of IJCLSI and it is now in the Legal Scholarship Network.

The journal's objective is to encourage, accommodate, and embrace an interdisciplinary approach to research focused on social issues that relates to law, crime, criminal justice systems, government, public administration, and social policies. We seek to publish works using a broad range of research methods and epistemologies while pursuing our primary objective of disseminating engaging, quality research that increases knowledge of the law, criminal justice, and other social sciences. I would like to express thanks to our editorial board members for their dedication and contribution to the journal's achievements.

I hope and trust that you find Volume 5, No. 2 valuable, that you will help to inform others about the journal and will consider submitting your own work, which would substantially contribute to the development and success of the journal. Your comments and suggestions would be appreciated to improve the journal in future volumes.

Best wishes and thank you in advance for your contribution to IJCLSI.

*Attapol Kuanliang*  
Editor

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# A Study of the Roles and Potentials of the Community Justice Center in Solving Public Problems

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## Article History

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## Abstract

The objectives of this research are to study the roles and potentials of the Community Justice Center, study the problems and obstacles of the Community Justice Center, and study the approaches or forms of operation of the Community Justice Center under the missions of Ministry of Justice to be more efficient. It is the research integrating between the qualitative and quantitative researches. The target group of the qualitative research using the in-depth interview consists of 43 members of Committee of the Community Justice Center in Thailand by random sampling. The target group of focus group consists of members of Committee of the Community Justice Center, people using the services, network and people by random sampling. The quantitative research is conducted by collecting the questionnaires. The target group consists of 444 members of Committee of the Community Justice Center by quota random. For the 3 methods, the target group in the Community Justice Center has the potential in the A and D grades. The research tools are the in-depth interview, focus group, and questionnaires. The data is analyzed on the contents and descriptive statistics including the frequency, number, percentage, and standard deviation. It is found that 1. The roles and potentials of the Community Justice Center under the missions of Ministry of Justice having the potentials in the A and D grades is entirely driven and has the operation on the 6 aspects of missions of Ministry of Justice. Besides, when analyzing for the whole country, it is found that the roles and potentials of the Community Justice Center under the 6 aspects of missions of Ministry of Justice are in the high level. 2. The problems and obstacles of the Community Justice Center in the operation following the missions of Ministry of Justice are in the budgets, structure of Committee, laws and regulations, lack of knowledge and understanding, location/area, remuneration, incentives, integration, cooperation, and rotation of the officials. There are also other problems and obstacles, for example, public awareness, access to the service uses including the reliability of people on the Community Justice Center. 3. The approaches or forms of operation of the Community Justice Center under the missions of Ministry of Justice can be improved with more efficiency requiring the appropriate location of Community Justice Center, structural pattern, Committee of Community Justice Center,

committee, legislation of law and related regulations, allocation of budgets, compensations, and allowances. This will make the Community Justice Center more efficient.

**Keywords:** Community Justice Center, Problem Solving, Sufferance of People

### **Significance of problem**

In foreign countries, the concept of community justice is seen as a challenge to practices about traditional criminal justice because community justice focuses on supporting public safety and community quality of life representing the process of justice in supporting life in the community especially by reducing the inequality in community life and reducing fear (Karp and Clear, 2000).

Community Justice is the strategy to promote, support or encourage people in the community to participate or be partners in prevention, control, reconciliation, reduction, and remedy the damage and violence caused by crime or committing of offenses as well as returning good people back to the community by restoring customary justice system or developing community justice system. The goal is to make people feel secure, safe, and reach justice. The community has the potential and reconciliation with the mechanism to work according to the community justice system that is linked to the main justice system through the coordination of the provincial justice agency effectively (Ueauamnui, Sukying, and Rofiemusor, 2006). At present, the Ministry of Justice has the policy to develop and promote the implementation of community justice to be used for justice. This enables the reduction of social disparity in the community, convenience on the access to justice through the establishment of Community Justice Center by creating a working partnership between various sectors or community justice network with the Ministry of Justice. This aims at focusing on the prevention of crime and the consequences of offenses that cover a range of inappropriate behavioral actions including illegal behaviors and remedies or damages in all dimensions to alleviate damage to all parties, suppress conflicts arising from crime in the area and communities that play the role in dealing with actions. In addition, the Ministry of Justice has decentralized the integration of Community Justice Center to connect with local authorities to play the roles in the implementation of the Community Justice Center in order to achieve the goals in the needs of the Ministry of Justice to meet the demands in strengthening the justice and peace in the community under the strategy of “Justice for All, All for Justice”. This corresponds to the importance of community justice in order to bring concrete benefits by being able to use social capital to make people better able to access justice. It can enhance the efficiency and reduce the burden of the main justice system as well as creating the community awareness and preserving the traditions and local wisdom to remain (Kittayarak and Ueauamnui, n.d.). The Community Justice Center will be the fair and useful alternative which has been initiated for long time ago. Ministry of Justice has the strict and serious policy in 2016 according to the Order of Ministry of Justice No. 322/2559 defining the structure of the Community Justice Center and clear mission roles to help reducing the gap and inequality arising from the mainstream justice system. This makes people in the local community rely on one another together with the surveillance on crime to increase the roles and strengthen the communities and localities. It can protect the rights, manage the conflicts, reduce and remedy the damage or violence caused by crimes or offenses as well as returning good people to society. However, the system and mechanism that serves to promote the community justice process according to the Ministry of Justice's policy and operational strategy is still complicated and has a mission that is not clearly supported concretely, for example, without the framework clear operation or specific laws that will support the operation of the agencies. As a result, such operations are still unable to achieve the objectives. The support is lacked for volunteer training budgets because each

fiscal year requires only one volunteer training, and most of them are usually assigned only to new generation volunteers. Therefore, older volunteers are not able to continue to develop more and more potential (Chanchai, 2010). It lacks the understanding on knowledge, principles, and models of the operations of the community justice profoundly or the change of social situation that is more urbanized resulting in a challenge to the strength of community in order to join the group for various activities. The Community Justice Center is possibly one mechanism that has been affected by such changes and most importantly the political changes resulting in the change of the concept or policy of community justice administration to be in accordance with the government that manages the country making the community justice work in confusion, lack of continuity and ambiguity in assigning real power to the public sector in order to operate community justice. This causes people feel that they cannot "rely on" and truly have access to justice (Pinij, 2017). It is also consistent with the study of Sornwicha Kritthathikarn and Chaivot Phaiwitthayasiritham (2017) suggesting that the performance of community justice in the past had a lot of practical problems. People in society or communities still lack awareness and understanding of the missions and roles of justice. The community justice policy itself still lacks clarity in their own roles and it is still unable to enforce community justice to become an institution in the justice system like the mainstream justice.

According to the reasons mentioned above, in order to understand the role and status of the Community Justice Center under the clear responsibility of the Ministry of Justice and to develop the system and mechanism to perform the operation following the missions of the Community Justice effectively, it is necessary to study the roles and potential of the Community Justice Center under the Ministry of Justice's mission, problems and obstacles of the Community Justice Center in the implementation of the Ministry of Justice's mission, and approaches or the form of operations of the Community Justice Center under the Ministry of Justice's mission to be more effective in order to develop the effective Community Justice Center suitable for a spatial variety and responds to the actual needs of the community.

## **Research Methodology**

1. The research model is the combination of qualitative and quantitative research with the study method from the documents, in-depth interviews, small group meetings, and questionnaires.

1.1 In-depth interviews are for studying the roles and potential of the Community Justice Center, studying the problems and obstacles of the Community Justice Center and the approaches or forms of operation of the Community Justice Center under the Ministry of Justice's mission.

1.2 Small group meetings are for studying the roles and potential of the Community Justice Center, studying the problems and obstacles of the Community Justice Center and the approaches or forms of operation of the Community Justice Center under the Ministry of Justice's missions to be more efficient.

1.3 Collection of questionnaires is for studying the roles and potential of the Community Justice Center under the Ministry of Justice's missions.

2. Target groups and target group selection methods

2.1 In-depth interviews: The target group is Committee of Community Justice Center in Thailand divided by 6 regions; North, North East, Central, Eastern Economic Group, South, and Southern Border Provinces. The Committee is in the Community Justice Center having potential in grade A and grade D for 43 persons divided into 23 persons of Community Justice Center having potential in grade A and 20 persons of Community Justice Center having potential in grade D by specific sampling.

2.2 Small group meetings: The target group consists of representatives from the Community Justice Center Committee, people using the Community Justice Center services, community justice network, people in that area divided by 6 regions and being in the Community Justice Center having potential in grade A and grade D for 48 persons by specific sampling.

2.3 Collection of questionnaires: The population consists of the Committee of the Community Justice Center being in the Community Justice Center nationwide divided by 6 regions. They are the committees in the Community Justice Center having potential in grade A and grade D. The sample group consists of 1,200 members of Committee of the Community Justice Center divided into the Committee of the Community Justice Center having potential in grade A for 600 persons and in grade D for 600 persons. The quota random is used on the target group in each method as follows:

**Table 1** Summary of target group in each method of data collection

Methods of data collection	Community Justice Center	Target group	Total
In-depth interviews	Grade A	23 persons	43 persons
	Grade D	20 persons	
Small group meetings	Grade A	-	48 persons
	Grade D	-	
Collection of questionnaires	Grade A	600 persons	1,200 persons
	Grade D	600 persons	

3. The research tools used in the qualitative research are the in-depth interviews and small group meetings. The research tools used in the quantitative research are questionnaires.

4. The data analysis for the qualitative research is the content analysis. The data analysis for the quantitative research is the descriptive statistics including the frequency/number, percentage, mean, and standard deviation using the criteria of interpretation of Pissanu Fongsri (2010).

## Research Results

According to the research results of the study on the roles and potentials of the Community Justice Center in solving public problems, the research results can be concluded following the objectives as below:

1. The roles and potentials of the Community Justice Center under the Ministry of Justice's missions for both Community Justice Center in grade A and grade D are found to be driven and to perform the operation following the 6 aspects of missions as follows:

1.1 Roles / Missions in the 1<sup>st</sup> aspect are the roles and potential in promoting, supporting, and coordinating the operations of government agencies and local administrative organizations in enhancing the access to justice of people of the Community Justice Center by driving the mission through activities of the project of the Community Justice Center. This aspect of roles and missions are supported by the personnel of government agencies and local administrative organizations in the operation.

1.2 Roles / Missions in the 2<sup>nd</sup> aspect are the roles and potential in surveillance and prevention on the problems of crime, corruption, and fraud of the government officials and the offenses against the laws. This can be driven through activities of the project of the Community Justice Center and can receive good support from the Center's Committee and network especially the local administrative organizations.

1.3 Roles / Missions in the 3<sup>rd</sup> aspect are the roles and potential in considering the complaints, solving of unfairness of people, receiving the notification for the clues of illegal offenses as

well as the assistance, care, suggestions, and problem solving to the people who suffer or want to receive the suggestions in legal and justice process. The missions are driven through activities of the project of the Community Justice Center. The cooperation is given by the personnel of the Community Justice Center in relevant areas and local administrative organizations.

1.4 Roles / Missions in the 4<sup>th</sup> aspect are the roles and potential in reconciling the disputes as requested by the litigants on the civil or criminal cases which are the compoundable offenses. The missions are driven through activities of the project of the Community Justice Center with the support from the personnel of the Community Justice Center and local administrative organizations.

1.5 Roles / Missions in the 5<sup>th</sup> aspect are the roles and potential in assisting and caring the persons being damaged or affected from the offenses and crime. The missions are driven through activities of the project of the Community Justice Center with the support from the personnel of the Community Justice Center, local administrative organizations, and other relevant agencies.

1.6 Roles / Missions in the 6<sup>th</sup> aspect are the roles and potential in assisting and supporting the operations of relevant agencies in solving, treating, rehabilitating the offenders and the ex-convicts including the persons under probation or the persons who are temporarily released to return to become the good citizen and do not return to re-commit the offense. The missions are driven through activities of the project of the Community Justice Center with the support from the personnel of the Community Justice Center, local administrative organizations, and other relevant agencies.

When classified by the potential of the center in grade A and grade D, it is found that Community Justice Center having the potential in grade A has the good operations on the roles / missions in the 1<sup>st</sup> aspect, 2<sup>nd</sup> aspect, 3<sup>rd</sup> aspect, 4<sup>th</sup> aspect, 5<sup>th</sup> aspect, and 6<sup>th</sup> aspect. However, some centers still lack knowledge and understanding and have not yet driven the missions of the center under the missions of the Ministry of Justice. When conducting quantitative analysis, it is found that the roles and potential of the Community Justice Center under the Ministry of Justice's missions in 6 aspects as the whole country are at the high level ( $\bar{X}=3.63$ , S.D.=.007). When considering each, it is found that the consideration on the complaints, grievances, problems of injustice of people and receiving clues, information on various illegal acts as well as helping to take care of, giving advice and solving problems to those who are in troubles or who need legal advice and justice procedures are at the high level ( $\bar{X}=3.71$ , S.D.=.034).

2. The problems and obstacles of the Community Justice Center in the operations under the Ministry of Justice's missions which are similar or the same (joined problems) are in the budgets, personnel, laws, rules, and regulations. The different problems and obstacles (different problems) are in relevant agencies and confidence of various agencies (A), knowledge and understanding on 6 aspects of missions (D), local politics (D), lack of cooperation from people (D), lack of cooperation from the relatives of the ex-convicts or the persons under probation (D), lack of motivation in the operation (D), and vision of the executives (D).

3. The approaches or forms of operation of the Community Justice Center under the missions of Ministry of Justice to be more efficient are from the results of comparison on the forms of operation of the Community Justice Center having the potential in grade A and grade D require the driving mechanism (form of operation) of the Community Justice Center having the potential in grade A and grade D to be efficient in 7 steps as follows:

**Table 2** Driving mechanism (form of operation) of the Community Justice Center to be efficient in 7 steps

No.	Community Justice Center having the potential in grade A	Community Justice Center having the potential in grade D	Things to be operated
1.	Location <input checked="" type="checkbox"/> Exact location <input checked="" type="checkbox"/> Sign of the center	<input checked="" type="checkbox"/> Exact location <input checked="" type="checkbox"/> Sign of the center	Ministry of Justice - There must be the exact location for the center completely. - The center must be identified with the clear sign.
2.	Form of Committee of Community Justice Center <input checked="" type="checkbox"/> 1 <sup>st</sup> pattern structure <input checked="" type="checkbox"/> 2 <sup>nd</sup> pattern structure	<input checked="" type="checkbox"/> 1 <sup>st</sup> pattern structure <input checked="" type="checkbox"/> 2 <sup>nd</sup> pattern structure	Ministry of Justice - The form of Committee of Community Justice Center must be improve to be appropriate.
3.	Committee of Community Justice Center <input checked="" type="checkbox"/> Have sufficient personnel <input checked="" type="checkbox"/> Have the voluntary mind	+ Have sufficient personnel + Have the voluntary mind	Ministry of Justice - Increase the personnel to perform the duties in Community Justice Center - Promote the voluntary mind in the community
4.	Understanding on the roles and missions of Community Justice Center <input checked="" type="checkbox"/> Knowledge and understand on the roles and missions of Community Justice Center	+ Knowledge and understand on the roles and missions of Community Justice Center	Ministry of Justice - Promote the training to the Center's Committee - Arrange the activities to exchange the skills and experiences of the Center's Committee continually. - Study/learn/monitor from the pilot Community Justice Center or the model Center
5.	Laws, rules, and regulations + Laws, rules, and regulations	+ Laws, rules, and regulations	Ministry of Justice - Enforce laws, rules, and regulations concretely
6.	Budget allocation + Remunerations and allowances	+ Remunerations and allowances	Ministry of Justice - Promote the creation of motivation such as awards - Promote the private sector / society in the community with the support in the budgets for the operations of activities.
7.	Operations / activities following the missions <input checked="" type="checkbox"/> Have knowledge and understanding <input checked="" type="checkbox"/> Participation <input checked="" type="checkbox"/> Have the voluntary mind / create the motivation	+ Have knowledge and understanding + Participation + Have the voluntary mind / create the motivation	Ministry of Justice - Create the motivation - Have the voluntary mind of the community - Have the motivation in performing the duties.



## Conclusion and Discussion

The roles and potential of the Community Justice Center under the Ministry of Justice's missions are being driven and operated on promoting, supporting, and coordinating the operations of government agencies and local administrative organizations in strengthening the access to public justice, surveillance, and prevention of crime, corruption, and misconduct of government officials and various illegal acts, consideration on complaints, petitions, solving problems of injustice of people and receiving clues, information on various illegal acts. This includes helping, taking care of, giving some advices, and solving problems for those who have troubles or who need legal advices and justice, mediation reconciliation as requested by the litigants in respect of civil or criminal cases that are in violation of the laws, works of the agencies involved in correcting, rehabilitating the offenders and the ex-convicts including the persons under probation or the person who was temporarily released to return to become good citizen and not return to repeat the offense. This is correspondent with the research of Orathai Kokphon (2017) finding that the missions of the local government organization have the high level of potential in implementing the task of justice including; 1. Prevention and surveillance, 2. Education / legal advice, and 3. Conflict management / reconciliation. The missions that have moderate potential include; 1. Justice service work, and 2. Rehabilitation and development of offender's behaviors. This is in line with the research of Amornrat Ariyachaipradit Nimnu (2013) finding that the roles of Mahasarakham Provincial Prison officers in performing duties according to the community justice concept whether it is control and prevention of crime in terms of knowledge and understanding about the community justice concept and the performance of duties in Mahasarakham Provincial Prison, it was found to be at the high level. Mahasarakham Provincial Prison officers gave priority to the control and prevention of crimes first. This is in accordance with the education of Scott (2006) about volunteers reporting suspicious behaviors to police in Miami, California, Kansas, etc. in the United States. This is also consistent with the research of Clear, Hamilton, and Cadora (2011) mentioning that the victims also wanted to tell the impact and pains with the demand to make the offenders truly realize their own offenses which are one form of remedy. This is in accordance with the study of Bazemore and Schiff (2001) finding that accepting the offenders back to society causes the victims or the perpetrators to return to society and still correspond to one important informant saying, "The Community Justice Center has continuously operated according to the missions of the Ministry of Justice because it is considered the primary duty of the Community Justice Center and the officers must have the good knowledge and understanding". This is also correspondent with another important informant giving the comments in the same direction, "Every Community Justice Center must follow the missions of the Ministry of Justice in 6 aspects to help alleviating the sufferance of people."

The problems and obstacles of the Community Justice Center in implementing the missions of the Ministry of Justice are found as follows; 1. Budget obstacles, 2. Committee's structure, 3. Laws and regulations, 4. Committee and personnel, 5. Location / area, 6. Remunerations and incentives, 7. Lack of enforcement and integration of laws, 8. Cooperation, 9. Rotation and, 10. Other aspects such as public awareness, use of services and access to confidence. When classified by the potential of the centers having the potential in grade A and grade D, it is found that the Community Justice Centers having the potential in grade A and grade D have different problems and obstacles in the following areas including local politics, lack of cooperation, lack of motivation in the operation, and visions of the executives. This is in accordance with the research of Woraphol Pinij (2017) finding that the obstacles to the roles of the Provincial Justice Office in the development of community justice are due to the dynamics of change from the environment including problems of human, budgets, materials, equipment, management and other problems. This is in accordance with the research of Chor Chayin Phetphaisit and Somsak Nakhalachan

(2015), the problems and obstacles affecting public confidence in the justice operation of the Ministry of Justice are delayed work, public relations, missions, and roles are not clear, comprehensive and thorough, patronage system, discrimination between the poor and the rich and corrupt officials. This is also consistent with the research of Napatip Kessomboon (2013) finding that the problems and obstacles are in the management of the community justice network coordinators, levels of education of the community justice network. 89 percent of network coordinators graduated from only the primary level. Solving problems about educational backgrounds of community justice network coordinators is not good enough. This curriculum is developed to focus on the implementation of conflicts in the community. The curriculum model is created in the development of knowledge consisting of legal knowledge, management, social sciences, psychology, information technology, statistics, Buddhist Dharma analysis, administration, use of languages and techniques to resolve conflicts peacefully. This also corresponds with the opinions of one important informant saying, "The problem of the Community Justice Center is problem, form, committee, center, budget, officer, tools. Most importantly, legal issues do not yet support the work of the Community Justice Center". Another important informant provides the information, "The major problem of the Community Justice Center is legal problem in supporting work, conflicts, or local politics in some regions."

The approaches or forms of operation of the Community Justice Center under the Ministry of Justice's missions to be more effective are; 1. Approaches or forms of legal and regulatory operations, 2. Budget, budget support, annual expenditure budget plan, 3. Policy and plan, 4. Integration and creation of parties / networks, and 5. Other aspects such as remuneration or incentives such as providing outstanding network rewards, granting the insignia, establishing a club or association of Community Justice Center and providing examples of case studies. This is in accordance with the research of Orathai Kokphol (2017) finding that the cooperation approaches should begin with the study of problems, proactive work, invitation and working with local government organizations. There are four practical steps; 1. Informal talk and set up a working group, 2. Organize workshop meetings to create a joint plan, 3. Prepare a memorandum of understanding and bring the plan into action, and 4. Evaluate the performance in the scope of the missions that can be prepared through the memorandum of agreement. This is in accordance with the research of Thanida Hirankham (2015) finding that the factors that affect the success of public participation in the community justice network are government support. The leaders must be knowledgeable, experienced, in gathering villagers to find solutions of people and motivation to benefit from being involved in development activities. This is correspondent with the research of Prapaipit Muthitacharoen (2015) finding that for the first step in initiating the management of community justice centers, if the establishment has quality according to the target set forth, the important inputs for the establishment of centers include administrative resources such as personnel structures (officers and Committee), budgets, materials, equipment needed for the operations, work place, etc. Besides, the Committee of the Center and the public relations of the Center must be procured and selected to be known by people in the community. 2. The recommendation for the operation is to allocate the budgets for the Community Justice Centers in the pilot sub-districts for 25,000 baht each. The recommendation for the operation of the center is to create the participation, knowledge, understandings on the laws to the Center's Committee. This is in line with the research of Thatchaphat Yuktanon, Banpot Wirunrat, and Pattree Freestad (2017) finding that the approaches in developing the potential of the compromises are to have training to educate labor law including negotiation, mediation and negotiation psychology, skills in summarizing and capturing important issues, collecting sample cases, creating the relationship group, conducting the case studies, arranging the study visit to see the places of

work. This is also consistent with the study of Bazemore and Schiff (2001) finding that the community justice is to use the community as the base of operations and partnership with the government sector and local communities. It can still access and play the roles in justice activities such as community courts, village police, or probation.

## **Research Recommendations**

The recommendations in this research include practical recommendations and policy recommendations for the Community Justice Center, Provincial Justice Office, and Ministry of Justice with the period of 1-4 years as follows:

### **1. Practical suggestions for the Community Justice Center**

#### **1.1 Period of 1-2 years**

1.1.1 The Community Justice Center must promote knowledge and understanding for the Center's Committee regarding the roles and potential of the Community Justice Center under the 6 aspects of Ministry of Justice's missions by arranging the potential training to increase the potential of the Center's Committee. This can create knowledge and understanding on the roles and duties of the Community Justice Center under the Ministry of Justice's missions as well as sending the Center's Committee to participate in the training for potential development of the Center's Committee.

1.1.2 Community Justice Center must have the Center's Committee to complete all positions and must have staffs at the community justice center (location) of their own by allocating personnel from the center or recruiting staffs to perform duties in the community justice center specifically.

1.1.3 The Community Justice Center must build confidence for the people in the area by presenting case studies to the public to acknowledge and publicize the basic services of the Community Justice Center through various channels such as radio broadcasting in the villages, public relations through the fairs in communities such as temple fairs, funerals, etc.

#### **1.2 Period of 3-4 years**

1.2.1 The Community Justice Center must have its own location and there must be the officers at the center to give the consults to suffering people in the area. Ministry of Justice must provide the area for the Community Justice Center not having its own location to have the exact place where people can easily access.

### **2. Practical recommendations for the provincial justice offices**

#### **2.1 Period of 1-2 years**

2.1.1 The Provincial Justice Office must have frequency or duration of supervision. There must be the location visit to provide advices to the Community Justice Center to promote knowledge and understanding on the missions for the Center's Committee. There will be the supervision at the center in one week. The provincial justice officers must take a number of centers to supervise at the ratio of provincial justice officers. Within 1 month, the provincial justice officers must supervise the center at the minimum number.

2.1.2 The Provincial Justice Office must organize activities or organize projects in the province so that the provincial justice center can exchange knowledge, experiences as well as transferring and exchanging the ideas in the implementation among one another, for example, organizing an exchange program between the Center's Committee, organizing a training project to create knowledge and understanding in the missions of the Community Justice Center.

2.1.3 Provincial Justice Office must monitor and evaluate the potential of the Community Justice Center in the past 6 months or 1 year and provide the rewards as an incentive to work for the Community Justice Center Committee such as supporting in materials - various equipment in the operations, supporting some additional budgets for activities when the

Justice Center can develop itself through the evaluation criteria of the Provincial Justice Office.

### 3. Practical recommendations for Ministry of Justice

#### 3.1 Period of 1-2 years

3.1.1 The Ministry of Justice must allocate sufficient personnel to establish Community Justice Center for the whole country to be suitable for the operations, operate and organize projects / activities to be more efficient by allocating personnel from the center to perform duties such as returning officers voluntarily to domicile, etc.

3.1.2 The Ministry of Justice must allocate the budgets for the Community Justice Center to be used in the operations of the center such as various activities related to the Community Justice Center and used in the operations of the Community Justice Center such as procurement of materials and equipment necessary for operations which can set up the project and withdraw the budget from the center.

3.1.3 The allocation of materials, office supplies and equipment such as computers, printing machines, photocopiers, paper, etc., to the Community Justice Center for being used in the operation of officers, Center's secretary as well as the Community Justice Center Committee which can be withdrawn from the center.

3.1.4 The Ministry of Justice must direct the policy to encourage the Ministry of Interior to integrate and implement concrete and serious actions in order for the local administrative organization to perform the acts truly.

#### 3.2 Period of 3-4 years

3.2.1 There must be activities or projects that are consistent with the missions of the Community Justice Center such as visiting the Community Justice Center.

3.2.2 There must be the clear and concrete budget allocation plan in accordance with the missions of the Community Justice Center.

### 4. Policy recommendations for Ministry of Justice

#### 4.1 Period of 1-2 years

4.1.1 The Ministry of Justice has to enforce the Community Justice Act B.E..... to support the performance operations of the provincial justice and community justice centers as well as the Community Justice Center Committee.

4.1.2 The Ministry of Justice should establish the Memorandum of Understanding with the Bureau of the Budget, Ministry of Interior including the Office of the Auditor General of Thailand to allocate budget for the Community Justice Center to drive policy and help solving the problems of people.

4.1.3 The Ministry of Justice has to formulate the master plan for implementation in the Ministry of Justice's strategy and must have a clear action plan.

4.1.4 The Ministry of Justice should have the development policy linked to the use of various resources in the community and social capital of each community in the form of extension in order for the community justice to truly belong to the community.

4.1.5 The Ministry of Justice should have the integrated policy for the establishment of community justice in the municipality, local or sub-district administrative organizations, etc.

4.1.6 The Ministry of Justice must have clear rules regarding the disbursement of allowances.

4.1.7 The Ministry of Justice must establish a fair action plan and a collision set to push the strategies and various operational plans related to community justice.

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# The Development of Criteria for Crime Scene Re-Enactment

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## Abstract

The objectives of this research were 1) to analyze the process of crime scene re-enactment, 2) to protect the alleged offender's right, and 3) to analyze the standard practical criteria for crime scene re-enactment using the qualitative research methods which employed documentary research, in-depth interview of key informant and focus group conducted with the inquiry officers. The research found that the crime scene re-enactment is an important procedure in collecting evidence. However, it is the discretion of the inquiry officer whether he would arrange the crime scene re-enactment or not. In addition, the crime scene re-enactment shall be under the principle which presumed that the alleged offender still being innocent until the court judge that he/she is the offender. Furthermore, the alleged offender could waive his or her right to presume innocence by consenting to have confession and voluntary indication to the crime scene. The development of criteria for crime scene re-enactment are: 1) crime scene re-enactment must have the purpose to search for evidences of the case with regard of the security of life for the alleged offender; 2) there should be a lawyer during to the crime scene re-enactment; 3) there should be a control on the published media which announced the crime scene re-enactment that may abuse the alleged offender; 4) the Royal Thai Police should raise the regulation in terms of Act of all crime scene re-enactment to be obvious law of all crime scene re-enactment case that should be taken place.

**Keywords:** Crime Scene Re-enactment, Confession, Accused, Alleged Offender, Inquiry Officer

## Introduction

The crime scene re-enactment is one step in the inquiry. Sometimes it is called a planned re-enactment means a procedure after the alleged offender has been arrested, then they make confession and voluntarily take the officer to crime scene re-enactment in order for the inquiry officer record the photos of the committed offenses procedure to present that if the alleged offender make true confession. Taking the officer to the crime scene should be consistent with each evidence that will be collected by the inquiry officer in the investigation. If the crime scene re-enactment is untrue, the alleged offender is not the culprit, but has been who accepts confession instead of the real culprit, the manner in which the alleged offender is taken the crime scene has been not consistent with other evidence, the officer must seek further evidence to find the facts in the lawsuit and investigate the next alleged offender (Wiwatwanich, 2013: 177).

The crime scene re-enactment is important in assisting to find the truth of the case in the inquiry step. The inquiry officer and the court could consider the circumstances that have been true and consistent with other evidences. It is a brief description of the offense of the alleged offender in the actual process from the beginning of the offense by planning, how they prepare weapons and equipment, how and where they act to victims and what they act

after the crime, how they carry and hide weapons, how they act to victims after that and where they hide assets etc. If the crime scene re-enactment of the alleged offender is consistent with other evidences, as a result to believe that alleged offender has been the culprit, not people claim the offense but should be a voluntary confession. If it not the real culprit or a involuntary confession, that would be difficult for the alleged offender to know the falsification procedure and the relevant evidence. Therefore crime scene re-enactment is important to find the truth and gather evidence in the inquiry process as well (Wattanachainun, 1997: 163).

The crime scene re-enactment might have the trouble issues of violation of the rights to the alleged offender as human dignity, right to be presumed innocent, right to be protected by the state. And also the media has been recording the offense process publicized. Besides, it is also the destruction of the reputation and the social value of the alleged offender.

The recording and presenting news of crime scene or planned re-enactment cause the society of creating the guided sense or the alleged offender may be judged by the primary society.

The principle of criminal procedure in Thailand is the Accusatorial System, Adversary System or Adversarial System. The defendant is the presidency of the case, as a result, accused must be part of the case as a "person" and not an "object" (Na-Nakorn, 1986: 130-131) which have the lawsuit right both "Active Right" and "Passive Right" are presumed to be innocent until the plaintiff who is the accuser will prove to the court without any suspicion the defendant has been commit the offense according to the allegation (Na-Nakorn, 2008: 166-169). The litigation must also be based on the due process (Tingsapat, 2012: 68) which hold the lawfulness and protect the rights of freedom of the people not to be unfairly abused by government officials and be against using Unlawful state power.

The procedure of crime scene re-enactment is based on the rationale and the necessity for the gathering of testimony under virtue of the Criminal Procedure Code Section 131, although the confession in the inquiry stage could not be evidence of the penalty of the alleged offender in the court, however, the evidence of the plaintiff can proof the defendant is a true offender, the confession in the inquiry stage shall be considered for the condemnation and commutation, as well as, in case that the alleged offender recant to the court, the statement and the circumstance that he pleaded in the inquiry stage shall be insisted in court including of the evidence of the plaintiff could be considering the offense of the defendant. But in case process of taking the alleged offender of serious offense to the crime scene and showing acting of offense or begging to the victim, body or relatives of the deceased, allowing the media to record the alleged offender in such a process as well as the control situation in which the people to pay attention to watch the crime scene till the alleged offender has been accused Lynch shall be the violates the rights of the alleged offender in various fields. The Researcher think that there should be a study on the problem on crime scene re-enactment and it is rational and necessary to collect evidence in the inquiry by comparative study on international approaches and preventive measures to protect the alleged offender has been violated his right by the officer in crime scene re-enactment procedure, to find the right approach according to the principle of Due Process for the lawfulness of Law enforcement duties and, to make crime scene re-enactment and plan re-enactment is valuable, acceptable legality without infringing on the rights of the alleged offender and to respect for the human dignity of all involved in the justice process.

## **Literature Review**

### **Presumption of Innocence**

This presumption of innocence guarantees the accused that the person who involved in criminal justice process shall treat the alleged offender or defendant as the innocent

regardless of the other facts of the case is relevant to the alleged offender or defendant (Likhasitwattanakul, 2011: 489). Nevertheless, that case will have obvious evidence, or the alleged offender make crime scene re-enactment with the police officer, those officers must act on the principle of presumption of innocence and treat the alleged offender as innocent until the judgment of the court that he is a real offender (May & Powles, 2004: 67).

### **Related Criminology Concepts**

**Deterrence Theory:** "Violence, speed and certainty of the punishment is the heart of crime prevention" (Khantee, 2010: 85) This theory believes that humans will take into an account of results of the actions before any behavior. So we can prevent a person to commit an offense. If the law is effective the offender can be arrested and sentenced the strict penalty. (White, & Haines, 2004: 45) So after the arrest of the alleged offender then bring into the inquiry process promptly. And when the defendant confesses that he had committed the crime, then arrange the crime scene re-enactment can be collect the further evidences which shows the effectiveness of the action to the offender. The perception of the society through the crime scene re-enactment process can protect a person from making a wrong decision according to the principles of defense theory.

**Social Control Theory:** The researcher proposes an analysis of social control theory continually the deterrence theory regarding the inquiry process in the crime scene re-enactment or plan re-enactment are process that is a formal social control mechanism and is description of the concept of defense theory of the original school that is to prevent a person to make an offense by the effective law which defined strict and fast penalty. It is a social control mechanism (Khantee, 2010: 88).

**Labeling Theory:** When the alleged offender is guilty and confesses, they are brought into the justice process for the crime scene re-enactment, which shall act in the presence of the public and mass media and they respond to the accused in various ways according to their views and opinions of each one based on feeling and faith which is subjectivity. This performance is called "Dramatization of Evil" by Frank Tannebaun. (Arthivej, 2015: 192) These are all labeling which make permanent deviation to the offenders, despite the court did not judge whether they were the offender. Which is the attitude of the people to the alleged offender in the bias and judge that they are the offender and deserves to be punished by the public or the society to prior judge the fault of the alleged offender. This behavior conflicts to the principle of international criminal proceedings. The alleged offender must be presumed innocent even he was confessing in the inquiry.

### **Criminal Justice Concepts**

**Crime Control:** It is a theory that emphasizes on the efficiency of the justice system by the purpose of controlling and suppression of crime. If the state officials cannot control or suppress the crime, it may show that there shall not be any peaceful in the society. According to this theory, the rate of arrest of the offenders is important as an indicator of the effectiveness of justice (Tingsapat, 2012: 141-142). Besides, the process must be quick and decisive to find the truth of the case. So, the efficiency of the judicial process has two approaches;

- a. Releasing the alleged offender or the innocent person quickly or
- b. Litigation against the alleged offender who has obvious evidence of the offense; or the alleged offender confesses.

**Due Process:** Law enforcement process must have due process of law which means in the case there is violators, there must be a process of investigation, inquiry, arrest, prosecution by the police or prosecutor and must be judged by the court, as well as there must have been advocated by attorney without any intimidation. Due process is the quarantine of rule of law in regards of law enforcement (Tingsapat, 2012: 147). All of those have been called the rule



of law that focuses on the protection of civil liberties, its process must be "liberal", disclosed, transparent, verifiable and must be able to prevent crime and bring the offender back to society. (Wipathawan, Yao-Dam, & Hormket, 2016: 112-113) The concept of this theory differs from the theory of criminal control which based on the law or the rule of law, It is not show that criminal control is truly effective, especially, searching for truth that has been conducted by the police or prosecutor or administration department, it is unreliable. The concept of this theory focuses on the legal approach of finding reliable evidence. If government officials do not fully comply with the legal process, the court may exercise discretion or release the defendant. (Siegel & Senna, 2007: 158) The crime scene re-enactment is one part of the inquiry process, it is obvious that the efficiency of the justice process has been distinct and decisive in the prosecution of the offender as Crime Control, which is beneficial to the case. The voluntary confessions can bring about the other evidences which is lawful without compulsion, temptation, or any illegal act. As a result, the prosecution is rapid, effective and achieve the objectives of crime control principles. In addition to legal prosecution, it is also necessary to focus on protecting the rights of the people not be violated by the actions of the state official. While crime prevention is important to the peace of society, the researcher must find the solution or the right approach between appropriate crime prevention and lawful procedures for all parties that involved in the criminal justice process (Wattanawanich, 1981: 171).

## **Research Objectives**

- 1) To analyze the importance of the crime scene re-enactment procedure.
- 2) To study the principle of protecting the rights of the alleged offender in crime scene re-enactment.
- 3) To study comparative analyze to the foreign countries.
- 4) To study the standard and appropriate practices of guidance of crime scene re-enactment.

## **Scope of Study**

### **Content Scope**

This research studies the process of collecting evidence in the inquiry stage in case that the alleged offender make confession, the procedure and the intention of crime scene re-enactment and plan re-enactment of criminal process even the allegation system and the inquisition system, the rights of the alleged offender in matters of being violated by the conduct of the officer, mass media and the public, which the researcher has selected qualitative research method by dividing into 3 formats.

- 1) Documentary Research, the researcher studied from the textbook, the Supreme Court, academic paper, thesis and related research papers which involved with the inquiry process of criminal cases in officials class, the collection of testimony of the inquiry officer, the rights of the alleged offender.
- 2) In-Depth Interview with key informants by expert interview on all relevant issues. Then, the results from the research papers and from expert interviews. The Researcher shall be analyzed and synthesized to find the appropriate practice in collecting evidence in the inquiry, in case the alleged offender makes a confession and ask the opinion of idea to the experts, it is stipulated a format of crime scene re-enactment.
- 3) Focus Group study is a tool used as a guideline for interviewing group to study the advantage and disadvantage in implementation of the crime scene re-enactment in order to receive the appropriated approach.

## **Methodology**

The researcher has selected qualitative research method by studied the document, textbook and related research (Documentary Research). In the in-depth interview, the researcher conducted a study of 24 key informants. And focus group discussions, researchers collected information from this group provided by the inquiry officers who are directly concerned with inquiry officers.

### **Key Informants**

In the in-depth interview, the researcher conducted a study of 24 key informants.

- 1) 5 informants who were former high commanders of the Royal Thai Police, experienced and expert in the inquiry.
- 2) 9 informants who are, academics, researchers who examine the documents academics works, books or those who concerning human rights and the medias.
- 3) 5 informants who are lawyers and acts as a lawyer for the alleged offender and the victim in case that was publicized to the media.
- 4) 5 informants who are the alleged offender through the crime scene re-enactment.

In focus group discussions, researchers collected information from this group provided by the inquiry officers who are directly concerned with inquiry officers and instructors from the Institute of Royal Thai Police. They have experience in investigative work and is expert in the principles and theories of inquiry, total of participants 8 persons,

### **Research Instrument**

Documentary Analysis was a table of documentation, the researcher has classified the documentation into categories, by type of documents, textbooks, articles, research papers, and the content of the documents.

#### **Questionnaire**

The questionnaire was used as an in-depth interview was designed open-ended interview as semi-structured interview, which is a flexible and wide-open research method.

Focus group interview form for the interview was used as an open-ended questionnaire, semi-structured interview.

### **Data Collection**

The researchers recorded data in the table of documents analysis which was classified by its category as textbook, research articles, and the content of the documents.

- 1) The interview with 24 key informants were conducted by the researcher, made voice recording and thee researcher took note during the interview and transcribed the audio recorded.
- 2) Focus group discussion with the inquiry officer and the instructor from the institute of the Royal Thai Police total 8 persons, the researcher requested to the instructors from any institutes the inquiry officer from any police station to have group focus discussion by the contribution from one of provincial police station, made and organized the appointment for group focus discussion. One of the inquiry officers was the moderator. The researcher was as assistants and note takers as well as recorded the voice.

### **Data Analysis**

The researcher analyzed the data from the research papers by content analysis method after the classification and the recording of the document. Arranging the data obtained from in-depth interviews with group focus discussion and categorized by the definition of concepts, themes and keywords as well as analysis data by interpretation. The researcher compared the data obtained that how it is consistent or different and find the data concerning in sequences. To summarize data fill in the information from the research papers by inductive analysis to find the conclusion of the appearance. The validation of data by triangulation which the researcher used the methodological triangulation that was document research, in-depth

interview and focus group discussion compared the same issue whether the data is consistent or not.

## **Results and Discussion**

### **Significance of Crime scene re-enactment process**

Information has been analyzed from document analysis, key informants and focus group. It was found that crime scene re-enactment is important to collect evidence as follows:

“The crime scene re-enactment is essential to the case to present the action of the offense orderly, the action before and after the crime, in actual place and time, having the rationality and the sequence of crime scene process to be consistent with the evidence obtained from the site”

“The weight of the confession was tight”

“It’s necessary to gather evidence sometimes use crime scene re-enactment in consideration in case of the recant of defendant in the court”

"In gathering testimony at the inquiry of the inquiry officer maybe is one needed step, to increase the weight of the confession to confirm what the alleged offender confessed to be the culprit. But this case is important when it becomes the gathering evidence which make weight of the confession is tight”

“...if we study from verdict of the Supreme Court will see that the court will use as evidence that defendant made voluntary crime scene re-enactment...”

The researcher analyzed key words from interview to key informants who had opinion that crime scene re-enactment has been important to collect evidence which can make reasonable confession and confirm the real offender. However, it seems not important for the information which obtained from scholars and lawyers because the details of the case have been recorded in all the rhetoric, so, it is unnecessary to have crime scene re-enactment. The key informants have the same opinion that to arranging crime scene re-enactment shall depend on the evidence in the case and the case which is relevant to location that is if the evidence is sufficient, crime scene re-enactment shall not be necessary. The types of cases are lawsuits related to body, life and property comply with command of the Royal Thai Police, No. 419/2013, dated on July 1<sup>st</sup>, 2013, subject to the prosecution of criminal cases, making file of inquiries, and measure of control, verification and acceleration the inquiry of criminal cases related to the crime scene re-enactment as follows: The alleged offender brings the inquiry officer to show how alleged offender commit offense, indicate the hidden assets which is derived from the offense, items that have been offense, which were used or will be used in the offense or suspected to be used in the offense, or may be used as evidence. Regarding the alleged offender voluntarily confessed to the inquiry officer and then he agreed to indicate the crime scene, its procedure, the gesture of offenses in order to can insist real offender as well, because the alleged offender will show the steps in the offense. The crime scene is consistent with what he gives the confession and consistent with the evidence obtained. If the alleged offender recanted to court and denied that he did not commit the confession of the alleged offender has given the inquiry officer and the voluntarily point out any places by himself have been recorded as a photo, even record of his crime scene with his signatory will be used against the refusal of the alleged offender to find that what he has been confessed to the inquiry step is more accurate. Thus, the perception of the society through the process of crime scene re-enactment, it can prevent a person from making a wrong decision according to the theory of deterrence theory.

### **Obtain additional evidence from the crime scene**

In some cases that had been finished pointing out and then the additional evidence appeared such as weapons or property stolen by the alleged offender as the object witnesses, moreover

there may be other involved oral witnesses in the crime scene. The key informants have provided the same information as follow:

“Sometimes, it can lead to find additional evidences and complete the file case of the inquiry and get clear evidence”

“...the inquiry officers get benefit from this evidence”

“It’s necessary to gather evidence sometimes use crime scene re-enactment in consideration in case of the recant of defendant in the court”

The inquiry officer can also collect evidence that appears later in the file case to support other evidences. However, the researcher comments that when there is crime scene re-enactment and then can receive the additional evidence which is the evidence of the plaintiff to prove the defendant's guilty. Although there is no issue of preference of evidence since the evidence is already existed and the alleged offender voluntarily confesses, those are the evidences are gathered in the inquiry for the court to exercise discretion in weigh of the evidence in under section 227 of the Criminal Procedure Code. The court must determine the weight of all evidence, do not judge the punishment until the court make sure that is a real offense and the defendant is the offender. When there is reasonable doubt whether the defendant has committed the crime or not, should raise the benefit of doubt to the defendant which the weight of testimony is an international principle. (Ratammarit, 2016: 292) and it shall be credible and admissible, must depend on the discretion of the court to consider.

#### **The Defect of crime scene re-enactment because this process has not been required by the law**

Crime scene re-enactment is a step to gather the evidence in the inquiry which there has not been required by the law. If the alleged offender pleads guilty, then the inquiry officer do not take him having crime scene re-enactment, the collection of evidence in the inquiry step can continue ongoing. The Police Regulations on the case is denied the regulations regards to the crime scene and the voluntary indicating the crime scene of the alleged offender, that is to add weight of the confession of the alleged offender to be more credible which the police regulations of this case is the way of conduct but it is not compulsory or not allow to do anything. It depends on the discretion of the inquiry officer in each case will be arranged the crime scene re-enactment. If there is no this process, the criminal investigation is unable to continue going.

When considering the Code of Criminal Procedure, Section 120 which stated that "the prosecutor may not file any lawsuit to the court without any inquiry" and under Section 120 stated that is not only inquiry process, but also must be a legitimate inquiry for the prosecution. If that is unlawful inquiry especially in the substantive, the Supreme Court has ruled that it is illegal, the prosecutor does not have the power to prosecute. (Kesawapitak, 2015: 165-175) In case that the alleged offender confessed in the inquiry stage, even without the crime scene re-enactment, that inquiry still be a legitimate process.

#### **The problems of the alleged offender has been lynched or attacked**

Crime scene re-enactment has to be happened among the people who keep watching and must be photographed and presented to the media. Besides, lynching to the alleged offender which is a collective behavior to spread their emotion in a form of a busy crowded people, which came from the anger with brutal behavior of the alleged offender.

Lynching is the punishment the alleged offender or whom people understand that is the offender, it is a social sanction according to the philosophy of punishment by revenge by people in the society itself to protect the community from the culprit, without the justice process. Infringement or being lynched does not come from the crime scene re-enactment of alleged offender, but it causes from the inability of safety to the alleged offender which is the defect of the official’s performance, not the steps of crime scene re-enactment, according to

section 131 of the Criminal Procedure Code, it is a practice under the law authorize to do to gather all kinds of evidence.

The crime scene re-enactment is one of step in gathering evidence that the researcher also has opinion that the crime scene re-enactment does not cause the lynching, it is just make a chance to get lynched. Even if it is not the process of crime scene re-enactment but if there is an appearance of the alleged offender or people who has been misunderstood to be the offender there also must be the spreading of emotional behavior and the lynch as well.

### **Protection of the rights of the alleged offender in crime scene re-enactment**

The basic right to protect the alleged offender according to the Constitution of the Kingdom of Thailand 2017, Section 2, paragraph 2 states that "in criminal cases, it must be presumed that the alleged offenders and defendants are not guilty. And before the verdict finally determined that any person has committed. It must treat the accused as an innocent person. Until the judgment of the court that he is a real offender. The accused has the right to be treated in a way that is not detained.

The research found that the right of the alleged offender to be presumed innocent is assumption that the alleged offender or defendant will have the opportunity to fully fight the case and resolve the allegations. But when the alleged offender pleaded guilty according to the allegation and volunteer to have the crime scene re-enactment, it means that alleged offender denied that right by themselves. And the crime scene re-enactment will be faster and justice in that litigation. Having crime scene re-enactment is not against the principle but just the officials have to realize to fair and appropriate principles of human rights of the alleged offender. The key informants have the same information as follow:

"...when it comes from his volunteering, his action shall not be violation of his body since everything is voluntary and consent of his own..."

"Is it fair or not, should be considered both of the alleged offenders and victims. If alleged offender is an offender and he accepts the officer that he's a wrongdoer in the case of the accused, either he's afraid of punishment or repent of his fault, when he confesses and agree to have a plan re-enactment, it shows his cooperation with the police, so the plan should be quick and does not violate his right"

"...It's because of the alleged offender has confessed so there is a plan. If has not confessed and not indicated, it will not be able to identify the crime scene, so the procedure of indicating to the crime scene should come from the consent and the volunteer of the alleged offender himself"

Protection of the rights of the alleged offender should be coexisting with social protection and crime control, that is the arrest of the culprit is an indicator of the effectiveness of the justice system. The reason and the need for people to know the information of the crime scene of the re-enactment. The duty of police officers to keep the security of society, if there is crime scene

re-enactment, it should be fast and decisive to find the truth in the case (Wiwatwanich, 2013: 177-189).

### **The crime scene re-enactment is considered to be an action of denunciation and may be lynched**

Having crime scene re-enactment will be an action in the presence of public, will depend on the location of that crime scene. The informant who was the alleged offender in the case happened in a public place, while having to the crime scene, there was a plenty of people watching it. Police officers will keep people away from that crime scene, but it cannot be forbidden to watch. On the contrast, if the case happened in a closed room such as in the house or in the room, there will be no any people in the scene that means normal people cannot see that crime scene, there are only the alleged offender and the relevant officials, so,

an action of denunciation is less than the opened crime scene which is influenced their image and is perceived as a denunciation.

To control the alleged offender in the crime scene re-enactment is discretion in the exercise of control of the inquiry officer whether the alleged offender will be controlled by handcuffing or not. The actions that exceeded the purpose of gathering evidence are cases where already had crime scene re-enactment, the officials bring the alleged offender to publish news in order to clarify their actions including the alleged offender make apology to the victim or relatives to express his repentance. All of these does not affect the weight of the evidence, it is an idea to promote the operations of police officers that they able to arrest the offender and confess, as well as to make people confident in the performance of the police. The actions which focuses on the public relations work until overrunning the right of the alleged offender. The collective behavior of the emotional spread of the people who watch that crime scene re-enactment. The retaliation against the alleged offender by lynching has been in line with their anger in the cruel misconduct of the alleged offender which is called Dramatization of Evil (Arthivej, 2015: 192).

In criminology, it is called stigmatization which make permanent misdeeds for the offenders, in order that is no any judgment by the judicial process that he is real culprit. In case of protection of the denunciation by covering the alleged offender's face with fabric or put on a helmet while having the crime scene re-enactment to hide the appearance of the public and the media. The researcher found that the act was inconsistent with the purpose of the crime scene re-enactment because arranging the crime scene re-enactment is aimed to confirm the culprit by let the alleged offenders show the process of their offenses and the acceptance of their actions as the evidence to the inquiry officer in the inquiry step. If the alleged offenders closed their face while having the crime scene, it is not possible to notice the expression of their face and eyes to show that he is the real offender.

#### **The assistance from an attorney**

Lawyers play an important role in criminal proceedings as a security to the alleged offenders that they have the full rights to defend in the case and it is necessary to receive an assistance from lawyers (Arthivej, 2015: 125) according to the Code of Criminal Procedure, Section 7/1 states that "the arrested or the alleged offender have the right to Find and consult a person who will be an attorney personally. The attorney or the person whom the alleged offender entrusts to participate the interrogation of the inquiry. The research found that attorney will participate in the case only if the law requires an attorney to hear the interrogation of the alleged offender according to the Code of Criminal Procedure, Section 134/1 which is a case where the death penalty applied or in cases where the alleged offender is not over eighteen years on the date the inquiry officer charged. The inquiry officer will ask the alleged offender whether they have a lawyer or not, it is compulsory that the inquiry officer must provide them the lawyer. If it is a jail sentence, then the inquiry officer enquires the lawyer, if the alleged offenders do not have any lawyer and they requires to have it, so the inquiry officer have to arrange them lawyer. But if the alleged offenders do not want a lawyer, it does not need to provide to them.

The informants who are the commander of Royal Thai Police, the academicians and inquiry officer have the same opinions that the crime scene re-enactment is the process that followed the interrogation. If there is a lawyer to attend the interrogation as required by law, then it is preferable to indicate the crime scene, so there is no need to have the lawyer to go. In addition, the terms condition of detaining the alleged offender under Section 87 of the Criminal Procedure Code, the inquiry officer can detain the alleged offender only 48 hours from the date of arrest, interrogation if he confesses and consent to have the crime scene re-enactment. It must be completed within the limit period, if time is over 48 hours, the alleged

offender cannot be arrested and not be able to wait for the lawyer to stay with the alleged offender to point out the crime scene and there is no need to have an attorney since the pointing out the crime scene should be voluntariness of the alleged offender.

However, the informants who are the lawyers have different opinions that lawyers are required to accompany the alleged offender to identify the crime scene to give an advice to the alleged offender. Besides, the crime scene has been important to the case, if the lawyer accompany with the alleged offender, the facts must be obvious and have a guideline of the fight in the lawsuit. According to the interview, the data from the informants was consistent with the inquiry officer in this section. The lawyer will not be notified for the participation. The inquiry officer brings the alleged offender to point out the crime scene without notifying the lawyer. The alleged offender will not know what their rights are. Lawyers who want to know the facts in the case by themselves may go to see the crime scene later to find a way to fight the case.

With time limited 48 hours, if they cannot wait for the lawyer to accompany to the alleged offender in having the crime scene, inquiry officer can continue to work without waiting for a lawyer. The person can be consulted to the accused are lawyers. Lawyers are important in the fight against the alleged offender. The litigation is due to the rule of law (Due Process).

The researcher has further comments that the qualification or ability of the attorney who shall assist the alleged offender in the case is important according to the purpose of the alleged offender is to have a lawyer. The principle of equality of arms in criminal proceedings, the lawyer is responsible for counseling, preparing the case and determining the direction in the defense against the allegations, as well as objection the unfairness in the inquiry step and find the useful facts, even the alleged offender will make confession that he is the offender. Lawyers also play a role in their counseling and maintaining the legal right to fight the case. Lawyers must have experiences and could conduct criminal cases. The equality of arms in criminal proceedings should be real equal arms.

### **Analyze the crime scene re-enactment or the plan re-enactment in the inquiry and analyze to compare with foreign country**

The arrangement a crime scene re-enactment or a plan re-enactment in another place which is not the actual location as in the United States that has been made in the court by jury system. The presentation of crime scene re-enactment to avoid people watching, being taken photos and to be lynched. Making a plan re-enactment in United Kingdom is bringing the alleged offender to crime scene re-enactment to show the gesture of a crime called re-enactment of crime by the alleged offender or reconstruction of a murder by the alleged offender and then it has been recorded as videotape. This action is intended to confirm that alleged offender of voluntary confession by Videotape recording of the plan has been a confession under Common law. The researcher found that the arranging of crime scene re-enactment for the alleged offender or having plan re-enactment to in other places other which is not an actual location, that is inappropriate for the system to find the truth in criminal procedure in Thailand, if those has not been indicated crime scene at the actual place, the confessions and testimony will be less reliable.

The sequence of actions of the alleged offender will be disorder and the actual place makes the alleged offender can remember how what he has done, because the real offenders have their steps, starting from making decision, planning a crime and taking action will increases the procedure of the justice process. It shall waste time in the judicial process.

## **Conclusions**

The crime scene re-enactment is an important step which is as a part of the collection of evidence to prove the fault and innocence of the alleged offender to receiver more obvious

facts related to the seriousness of the action or the cause of the alleged offender's actions is not guilty or a commuting the penalty, such as whether it is a legitimate defense or because of the necessity. Practically, there may be a number of problems, as mentioned in the introduction, for example, the crime scene re-enactment is the steps of the investigation which must be done within the period of detention under the law. If the alleged offender is unable to identify the crime scene of the alleged confession within the legal period, this step has to be cut away. And the crime scene re-enactment of the alleged offender, the officials must assess the situation whether they can control the situation to be peaceful? If cannot get people out of the crime scene, they must avoid having the crime scene since the alleged offender will be lynched. The controller is guilty of both criminal and disciplinary action. Besides, there is no any legal requirement to have a crime scene re-enactment in every case. It is the discretion of the inquiry officer who in charge to that case that whether the crime scene can be arranged? So, crime scene re-enactment is an important procedure but unnecessary to do in every case. It is up to the discretion of the inquiry officer who is responsible to the case whether he will arrange the crime scene re-enactment or not?.

The alleged offender was lynched while having the crime scene re-enactment and the photographs have been publicized in various media. This incident was seen as a denunciation or a violation. Presenting the news of the crime scene re-enactment and showing the circumstances, patterns, procedures, methods of committing the crime without cover-up the face, name, surname, and information showing who the alleged offenders which affect to the reputation of the alleged offender and family members. The violation of this reputation has been not taken by the officers who provided the crime scene re-enactment but it is the act of the media that must control the scope of the presentation of images and information and realize to the rights of the alleged offender. The right of the alleged offender to be presumed innocent is assumption that the alleged offender or defendant will have the opportunity to fully fight the case and resolve the allegations. But when the alleged offender pleaded guilty according to the allegation and volunteer to have the crime scene re-enactment, it means that alleged offender denied that right by themselves. And the crime scene re-enactment will be faster and justice in that litigation. Having crime scene re-enactment is not against the principle but just the officials have to realize to fair and appropriate principles of human rights of the alleged offender.

For the rights of the defense of the alleged offender, even the alleged offender will confess in the inquiry officer, there still is step in the inquiry of many cases are prosecuted until the court has sentenced the offender, the lawyer must go with the alleged offender to have crime scene re-enactment in order to give advice to the alleged offender which there shall be the clarity of facts and also have clear guidelines in the defense of case. The confession of the alleged offender will be beneficial to the trial and he gave useful information to the inquiry officer with his guilty and mitigation the consequences of the offense and educated the court for the benefit of consideration. According to the Penal Code Section 78, the alleged offender may receive the commutation.

Some alleged offenders may not know that their confession and the having crime scene re-enactment, can have the commutation. The inquiry officer could not explain the benefits of this law which may be seen as a wrongful act by the inquiry officer to make commitment or incentives that are prohibited under the Criminal Procedure Code, Section 135. Therefore, the person can consult the benefits to the alleged offender is lawyer who are important in the fight against the case of allege offender and the litigation can follow to the due process.



## Recommendations

**Police Officer** who is the official who operates as inquiry officer and must gather the evidences according to the basic principle of collection evidence, that is to follow the legal regulation to get a lawful testimony. The arranging of crime scene re-enactment must be for the purpose of gathering evidences there is one thing to be considered which is more important as the gathering evidence in rhetoric, that is the security of the life of the alleged offender and save the peace at the crime scene while having the crime scene re-enactment. Sometimes it is inevitable that there will be a confrontation between the alleged offender and the victim or relatives of the victim as well as people who wait for watch. The alleged offender shall have risk of being attacked or to be lynched. Police officers are required to have a plan and assessing the various disturbances that may occur. If the results are obtained on the basis of witnesses at the scene of the crime it is not worth to have risk of disturbance and insecurity of the alleged offender, so it should be avoid having the crime scene re-enactment.

**A lawyer** who is a professional and has the knowledge, the ability to consult and help the case to the alleged offender. The crime scene re-enactment is a step in the inquiry process for gathering evidence after alleged offender confessed to the inquiry. The attorneys need to stay with them in the process, especially in cases where the crime scene is important to the case to know the facts obviously and have a guideline to fight in the lawsuit as well as the lawyer can also provide useful information to the alleged offender.

**Press media** who are the informative presentation to the public and have a role which is an important in perception, values and attitudes of people. The media will present the news based on the fact to reflect the truth in society to appear to the public and to have knowledge of the situation in various types of offenses. But the presentation of news should not be a drama, and should not seduce people's emotions to hate the alleged offender. Although the media is responsive to the curiosity of the society. But do not violate the privacy rights, such as entering the interviewer. Regarding to the offense and motivation, the alleged offender will confess to the inquiry officer voluntarily. It does not mean that the alleged offender will voluntarily respond to the questions and agree to take photographs to present. In this regard, there is no law prohibiting the act. But the media should consider the ethics, morality and ethics of the media.

### Policy recommendation

The crime scene re-enactment is the one way to gather evidence in the investigation which the Criminal Procedure Code has no provisions on procedures and process. According to the order of the Royal Thai Police, there is no any legal requirements or regulations that are clear said that what kind of case must be taken the crime scene re-enactment, what kind of action must not do, so there should be the obvious criteria and the exceptions as follows;

- a. Determine the type of case that should be done in the case where the scene involved,
- b. The lawsuit will provide a guilty verdict, it should be a case where the alleged offender confesses and is guilty of an offense punishable by imprisonment not exceeding five years, according to Section 176 of the Code of Criminal Procedure, namely, under Section 176, "the case where the defendant pleaded guilty. The court will adjudicate without further evidence. Except the case, the charges against the defendant pleaded guilty.

The definition of clear rules is a reference of protection of the duties of officials that has been done by law. The results of the evidence gathered from the scene of the confession is a reliable weight to the court heard. This is done under the rules that the law empowers. It also protects the rights of the accused. It shall not be taken to point the crime scene without the need to gather evidence in the case. The risk of facing people and media.

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# The Impacts and Implications of Human Rights upon the EU and the UK Arbitration Process

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## Abstract

One of the most significant and fundamental sources of law regarding legal rules against bias can be found in the European Human Rights Law, which has intrinsically stipulated that a decision maker must be independent, impartial and hence clear of bias. In 1950, the 47 states of the Council of Europe, including the United Kingdom, signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>1</sup> Accordingly, provisions contained in the ECHR have been incorporated into domestic laws of member states. In 1998, the guaranteed rights of the ECHR have been successfully incorporated into the United Kingdom domestic law by means of the Human Rights Act (HRA). Accordingly it is essential to apprehend the magnitude of the human rights impact and its extended application and implication on the arbitration process across the EU and UK. In the attempt to answer such question, I will divide my answer into three main parts. In the first part, I will set out and unpack Article 6 of the Convention and explain how these provisions contained in Article 6 are applicable to Arbitration. Secondly, we will be looking at the shifts between the applications of the tests against bias used in the EU, the UK in particular. In the final part of this essay, the main discussion would be placed upon assessing the efficiency and effectiveness of the current bias test and to examine whether or not the test currently and commonly employed in the UK should be improved or replaced.

**Keywords:** Human Rights, Arbitration, European Union, UK Human Rights Act

## Part I

The most important and relevant provision of the HRA concerning both the judicial and arbitral proceedings is laid down in section 6. This provision essentially guarantees the right of every person to fair trial before an impartial and independent tribunal. It can be derived from an interpretation of section 6 that this provision is also applicable to arbitration proceedings as well. That is to say, section 6 states that 'It is unlawful for a public authority to act in a way which is incompatible with convention rights'. An inclusive definition of the term 'public authority' can be found in section 21(1) which states that this term includes 'a court tribunal' and 'tribunal' is defined as 'any tribunal in which legal proceedings may be brought'. Therefore, it seems that such given definition would be wide enough to encompass an arbitral tribunal. This would render arbitrators to act in accordance with the provisions laid down in the HRA (Altaras, 2007).

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<sup>1</sup> The United Kingdom signed in 1953.

Consequently, as regard to the requirement of independence and impartiality imposed on the arbitrators, it must be established that, firstly, the arbitral tribunal has been appointed with the manner that guarantees against outside pressures (Independence) and, secondly, the tribunal must be subjectively free of personal prejudice or bias and it must also be impartial from an objective viewpoint (Impartiality) (Altaras, 2007). It should be noted that the court has viewed the issues of independence and impartiality as closely linked with each other and generally considers these requirements together.

Nevertheless, certain provisions contained in the HRA can be construed to exclude parties from obtaining section 6 rights. That is to say, it has been strongly upheld by both English courts and the European Court of Human Rights (ECtHR) that by entering freely into an arbitration agreement by the parties, they, consequently, expressly waive their rights of access to an ordinary court. The scope of such waiver could possibly extend and cover other rights such as the right to a public hearing, the right to judgment being pronounced in public and the right to an independent tribunal. Therefore, arbitral proceedings entered into willingly by the parties are considered as being generally in accordance with Article 6 of ECHR and section 6 of the HRA. However, particular rights contained in this provision may not be so simple to relinquish and the right to an impartial judge or to a fair hearing are one of the most difficult rights to waive under the Human Rights jurisprudence.

Under the English Arbitration Act 1996, it has been established that the mandatory provisions of the Act cannot be waived. This establishment has certainly echoed and reinforced the parties' Article 6 Convention rights. In Particular, section 1 sets out the overarching object of arbitration 'to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense'. Section 24 also gives the court power to remove arbitrators on certain grounds including justifiable doubts concerning their impartiality, incapacity and refusal or failure properly to conduct the proceedings. Section 33 explicitly states that the tribunal shall act fairly and impartially as between parties. The significance of these provisions has also been highlighted in the recent 2007 case of *Stretford v. The Football Association* (Stretford v. The Football Association, 2007).

## Part II

It can be observed that the requirement for the judiciary and the arbitrators to be impartial is significantly emphasised. Nowadays, as arbitration has been rapidly rising in popularity in international transactions as alternative model of dispute resolution, parties are seeking to have their disputes arbitrated by independent and impartial arbitrators especially when facing with the prospect of high stakes and the relatively high expense of the process. Many international attempts have been made towards the unification of the independence and impartiality standards. Despite such attempts by organisations like the UNCITRAL, the International Bar Association (IBA), and the ICC, there is still no uniform establishment regarding the requirement of impartiality amongst different jurisdictions.

Under the English jurisdiction, the court has traditionally approached the issue of the requirement of impartiality in arbitral proceedings in the same way as for judges in court proceedings. That is to say, although Article 6 requirement of impartiality may not explicitly and directly apply to arbitral proceedings, the legal 'test' for bias under section 24(1) of the Arbitration Act essentially mirrors the test for bias in English judicial proceedings (Hodges, 2007). Hence, in the following part of this essay, where issues regarding tests against bias are discussed, I would form my opinion and discussion based on certain landmark precedents concerning requirement of impartiality, which would be derived both court cases as well as arbitral rulings.

### **The Law of Bias in England Prior to the Enactment of the HRA**

Under the English law regarding the requirement of impartiality, it has been suggested that,

prior to the Human Right Act, there are two main options applied by the court in order to supervise an arbitral proceedings, namely the Sussex Justice test and the Gough test. The first one is to remove an arbitrator provided that a fair minded and informed observer would have a '*reasonable apprehension*' that the arbitrator was biased (Luttrell, 2009). This long established notion by Lord Hewart in the ruling of *R. v. Sussex Justices* (*R. v. Sussex Justice Ex p. McCarthy*, 1924) has been the cardinal principle in determining the tests of bias- 'Justice should not only be done but should manifestly and undoubtedly be seen to be done'. It could be seen that in Sussex Justice, a two-arm test has been established. These two arms of Sussex Justice are: (1) Assessment of the impugned conduct from the vantage of a 'reasonable observer' and (2) A 'reasonable apprehension' (or 'reasonable suspicion') threshold.

The second option is to remove arbitrators provided that the 'court' itself would perceive that there was a '*real danger*' that the arbitrator was biased. Such contradictory notion against the ruling in Sussex Justice has been established in the Gough test for bias. It could be arguably said that the Gough test has consequently gained its dominant position and replaced the Sussex Justice test. In *R. v. Gough* (*R. v. Gough*, 1993), Lord Goff reviewed the earlier precedent case of Sussex Justice and discerned two prominent tests that had been generally applied by the English courts, which are the tests of whether there was a 'real danger' of bias test (Gough) and the test of whether a 'reasonable person might reasonably suspect bias' (Sussex Justice). His Lordship, by endorsing the first test of 'real danger' test, had set out a two-arm approach to be applied by courts when determining the allegation of bias. He suggested that firstly, the court should ascertain the relevant circumstances, knowledge of which may not be available to an observer and then see if there is a real danger of bias, in terms of a real possibility of bias (Singhal, 2008). To reiterate, the approach of two arms assessed in Gough are: (1) Assessment of the impugned conduct through the eyes of the court and (2) The 'real danger' threshold.

The Gough real danger test was subsequently applied to arbitral proceeding in *Laker Airways Inc v. FLS Aerospace Ltd* (*Laker Airways Inc v. FLS Aerospace Ltd.*, 1999) where it concerned the status of impartiality of the arbitrators appointed. In this case, the appointed arbitrators from both the appellant and the respondent came from the same barristers' chambers. The court considered that the test of bias was not satisfied here due to the point of view that even though the arbitrators may share certain resources such as libraries and staff, they are essentially self-employed and work independently. It could be seen that the court derived its decision relying on section 24 of the English Arbitration Act, which according to the court, reflected the real danger test. It seems that the Act only requires the arbitrator to be 'impartial' and not necessarily 'independent', unless the lack of independence gives rise to justifiable doubts as to impartiality.

However, soon after *Laker Airways* had been decided, there was an immense criticism arguing that the court had been wrong in the application of test to the facts in this case. It should be noted that the challenge did not concern the validity and the applicability of the *Gough* test, the main concern was rested on the topic of how the court apply the test to the facts. In other words, the question concerned with the second arm of *Gough* of how the court had viewed the case: subjectively or objectively. It was argued by the American party that the court was wrong in applying the facts to the test subjectively by using the standard of a reasonable Englishman. If the court were to apply by using the American standard, it could be the case that an association with the same barristers' chamber could constitute a real possibility of bias. Therefore, it was contested that the correct approach concerning the second arm of *Gough* test should be assessed objectively and not subjectively (Riches, 1999). Moreover, the broad common sense approach in the personification of a reasonable man suggested in *Locabail* was also manifested in the judgement of May L.J in *AT&T Corp v.*

*Saudi Cable Co.* In his ruling, even though his Lordship eventually reached the same conclusion as Lord Woolf and Lord Potter did<sup>2</sup>, still, he felt that the non-executive directorship of the arbitrator could have called into question his independence in the eyes of one of the parties.

From the discussion earlier, it could be observed that the applicability of the test in *Gough* was gradually diminished throughout the years as witnessed in the above mentioned cases. A new approach, nevertheless, seems to be significantly emerged from recent cases developed after the implementation of the HRA. In the following part of this essay, we will be looking at the impact of the HRA and the ECHR jurisprudence on the application and the requirement of impartiality imposed on the English arbitrators.

### **After the HRA**

The highly significant turning point regarding the requirement of arbitral impartiality has manifested itself right after the HRA 1998 came into force in October 2000. Relying on the ECHR jurisprudence, Article 6 of the Convention stipulates that everyone shall have a right to a fair hearing by an independent and impartial tribunal established by law. As a consequence, the Human Right jurisprudence was taken into account when the court considering the case a month later after the enforcement of HRA. In *Medicaments and Related Classes of Goods, Re*, it was held by the court that the *Gough* test was no longer satisfactory for it only focuses on the court's view of the facts. Accordingly the Court of Appeal suggested and recommended a 'modest adjustment' to the test in *Gough*. This proposition was later affirmed by the House of Lords in the case of *Porter v. Magill*. Interestingly, it should be noted that the newly established standard test set out in *Magill* actually derives its formulation from both *the Sussex Justice* and the *Gough* tests. That is to say, for *Porter v. Magill* test, the first arm of the test is the one used in *Sussex Justice* and the second arm was the one posted in *Gough* test. Such modification was seen as an attempt of the English Court to bring the standard test in line with the ECtHR case of *Findlay v. United Kingdom* where it was viewed that the standard of *Sussex Justice* had been applied by the court.

Nonetheless, there is still an on-going question as to the validity and the applicability of the *Magill* test. This is because the second arm of the *Magill* test incorporates the very same standard used in *Gough*, which is the standard of 'real danger' or 'real possibility'. These two notions have practically the same meaning and this has been explicitly stated by Lord Goff: '*For the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability or bias*'. Therefore, it can be noticed that the, with respect to Lord Goff's primary intention, the term 'real danger' should be understood as carrying the same meaning as the term 'real possibility'. This acknowledgement then leads to one of the most contested propositions against the application of *Magill* test. That is to say, it has been argued that the second arm of *Magill* is incompatible with the HRA which derives its jurisprudence and authority from the ECHR. Evidently, in the ECtHR, there is an insistence in applying *Sussex Justice* using 'reasonable apprehension' and most of the ECHR member states are following Strasbourg in this regard.

Nevertheless, despite the fact that there are still certain doubts concerning the compatibility of the 'real possibility' test with the ECHR jurisdiction coupling with the dicta of the Court of Appeal in *Director General of Fair Trading v. Proprietary Association of Great Britain* (ECWA, 2000), English courts have found little difficulty in applying the 'real danger' or

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<sup>2</sup> In this case the arbitrator in question was a non-executive director of a competitor of AT&T Corp, having a very small shareholding. According to Lord Woolf and Lord Potter, this indirect interest was not likely to influence him the discharge of his arbitral duty.

'real possibility' test.

The following two important decisions will be used to illustrate that the second arm in *Magill* test is, in fact, viewed to be in accordance with the HRA and the ECHR rhetoric and does not constitute a breach of a fair trial guaranteed rights under Article 6 of the ECHR. In the first case of *Lawal* (2003), the appeal point was whether '*the practice of using senior barristers as part time members of statutory tribunals conflicted with the requirements of ECHR Article 6*'. The real possibility pleaded was that these members might unconsciously favour submissions of their colleague who was the senior counsel for the Respondent over those of the Appellant. The House of Lords allowed the appeal and ruling that the practice of using members of the inner Bar as part time judges and also allowing them to appear before members with whom they have sat must be discontinued. More importantly, his Lordship also held that there was no difference between the Common law test for bias laid down in *Magill* and the requirement of impartiality contained in ECHR Article 6.

In the second decision of *AWG* (2006), it directly addresses the effect of the HRA upon the Common law test for bias. In the leading judgement of Lord Mummery, he concluded that convenience, cost and delay are subordinate considerations where concerns as to judicial impartiality are properly invoked. The court also found that Evans-Lombe J should have recused himself because it was in the interests of justice and all the parties involved that another judge try the case.

Evidently, the above ruling was contradicting with the ECHR test for bias, which is the '*reasonable apprehension*' test applied in *Sussex Justice*. Nonetheless, the key importance of the decision in *AWG* is that the 'real danger' test is cited immediately after the description of the guarantee of judicial impartiality in ECHR Article 6 as 'the fundamental principle of justice'. Accordingly, it could be derived that, judging from the silence on the matter, it is evident that the members of the Court of Appeal saw no disagreement between the terms of the ECHR Article 6 and the 'real possibility' test applied in this decision.

### **Part III**

In this part of this essay, I will attempt to argue that the enactment of HRA and the influence of the ECHR have somehow produces, to a certain extent, an adverse effect on the English arbitration system. The adverse impact of the HRA and the ECHR jurisprudence is that it changes and lowers the standard of the test against bias. Consequently, according to certain scholars and empirical studies, such lower standard on the requirement of impartiality is not entirely beneficial to the justice system as a whole.

For arbitration today, as any commercial disputes lawyer would know, delays of the proceedings could be beneficial for their clients, for instance, it could allow them more time to perform creative book keeping, to make money for the award or even to hand the client an opportunity to shed assets. Evidently, it has been suggested that delays also tend to re-establish settlement negotiations, which again tend to give positive results. Nevertheless, causing delays inevitably constitute an abuse of process and a breach of professional ethics. This possibly gives rise to an increasing in arbitration bias challenges witnessed since the early 1990's in many leading forum.

#### **The Need for a Tougher Standard**

As more and more 'Black Arts' arbitrators are becoming widely recognised, this might be the explanation for the rise in demand by clients who are now seeking to resort to these arbitrators who deploy such particular tactics especially when their cases involve high value disputes. A number of international commercial actors, including companies and states, demonstrate an apparent willingness to resort to the Black Arts. Also, it is likely that as more

and more clients are exposed to these tactics, they might instruct their lawyers to utilise such skills. It has been suggested that there are new ways of removing arbitrators emerging every year. Some even described the Orange List as '*a malignly imaginative check-list for tactical challenges by recalcitrant parties*' (ICC Bulletin, 2007); it therefore suggested that the IBA Guidelines should be updated soon. Accordingly, a tougher standard of the bias test should be established in order to prevent such abuses of process.

As England is considered to be one of the most popular seats for arbitral proceedings, by following the Strasbourg insistence in applying 'real apprehension' test, this can certainly attract parties who wish to employ Dark Arts skills to choose England as their seats because the chance of successfully removing arbitrators would be greater than those states where a higher standard test is applied.

### **The Real Danger Test and the HRA**

The earlier discussed argument leads me to the proposition of bringing back the application of the *Gough* test in the English arbitration system. However, the complete replacement of *Magill* test with *Gough* might seem too far-reaching. Therefore, I am of the opinion that it would be more efficient and appropriate to reintroduce the second arm of *Gough*, which will be replacing the standard test set out in the second arm of *Magill*.

Although the reason for bringing back the second arm of *Gough* has been reviewed earlier, it is still necessary to examine as to whether such test would survive the jurisprudence of the ECHR. Apparently, many commentators are trying to bring back the application of *Gough* test. In doing so, they seek to establish that the ECHR procedural rights enshrined in *Sussex Justice* standard can be waived in favour of *Gough*. Accordingly, in *Suovaniemi* 1999, the importance of this case lies in the fact that the Strasbourg court has become more tolerant towards the idea that ECHR procedural rights can be waived. That is to say, it was held by the court that the waiver of a procedural right under the Convention would be allowed provided that three requirements can be satisfied. These requirements are namely: (i) *waiver of the relevant right is 'permissible under the Convention'*, (ii) *the waiver is 'unequivocal'* and (iii) *the waiver is accompanied by 'minimum guarantees commensurate with its importance'*. In this case, the three requirements were found to be satisfied. Thus, the waiver was considered valid and effective.

Accordingly, when applying the wording of the *Gough* clause with the three requirements set out in *Suovaniemi*, it can be observed that *Gough* would pass the first two requirements relatively easily. Regarding the third and final requirement where the significance of 'minimum guarantee' is emphasised, it would seem that *Gough* could still overcome this hurdle. This is because obviously *Gough* does not '*abandon the parties to the wilds of prejudice and corruption*'. This argument has been put forward clearly by one scholar who wrote that:

*'Firstly, if we accept that Gough deals with apparent (or 'objective') bias only, then nemo judex still stands to disqualify any arbitrator with an interest in the cause. Secondly, actual bias will always pass the Gough test so there is a minimum guarantee in place in this sense.'*

Accordingly, as examined above, it can be observed that the *Gough* clause would be highly likely to survive the Strasbourg review.

### **Conclusion**

As having set out as the main purpose of this essay, the discussion throughout this paper has attempted to argue and convince its readers that the Human Rights Act has consequently changed and lowered the standard of the test against bias under the English arbitration system. Such adverse impact produced by the ECHR jurisprudence should not be



continuously welcome and certain changes should be implemented in order to benefit the society as a whole.

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# **The Power Limitation of ASEAN Inter-Governmental Human Rights Commission Under the Perspective of ASEAN Charter in Case of the Rohingya Issue**

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## **Abstract**

The ASEAN Inter-governmental Human Rights Commission (AICHR) was established in 2009 by the Association of Southeast Asian Nations (ASEAN) as their human rights commitment under Article 14 of the ASEAN Charter. This article is written under the perspective of ASEAN Charter to explain the power limitation of AICHR in case of Rohingya issue. It briefly explains the introduction of Rohingya issue, ASEAN, ASEAN Charter, Terms of reference (TOR) of AICHR, and AICHR through the hierarchy of AICHR as the inter-governmental body of ASEAN as well as the relationship between the AICHR and the Rohingya issue through the ASEAN Charter. It found that the Rohingya issue is overpowered of the AICHR to protect human rights due to the restriction empowered by the TOR. Hence the author suggests the ASEAN to revise the TOR by giving more powers on the human rights protection to the AICHR.

**Keywords:** AICHR, ASEAN Charter, ASEAN, TOR, Rohingya

## **Introduction**

Since the ASEAN ratified the ASEAN Charter in 2007, the issue of human rights becomes the main commitment of ASEAN. Article 1(7) of the ASEAN Charter stipulated that “[the] purpose of ASEAN are ...[to] strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of [ASEAN]”. (ASEAN, 2016: 4) This would say that the ASEAN has obligated to promote and protect human rights in Southeast Asia region. In order to fulfill this ASEAN’s commitment on human rights, the ASEAN in 2009 established the ASEAN Inter-governmental Human Rights Commission (AICHR) to develop the cooperation on human rights in ASEAN. The Rohingya issue is apparently happened in the state of Rakhine, Myanmar which is a member state of ASEAN. With the direct authority on ASEAN human rights mission, the AICHR in theory is respected to take some actions on this situation. However the AICHR in reality disregard and kept silence to respond with this Rohingya issue instead of acting strictly under their commitment on human rights. This circumstance makes the doubt and question on the failure of AICHR to protect their human rights commitment in ASEAN. Hence this journal explains the power limitation of AICHR to act on the Rohingya issue from the perspective of ASEAN Charter.

## **Rohingya Issue, ASEAN, AICHR, ASEAN Charter and TOR**

**Rohingya Issue:** The Rohingya is the Muslim minority living in the Rakhine state, Myanmar. The 2012 report on the Rohingya issue by the Human Rights Watch was issued and asked Myanmar government to pay responsibility for the rejection of citizenship, degrading of human rights, forced relocations, use of force against the minority, and many accuses on human rights issues. (Human Rights Watch, 2012) All of these accuses are referred under the International Covenant on Economic, Social and Cultural Rights 1976 (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women 1981 (CEDAW), the Convention on the Right of the Child 1990 (CRC), and the Convention on the Rights of Persons with Disabilities 2008 (CRPD) which Myanmar is a party to. (OHCHR, 2017; SHAPE-SEA, 2016:40) Moreover the fact shows that until now more than 500,000 Rohingyas have fled Myanmar to Bangladesh. (Time, 2017; SHAPE-SEA, 2016: 52-53) Many of human rights international organizations and NGOs such as the UN High Commissioner for Human Rights, Amnesty International, the European Commission, the Human Rights Watch, and others, undeniably mentioned the Rohingya as the most victimized minority in the world (Amnesty International, 2017; ECHO, 2017; OHCHR, 2017; Human Rights Watch, 2012) This situation also makes Myanmar government to be questioned on doing ethnic cleansing against the Rohingya as well as the AICHR which is established to be directly responsible and protect human rights in ASEAN, completely fails to act on the Rohingya issue. (Time, 2017)

**ASEAN:** On 8 August 1967, the Association of Southeast Asian Nations (ASEAN) was lawfully established through the founding document which is called the ASEAN Declaration (Bangkok Declaration) (ASEAN, 2017). Then after launching the ASEAN Charter in 2008, the ASEAN was reconstrued its organization and created the ASEAN Community (AC) which are ASEAN Economic Community (AEC), ASEAN Political-Security Community (APSC), and ASEAN Socio-cultural Community (ASC). (ASEAN, 2013) Based on Article 7(2)(a) of the ASEAN Charter, the ASEAN Summit is the highest policy-making body of ASEAN with the main supportive of ASEAN Coordinating Council, ASEAN Community Councils, ASEAN Sectoral Ministerial Bodies, and ASEAN Secretariat. (ASEAN, 2016: 10) In October 2009 at the 15<sup>th</sup> ASEAN Summit, the ASEAN first time established the AICHR as the inter-governmental body and the integral part of ASEAN which stated under Article 3 of the TOR. (ASEAN Secretariat, 2009: 6)

**ASEAN Charter:** The ASEAN Charter was entered into force on 15 December 2008 by the adoption of 13<sup>th</sup> ASEAN Summit. (ASEAN, 2007) The ASEAN Charter mainly restructured legal and institutional framework for ASEAN. (Wong, 2012: 671-672; Koh, Manalo & Woon, 2009) The ASEAN Charter consisted of 13 chapters and 55 articles which are; the purposes and principles of Charter in Chapter 1 (Article 1-2), Legal personality in Chapter 2 (Article 3), Membership in Chapter 3 (Article 4-6), Organization organs in Chapter 4 (Article 7-15), Entities associated with ASEAN in Chapter 5 (Article 16), Immunities and privileges in Chapter 6 (Article 17-19), Decision making in Chapter 7 (Article 20-21), Settlement of disputes in Chapter 8 (Article 22-28), Budget and finance in Chapter 9 (Article 29-30), Administration and procedure in Chapter 10 (Article 31-34), Identity and symbols in Chapter 11 (Article 35-40), External relations in Chapter 12 (Article 41-46), General and final provision in Chapter 13 (Article 47-55). (ASEAN, 2016) The principles of human rights promotion and protection are also referred in many articles of ASEAN Charter such as; the Preamble of the ASEAN Charter stated that “[ADHERING] to...[respect] for and protection of [human rights]...”, Article 1(7) stipulated that “[the] purposes of ASEAN are: ...[to] promote and protect human rights and fundamental [freedoms]...” (ASEAN, 2016:4), Article 2(2)(i) stated that “[ASEAN] and its Member States shall act in accordance with the following Principles... [respect] for fundamental

*freedoms, the promotion and protection of human rights, and the promotion of social [justice]*” (ASEAN, 2016: 7), Article 14(1) stipulated that “[In conformity] with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an [ASEAN human rights body]”, as well as Article 14(2) stated that “[This] ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers [Meeting]”. (ASEAN, 2016: 19) As aforesaid articles, the principles of human rights promotion and protection are obviously claimed on the purpose of ASEAN Charter under Article 1(7), the principle of ASEAN Charter under Article 2(2)(i), and the establishment of the ASEAN human rights body under Article 14.

**Terms of reference (TOR) of AICHR:** In the interpretation under Article 14(2) of the ASEAN Charter, the ASEAN set up the High-Level Panel to draft the TOR to establish ASEAN Human Rights Body which is now the AICHR. In July 2009, the TOR was adopted by the ASEAN Foreign Minister Meeting (AMM). (ASEAN Secretariat, 2017: 6) The TOR consisted of 9 articles which are; the purposes of AICHR in Article 1, the principles of AICHR in Article 2, the consultative inter-governmental body of AICHR in Article 3, the mandate and functions of AICHR in Article 4, the composition of AICHR in Article 5, the modalities of AICHR in Article 6, the role of the secretary-general and ASEAN secretariat to the AICHR in Article 7, the work plan and funding of AICHR in Article 8, and general and final provisions in Article 9. (AICHR, 2017) Hence the TOR is considered as the look-alike constitutional of AICHR.

**ASEAN Inter-governmental Human Rights Commission (AICHR):** According to Article 14(1) of the ASEAN Charter, the ASEAN established the AICHR as the ASEAN human rights body after the adoption of ASEAN Foreign Minister Meeting. In October 2009, the AICHR was adopted at the 15<sup>th</sup> ASEAN Summit and the ten AICHR Representatives were appointed. (AICHR, 2017; Sharom, Purnama, Mullen, Asuncion & Hayes, 2015: 92) The establishment of AICHR determines ASEAN’s commitment to develop regional cooperation on human rights. And the main purposes of AICHR is to promote and protect human rights in ASEAN. (ASEAN Secretariat, 2017: 18) However it seems to the author that most of AICHR achievement is focused more on the human rights promotion approaches such as seminar, workshop, training and report, not the protection approach. (Gamez, 2017: 55-56) Consequently the AICHR sometimes is criticized as the tootles tiger due to their limitation of power to protect the human rights in ASEAN. (Sharom, Purnama, Mullen, Asuncion & Hayes, 2015: 93)

**The Limitation of Power of AICHR under the ASEAN Charter in the Rohingya Issue:** To explain the limitation of power of AICHR under the ASEAN Charter to act in the Rohingya issue, there are two main matters to be considered such as (1) the hierarchy of AICHR as the inter-governmental body of ASEAN, and (2) the relationships between the AICHR and the Rohingya Case through the ASEAN Charter.

## The Hierarchy of AICHR as the Inter-Governmental Body of ASEAN

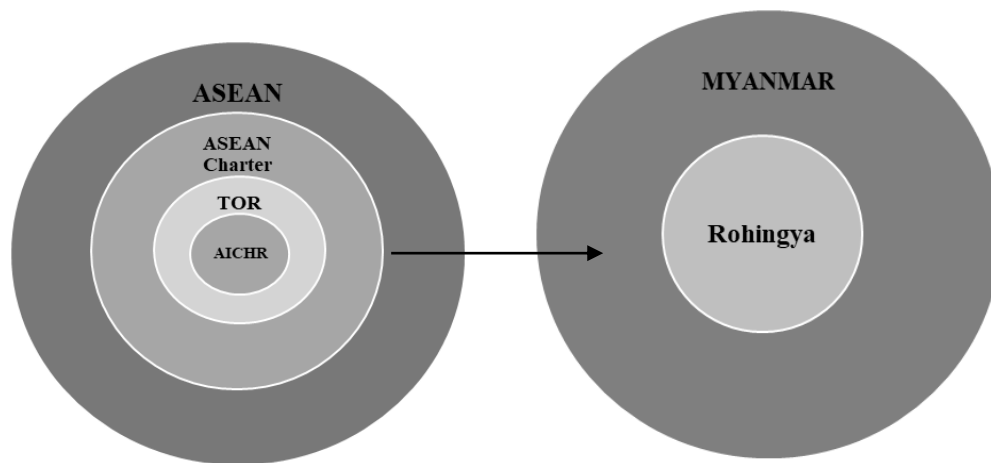


**Figure 1:** The hierarchy of AICHR as the inter-governmental body of ASEAN

As shown on Figure 1, according to Article 7(1)(a) of the ASEAN Charter stated that “[*The ASEAN Summit shall comprise the Heads of State or Government of the Member [States.]*”, the ASEAN Summit is consisted of the ASEAN Heads of State and is also the highest policy-making body in ASEAN. According to Article 8 of the ASEAN Charter, the ASEAN Summit are supported by their respective Foreign Ministers who meet in the ASEAN Foreign Minister’ Meeting (AMM). (ASEAN Secretariat, 2017: 12) The AICHR works as the inter-governmental body of ASEAN and stays in the lowest level of pyramid. In practice the ASEAN was established with the ideal of Top Down power organization. (Limsiritong, 2016a: 18) Therefore due to figure 1, the ASEAN Summit is considered as the center of power of ASEAN and the top level of pyramid.

The AMM is considered as the second level rank as well as the AICHR is considered as the lowest level rank. This would mean that the AICHR is in the lower level than the ASEAN Summit and the AMM. In both of theory and practice the AMM and the AICHR are absolutely under the power of the ASEAN Summit. According to Article 7 of the ASEAN Charter, it would interpret that the AICHR is designed to protect the human rights in ASEAN with a limitation of checking and balancing against the ASEAN Summit’s order in all matters included the Rohingya issue. (ASEAN, 2016: 10) And even the ASEAN Summit itself also balances their powers between the ASEAN Member States by the ASEAN Way through the consensus decision making mode under Article 20 of the ASEAN Charter. (Limsiritong, 2017: 76-77) Hence it is impossible for the AICHR as the lowest ASEAN body to break this hierarchy and have power over the ASEAN Summit due to their lower level rank of ASEAN structure.

## The Relationships between the AICHR and the Rohingya Case through the ASEAN Charter



**Figure 2:** The relationships between the AICHR and the Rohingya Case through the ASEAN Charter

As shown on Figure 2, on the left cycle, the AICHR is legitimately empowered by the TOR. The TOR regulates all regulations related to the AICHR such as the structure, purposes, principles, mandate, functions, funding, and especially decision-making mode of AICHR. The decision-making mode of AICHR under Article 6 of the TOR is referred to be based on consultation and consensus accordance with Article 20 of the ASEAN Charter. (ASEAN Secretariat, 2009: 10) Interestingly one big question came to the author that one of AICHR representatives who represented for Myanmar, will give his vote against Myanmar for the Rohingya issue or not. Moreover the TOR was empowered by the Article 14 of the ASEAN Charter which is created by the ASEAN. (ASEAN, 2016: 19) Hence it can interpret in the way that all powers of AICHR is originated from the ASEAN which is controlled by the ASEAN Summit as the supreme decision maker of ASEAN.

On the right cycle, the issue of Rohingya is fully under the sovereignty of Myanmar in one hand. In the other hands, Myanmar takes place as one of ASEAN Member State as well as one of member of ASEAN Summit which is also the supreme decision maker of ASEAN. Based on the ASEAN Way especially the ASEAN principle of non-interference in the internal affairs of ASEAN Member States under Article 2(e) of ASEAN Charter, this would mean the AICHR in practice always needs to get permission from the ASEAN Summit if the AICHR would like to act in the Rohingya issue. (ASEAN, 2016: 6)

Furthermore the decision-making mode of ASEAN Summit is referred to Article 20 (1) of the ASEAN Charter which is totally based on consultation and consensus method. This would mean to get permission on the Rohingya crisis, it requires all ASEAN Member States included Myanmar itself to agree on this matter. Hence the resolution in this situation is impossible to be solved in practice because Myanmar will not vote against himself for sure. (Limsiritong, 2016a: 21) In conclusion the limitation of power of AICHR is limited by the TOR which is totally regulated by the ASEAN and the Rohingya issue is the subject related to Myanmar which is one of the ASEAN Summit.

## Conclusion and Recommendation

To summarize, as mentioned above, the power limitation of AICHR is based on (1) the hierarchy of AICHR as the inter-governmental body of ASEAN and (2) the TOR which is administered by the ASEAN. Hence it is impossible in practice that the AICHR as the inter-governmental body of ASEAN and the lowest level rank of ASEAN body, will takes power over the issue of ASEAN Member State such as the Rohingya issue. Because the power of AICHR is blocked by the hierarchy of AICHR itself due to Figure 1 and by the TOR as the fundamental instrument of AICHR due to Figure 2. Therefore the Rohingya issue in this case is more bigger than the power of AICHR under the TOR.

For recommendation, to resolve the power limitation of AICHR for human rights protection, it needs to revise the TOR and giving the power of investigation to the AICHR even the party is the ASEAN Member State. As the option, Article 20(2) of the ASEAN Charter stated that “*where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made*”, This would mean that the ASEAN can apply other way of decision-making modes such as a majority vote or reverse consensus in case of the human rights issues. (Limsiritong, 2016b: 11; Van Damme, 2010)

## New Challenging in Future

As long as ASEAN would like to be accepted and recognized in a level of international organization, the human right issues in ASEAN such as the Rohingya issue are undeniable issue and the ASEAN needs to fulfill their human rights commitments as they gave their promises and binding themselves under the ASEAN Charter. However the Rohingya issue makes the hard position to the ASEAN as the whole. This is because on one side ASEAN is facing the pressures from the world and on the other hands the ASEAN felt their country's sovereignty are threatened by human rights as well as ASEAN also need to keep balance among the ASEAN Member States such as Myanmar in this situation through the ASEAN Way or Asian values. (Gamez, 2017: 7; Khotsananan, 2016: 552; Southeast Asian Human Rights and Peace Studies Network, 2016: 17)

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# The Challenge of Indonesia in Applying the Right to be Forgotten

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## Abstract

The results of the amendment of Law No. 11 of 2008 on Electronic Information and Transactions (UU ITE) not only solving problem but also causing new problem. UU ITE No. 19 of 2016 regulates the authority of a person to delete his/her personal information on an internet page or otherwise known as the Right to be Forgotten (RTBF) which was previously popular in European countries. In many studies this Right is always confronted with the right of the freedom of expression, thus the fundamental issue concerning this right is an attempt to balance the two. This paper shall discuss the history of RTBF, review several cases related to the implementation of RTBF in several countries, compare the RTBF concept to be applied in Indonesia, analyze the challenges in the implementation process, as well as try to find models for the proper implementation in Indonesia. Indonesia should immediately prepare government regulations in response to the RTBF, given the potential problems if there is no detailed instrument of the implementation. As well as to further determine the competent authorities to assess each submitted application is based on the RTBF.

**Keywords:** Right to be Forgotten, Data Protection, Right to Privacy

## Introduction

Internet has become a familiar term for some of Indonesians. The use of internet technology is an outstanding phenomenon. First, internet has global characteristics and knows no national boundaries; Second, every internet user can communicate interactively or non-interactively, even can conduct broadcasting activities with relatively lower costs; Third, no one can claim that they are the “owners” of internet which is the compilation of hundreds of networks; Fourth are extraordinary internet user growth and rapid internet technology development; Fifth, internet is not under the scope of governance of a certain country or organization so international cooperation is necessary to mitigate the occurring legal issues. The aforementioned things have made internet technology unique so it is necessary to find regulation or law which can be applied optimally in information technology activities (Budhijanto, 2010).

Numerous studies have been conducted related to the relationship between virtual world and law, including the thoughts doubting law’s capability in regulating virtual world. After experiencing various evolutions of thought, Lawrence Lessig concluded that virtual world will eventually be regulated by law. This conclusion was made after Lessig reviewed the relationship between law in real world and its capability to regulate virtual world. Lessig claimed that there is a systematic competition between virtual and real worlds affecting legal regulations (Djafar and Veda, 2014).

According to the report released in 2011, UN special reporter for freedom of speech and expression Frank La Rue said that the issue currently faced in utilizing internet technology, besides digital disparity issue, is the increasing attempts to restrict contents, which tends to

restrict human rights, especially the rights over internet access. Some of the content restriction attempts are specifically regulated in national laws, while the others are merely governmental policies. La Rue identified that content restrictions are materialized in forms of (1) Arbitrary internet content filtering and blockade; (2) Criminal sanctions for internet users over legitimate expressions; (3) Implementation of legal liability to middlemen (ISP); (4) Internet access termination under the reason of HaKI; and (5) Weak personal data and privacy protection (Jafar, 2013).

As we know, internet-based information has *free* flow of information principle, which means the spread of the information cannot be hindered, but it does not mean all internet-based information can be accessed by anyone without any restriction. Every information owner can determine privacy protection against the information owned by the related person in internet media (Kantaatmadja, 2002), so similar understandings about things related to privacy is necessary. David Flahaerty explained a list of descriptions about information related to privacy, namely: (1) The right to individual autonomy; (2) The right to be left alone; (3) The right to a private life; (4) The right to control information about oneself; (5) The right to limit accessibility; (6) The right to exclusive control of access to private realms; (7) The right to minimize intrusiveness; (8) The right to expect confidentiality; (9) The right to enjoy solitude; (10) The right to enjoy intimacy; (11) The right to enjoy anonymity; (12) The right to enjoy reserve; and (13) The right to secrecy (Makarim, 2005).

However, this development brings another impact related to privacy protection. In various countries, privacy-related issues and regulation about privacy have been growing as a complete part of social development. Therefore, it is understandable that in several democratic countries, positive law and jurisprudence about privacy have occurred far before privacy becomes a complete part of a human rights legal regime (Indriaswati and Djafar, 2013). Therefore, the regulations protecting the rights are created. In general, protection against rights occurring in conjunction with the activities is a necessity. There are three (3) dimensions of rights which are protected and whose implementation is guaranteed by Article 19 of ICCPR, namely (Jafar, 2016): (1) Freedom to deliver opinion without disturbance; (2) Freedom to seek and obtain information; (3) Freedom to forward information.

William L Posser realized that inconsistency is developed even leads to confusion when explaining about privacy, but Posser cited at least four things describing the privacy, namely: (1) Intrusion upon a person's seclusion or solitude, or into his private affairs; (2) Public disclosure of embarrassing private facts about an individual; (3) Publicity placing one in a false light in the public eye; (4) Appropriation of one's likeness for the advantage of another (Ritchie, 2009).

One of the most essential concepts related to privacy according to Neil Richards is called *Fair Information Practice* (FIPs). FIPs is a set of principles developed in 1970 by the government of United States of America and regulates the relationship between business and governmental entities which collect, use, and disclose personal information about "data subject" (a person whose data is being collected and used). In its report, the government of United States of America introduced FIPs by describing it as five basic principles to be guaranteed by automatic data system (Richards, 2016): (1) *There must be no personal-data record-keeping systems whose very existence is secret*; (2) *There must be a way for an individual to find out what information about him is in a record and how it is used*; (3) *There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purpose without his consent*; (4) *There must be a way for an individual to correct or amend a record of identifiable information about him*; (5) *Any organization creating, maintaining, using, or disseminating record of identifiable personal data must assure the reliability of the data for their intended use and must take reasonable precautions to prevent misuse of the data*.

In the development of international human rights law, the protection of rights to privacy is regulated in Article 12 of General Declaration of Human Rights, which emphasizes: “No one shall be disrupted arbitrarily in their personal, family, household or correspondence matters and no attack shall address their honors and reputations. Every person is entitled to obtain legal protection against such disruption or attack.” In the context of Indonesian law, the protection against rights to privacy has been acknowledged as one of citizens’ constitutional rights, as emphasized by 1945 Constitution, after amendment. The provision of Article 28G section (1) of 1945 Constitution states: “Every person is entitled to the protection of personal, family, honor, dignity, and asset under their possession and entitled to sense of security and protection from the threat of fear to do or not to do something which is human right.”

Even though several countries, especially in Europe, have regulations related to privacy data protection, Europeans have relatively great anxiety over personal data. It can be seen from the result of survey conducted in 2015 against 28,000 citizens of European Union that 66% feel anxious to not have full control over the information they give online. Approaching 70%, an explicit agreement is needed before data collection and processing and the use of data is not suitable with its initial purpose (Urquhart and Rodden, 2017).

In Europe specially, privacy has been seen to have a temporal aspect: the right at some point to be free of the past. European privacy law has recently come to recognize what is called the “*right to be forgotten (RTBF)*” (Francis and Francis, 2017). The term RTBF draws wide attention after the case of Mario Costeja Gonzales was decided by *the Court of Justice of the European Union* in 2014. The review of RTBF progresses with various criticisms and supports for it, and in its development in 2016, Indonesia promulgated Law No. 19 of 2016 about amendment of Law No. 11 of 2008 about Information and Electronic Transaction (UU ITE) containing provisions which, for some elements, are deemed as the form of RTBF or known as ‘Hak untuk dilupakan’ in Indonesia.

### **The Case of Mario Costeja Gonzales**

On 13 May 2014, *the Court of Justice of the European Union (CJEU)* judging the case of *Google Spain v AEPD* and Mario Costeja Gonzales stated that *right to be forgotten* occurred in the context of data processing in search engine sites. The case was filed by Mario Costeja Gonzales, after he attempted to delete the information about his house auction event in 1998 posted on a newspaper site *La Vanguardia*, which was newspaper with the most reader in Catalonia (Kampmark, 2015). *La Vanguardia* conducted digitalization process against its news archives, including which released in January and March 1998 related to the auction of Mario’s house due to his social guarantee debt. Mario was objected by the news since it raised issues related to his profession. His request was initially rejected by Google, but eventually on 5 March 2010, Mario filed his complaint to *Spanish Data Protection (AEPD)* to face *Google Spanyol SL and Google Inc.* Mario reasoned that both news had to be deleted since his debt had been paid off and the news made inaccurate impression related to his current economic condition (Carbone, 2015).

In its verdict, CJEU considered Article 14 EU Directive 95/46/EC which covers personal data processing and the freedom of distribution of the data. One of essential points to be noted is about to what extent the liability of a company like Google against information provided through search engine sites. On the trial, judge decided that search engine operator was liable over the processing of personal data posted on the web page published by third party (Kampmark, 2015).

One thing drawing the attentions of legal and policy experts related to the verdict given by CJEU in Gonzales case is a philosophical basis in its association with data control aspect. One of which is the belief that the system is result of human works, created by human and intended for human. The opening of Article 1 EU Directive 95/46/EC states that “*data*

*processing systems are design to serve man;....they must, whatever nationality or residence of natural persons, respect their fundamental rights and freedoms notably the right to privacy, and contribute to... the well-being of individuals*". In the case, either Google Spain or Google Inc opted to act by referring their arguments to '*the act of processing data*'. The argument stated that search engine sites "*cannot be regarded as processing the data which appear on third parties' web pages displayed in the list of search results*". According to them, the information in search engine is processed without selection process between *personal data* and other information. Disagreement was shown by Gonzales and the Government seeing search engine sites as "controlling parties" in data processing. However, in the end, the Court agreed with Gonzales' argument and deemed that applicant's privacy rights waived not only economic interest of Google, but also public's interest against information access on search engine sites related to the name of applicant. Applicants in EU are entitled to ask for information deletion under reasons that the information is *inadequate, irrelevant or no longer relevant* and *excessive* in its initial purpose is processed (Kampmark, 2015).

This decision is not only devoted to Google, but also to other search engines which run in the scope of EU's market such as Bing and Yahoo. The search engine sites need to prepare infrastructures to respond to the presence of *right to be forgotten*. However, Google still needs to be the most hard-working party since 90% of European market uses its search engine (Carbone, 2015).

Responding to the verdict of *Court of Justice of the European Union (CJEU)* related to the deletion of links about personal information, Google asked for considerations from groups of international experts in deciding and responding to the requests submitted to its company. Board of experts briefly suggested Google to (a) implement delisting decision for all sites in European region (such as Google.de, Google.it, Google.es and others); (b) give information to information *publishers* when delinking process was initiated. Four other criteria were given to guide Google in assessing *delisting* requests: (i) conducting evaluation against public roles from data subject; (ii) considering whether information which will be deleted from list affects public or personal interests; (iii) considering information sources; (iv) information time interval becomes one of criteria in determining its relevance (Taddeo, 2016).

## **Right to be Forgotten Concept**

George Brock stated there is no legal basis unity which is applicable internationally and is used to enforce *right to be forgotten* principle. *The European Convention on Human Right* warrants *right to privacy* on Article 8 and *right of free expression* on Article 10. *The UM Declaration of Human Rights* regulates similar provision on Article 12 and 19. *The EU Charter of Fundamental Rights* regulates *rights to privacy* on Article 7, *the right to data protection* on Article 8, and *the right to free expression* on Article 11. *The UK's Human Rights Act* re-emphasizes the rights previously regulated in *European Convention* (Brock, 2016).

*Right to be Forgotten* can be implemented on two correlated things but different designations: *First*, data collected about a person - due to business or governmental interests - is not allowed to be used besides its initial designation purpose and the data has to be deleted immediately if it is no longer needed based on its initial purpose; *Second*, that *search engines* are required in special conditions to delete a *link* leading to certain information when searching the name of a person on a search engine, even though the information is correct but inflicts loss to the person or when the person opts to not be involved in the result of the searching system. The second idea describes restrictions of the type of information which has to appear when searching the name of a person on search engines (Isom, 2016). However, an interesting thing occurred when Koutnatzi explained about the legal basis of *Right to be Forgotten*. Koutnatzi explained that RTBF can be used for someone who has served a

sentence for their crime, due to difficult *reintegration* process for an ex-convict to social environment and rejections to them (Koutnatzi, 2012). Koutnatzi's perspective as if rams privacy right and public right to obtain information, after previously several newspaper portals complained about threat potentials if the RTBF was not carefully implemented.

At least the supporting group like German newspaper *Der Spiegel* states that individual rights need to be enforced over economic interest of search engine sites. Similar with *Der Spiegel*, Spanish newspaper *El Pais* states that “.. *it did not seem logical that in a “democratic society in which even criminal records may be cancelled after a certain period of time, the Internet could become a life sentence for some people”*. However, the opposing group like US newspaper *New York Times* states its rejection explicitly and sees that RTBF can hinder journalists' works and make their sounds unheard and will harm freedom of press and expression (Santin, 2017).

Weber explained a perspective which often correlates *Right to be Forgotten* with *right to forget*, since one last decade the debate related to *right to forget* used to take place. Weber explained that actually, both rights are different. Weber comprehensively states: *The “right to forget” refers to the already intensively reflected situation that a historical event should no longer be revitalized due to the length of time elapsed since its occurrence; the “right to be forgotten” reflects the claim of an individual to have certain data deleted so that third persons can no longer trace them* (Weber, 2011). According to Weber's perspective, the essential point related to the difference of both rights above, is individual power against their information to not be found again by other parties, so the original data remains in the site but Google's search engine cannot find it.

The policy of *Right to be forgotten* in UK applies on search engines like Google, and does not restrict whether the information is a journalistic product, as experienced by *The Guardian's* site which has to lose six of its articles from Google's search engine (Ball, 2017).

Several journalistic media reported the removal of several of their articles on Google's search engine. BBC media reported the article published in 2007 about a former director of an investment company Merrill Lynch involved in a financial scandal was no longer indexed on Google's search engine. The Guardian used to protest about a Scotland referee involved in a fraud case of penalty in a match (Santin, 2017).

One of the influences of digital world is the presence of digital memory. Schonberger explained Three features of digital memory make this possible (Schonberger, 2009).: (1) **Accessibility**. In an analog world, data and information will be restricted to be known by other parties, since information owners are capable of restricting them. An example is a hepatitis B patient asking his doctor to not deliver the disease information to anyone. The other example is the collection of photos saved in an album, when being published to virtual world, the opportunities of other parties to access or see them are possible, especially when the photos are “tagged”; (2) **Durability**. Storing information previously was a burden to be specifically prepared since it was proven to require costs. For example, a communist country has never forgotten information related to identities, acts, and words from opposing people. However, in digital era, similar intention is not a heavy burden. Google remembers every search query of a person, even though every day sees one billion queries. A person currently cannot get away from their pasts related to the access in virtual world; (3) **Comprehensiveness**. Digital memory has capabilities to process information comprehensively, due to its capabilities to collect and complete data, data location/region is no longer an obstacle. However, this, on the other side, will be a potential issue since the capability to record information without confirming about data validity eventually leads to conclusion unfounded or not suitable with the context of time and space. As experienced by Andrew Feldmar, a Canadian psychotherapist, who was not allowed to enter USA by border

officers, was based on the search they conducted on Google's search engine, which was the consumption of drugs conducted by Andrew Feldmar in 1960.

Several examples of RTBF requests delivered by individuals from various countries to Google are as follows:

**Table 1** Examples of requests google received from individuals

No.	Country	Request	Outcome
1.	Austria	Google received a request from the Austrian Data Protection Authority on behalf of an Austrian businessman and former politician to delist 22 URLs, including reputable news sources and a government record, from Google Search.	Google did not delist the URLs given his former status as a public figure, his position of prominence in his current profession, and the nature of the URLs in question.
2.	Finland	Google received a request from the wife of a deceased individual in Finland to delist a forum page from Google Search that alleges the deceased individual committed several sex crimes. The request was to remove for the deceased individual's name.	Google delisted the URL under Finnish data protection law.
3.	France	Google received a request from an individual to delist several URLs from Google Search about his election as leader of a political movement and other political positions he held when he was a minor.	Google delisted 13 URLs as he did not appear to be currently engaged in political life and was a minor at the time. We did not delist 1 URL as the page referred to a different person who had the same name as the requester.
4.	Germany	Google received a request to delist 4 news articles about an academic's research that contained the individual's photo because the academic changed gender and identifies under a new name.	Google did not delist the articles as they continue to be relevant to the academic's professional life and research.
5.	Italy	Google received a request to delist dozens of recent, reputable news articles regarding the conviction of an individual for rape, including video footage of the victim.	Google initially refused to delist the articles and the Italian Data Protection Authority wrote to Google asking to explain our decision. We decided to maintain our decision to not delist the articles given their recency and the severity of the crime. The Italian Data Protection Authority agreed with our decision to not delist the content.

**Table 1 (Con.)**

<b>No.</b>	<b>Country</b>	<b>Request</b>	<b>Outcome</b>
6.	Netherland	Google received a court order directed to Google Inc. to delist from Google Search a blog post about a professional who was convicted for threatening people with a weapon on a city street.	Google appealed the decision, but lost our appeal. We delisted the blog post.

In the context of Indonesia, privacy protection has actually been acknowledged since long time ago. At least Criminal Code states several articles of criminal acts related to privacy such as prohibition to open letters, and prohibition to enter personal land/property and other criminal acts related to position crime. Despite its presence since long time ago, the protection for right to privacy has yet to be a part of protection given by Constitution. On 18 August 2000, the protection for right to privacy becomes a part of constitutional protection (Anggara, 2015), as stated on Article 28G of 1945 Constitution. Similar emphasis is also stated on the provision of Article 29 of Law No. 39 of 1999 about Human Rights, and Indonesia has also ratified International Covenant on Civil and Political Rights (ICCPR). However, the constitutional guarantee has yet to be well-materialized in statutory level. Even though identification was conducted, at least there are 30 laws in Indonesia whose materials are related to the importance of protection against citizens' personal data. In its practice, the handover of a person's personal data without the knowledge of data owners still often occurs, especially which is allegedly conducted by parties which record and store personal data, either conducted by governmental or private institutions (Djafar, Sumigar, Setianti, 2016).

The implementation of Law No. 19 of 2016 about amendment of Law No. 11 of 2008 about Information and Electronic Transaction (UU ITE) in Indonesia also generates various opinions about it. One of which is related to the existence of *Right to be Forgotten*. The provision is stated on Article 26 section (3): "Every electronic system organizer shall delete irrelevant electronic Information and/or electronic documents under their control over the request of the related person based on court's decision". Moreover, Article 26 section (4) states that: "Every electronic system organizer shall provide deletion mechanism for irrelevant electronic information and/or electronic documents based on statutory laws". Article 26 section (5) states: "Provisions about the procedures to delete Electronic Information and/or Electronic Document as stated on section (3) and section (4) are regulated in governmental regulations."

## Research Methodology

This research chooses descriptive-evaluative and prescriptive approaches as its method. With its descriptive nature, this research is intended to provide some explanations about the background of the needs to regulate the use of internet technology, especially those related to *Right to be forgotten*, and the expected regulation models. Meanwhile, evaluatif approach is intended so that this research is able to provide expositions about several existing legal issues, in the implementation of *Right to be forgotten* in several countries which have implemented it, so renewal is necessary. On the other hand, prescriptive approach is intended to place this research as an instrument to obtain suggestions and solutions about what has to be conducted when arranging policies related to the use of internet technology, especially those related to *right to be forgotten*, to synchronize it with privacy data protection in Indonesia.

## Research Result

The research related to the challenge of RTBF implementation in Indonesia found that Indonesian government currently has yet to be fully ready to implement the RTBF. At least, the government needs to prepare some regulations to regulate the details of RTBF implementation flows to the technical guidance of RTBF performance. Europe Union (EU) has ratified General Data Protection Regulation (GDPR), a regulation about data privacy enacted for all companies across the globe which store, compile, or process EU citizens' personal information, has been in force since 25 May 2018, and has replaced EU Directive 95/46/EC which so far has been used as the basis of RTBF. The provisions about RTBF in GDPR are stated on Article 17 namely:

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

1.1 the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

1.2 the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;

1.3 the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);

1.4 the personal data have been unlawfully processed;

1.5 the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;

1.6 the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

3.1 for exercising the right of freedom of expression and information;

3.2 for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

3.3 for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);

3.4 for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or

3.5 for the establishment, exercise or defence of legal claims.

The enforcement of GDPR currently becomes homework for Indonesian government to prepare regulations about RTBF since GDPR applies in an extra-territorial basis. Moreover, big criticism delivered to the concept of Indonesian RTBF can refer to the GDPR which does not implement RTBF without limitation. Article 3 above has properly regulated several limitations/exceptions against the RTBF. The other challenge is the existence of Law No. 14 of 2008 about Public Information Transparency (UU KIP) and Commission of Information Institution. UU KIP provides warrants to people to access public information and if some



people feel that their accesses are blocked, they can deliver their complaints to Commission of Information. Conflicts may occur between the rights of people to obtain information and the right of an individual to have their information removed.

The other challenge is court ruling instrument as a prerequisite to perform RTBF. Several countries in Europe use similar flows before proposing RTBF to Google's search engine even though a release from Google states that there are 1 forged Canadian court order, 1 forged US court order, 4 forged Indian court orders, 4 forged Peruvian court orders, and 5 forged German court orders (Google, 2018). Compared to the conditions in Indonesia whose case issues have yet to be well-mitigated, Indonesia needs to consider an authorized institution to decide RTBF proposal in Indonesia. As information, in 2016, from 352 courts across Indonesia, only 64 courts or 18% had positive performances (green reports). The recapitulation to assess the performances of those district courts is performed using Case Handling Information System (SIPP) application. This system shows the courts whose case handling is over 90 percent will obtain green reports, while those whose performances are less than 90 percent will obtain yellow reports (Tempo). An institution authorized to make the decision needs to have special trainings, just like Google preparing its review teams which specifically conduct the role and are mostly placed in Dublin, Ireland.

## Conclusion

Fundamental differences can be seen related to RTBF concept implemented in Indonesia and in Europe. At least there are two main differences of it. First, the implementation of RTBF in European countries is addressed to search engine sites like Google, Yahoo, and others. RTBF becomes a basis for an individual to ask search engine sites to delete on search results personal information which may appear when the name of a person is typed. However, public will still find original articles of the information if they search it on original sites without search engine sites. Different from Europe, Indonesia takes extreme measures by regulating that content deletion has to be conducted by electronic system organizers over the request of the related person based on court's decision. It not only makes the information hardly searched but also it may not be found since deletion has been conducted on its original sites.

Another difference is related to the basis of RTBF application. Applicants in EU have rights to ask for information deletion under the reasons that the information is *inadequate*, *irrelevant* or *no longer relevant* and *excessive* in its initial purpose is processed. However, in Indonesia, only based on the reason of irrelevant, a person can apply for RTBF request.

The difference of RTBF concept has brought up homework for Indonesia. Indonesia needs to immediately prepare Governmental Regulation to ensure the technical preparation of RTBF and to ensure individuals who may propose for the rights due to the potentials of certain parties which may propose it such as corruptors, malpractice perpetrators, pedophilia perpetrators, business fraud players - religious travel agencies. Furthermore, it needs to ensure what information sources can be proposed, especially related to the information published on newspaper. If other countries implement information deletion from newspaper, Indonesian needs to conduct careful measures to balance rights to obtain information and RTBF, as well as the importance of Press Council's involvement to ensure the information deletion.

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# Electing and Impeaching the President of the United States of America

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## Abstract

The presidency of Donald Trump has been controversial. Just two years, and talk of cutting short his presidency by impeachment is already swirling through Washington and the media. Many find the situation confusing and inexplicable. In the context of the events and mood of Trump's era, this article considers the practical and Constitutional framework for electing a president and for impeaching one.

**Keywords:** Election, Impeachment, Presidency

## Introduction

Trump's winning sweep began with his triumphs in 41 Republican primaries, which reflected his widespread appeal among voters. In the 2016 presidential election that followed, he won 30 of 50 states, including the two well-known swing states, Florida and Ohio, which are known to decide elections.

The Democratic candidate, Hillary Clinton, received many more popular votes than Trump, but those votes were not enough to win the election. It was that quaint mechanism, the Electoral College, enshrined in the Constitution to reassure Colonial America's concern for States' rights, which awarded the presidency to Donald Trump. While Clinton received 2.87 million more votes than Trump nationwide (the largest margin ever for a candidate who lost in the Electoral College), Trump had the most electoral votes. He won with a total of 306 electors from 30 States (among them, unexpected victories in the pivotal Rust Belt region<sup>3</sup>). In order to appreciate this awkward story, one should look more closely at the political process of electing the U.S. President.

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<sup>3</sup> The Rust Belt begins in central New York and traverses west through **Pennsylvania**, **West Virginia**, **Ohio**, **Indiana**, and the **Lower Peninsula** of **Michigan**, ending in northern **Illinois**, eastern **Iowa**, and southeastern **Wisconsin**. **New England** was also hard hit by industrial decline during the same era.

## 2016 Electoral College Map



**Figure 1** 2016 Electoral College Map

### Selecting Candidates for President: Before the Election, the Primaries

In the process to elect the President, the U.S. Constitution mandates a **national popular vote** as a necessary step.<sup>4</sup> Ideally, the vote is cast by all citizens who are eligible and who wish to participate. But before a vote can be taken, a critical step is necessary: the candidates must be selected. Political primaries fulfill this essential role in today's presidential elections. Primaries are competitions in which leading figures from the nation's major political parties demonstrate how they might fare in a real run for the presidency. During the primaries, prominent candidates travel through many states, competing for votes within their own party. Millions of registered party members then cast their votes in this pre-election process to decide who their party will nominate to stand in the real election.

Although mandated neither by the Constitution nor by federal or state law, today's primary elections have become an important part of America's culture of open political participation. They are part of the historic development of a stable political system in the United States. Primaries decentralize control beyond the hands of small groups of influential persons and spread power among much larger numbers of citizens. Until the early 20<sup>th</sup> century, only very influential and powerful party members were invited to the nominating **caucuses**<sup>5</sup> of major parties to select their candidate for the presidency. Nowadays, millions of voters participate to select presidential candidates in today's more open caucuses and primaries. This is considered to be a step forward for American democracy.

In 41 of 56 Republican primaries, Donald Trump challenged the party luminaries and beat them decisively. Although he was more familiar as a television reality show celebrity than as a leading figure in the Republican Party, Trump was welcomed by many registered Republican voters precisely because he was an outsider, a maverick. After his election, Trump immediately raised eyebrows and caused some grumbling by breaking a long-standing

<sup>4</sup> In the United States, Election Day is the day set by law for the general elections of federal public officials. It is statutorily set as "the Tuesday next after the first Monday in the month of November" or "the first Tuesday after November 1". The earliest possible date is November 2, and the latest possible date is November 8. (Wikipedia)

<sup>5</sup> Caucus: (in some US states) a meeting at which local members of a political party register their preference among candidates running for office or select delegates to attend a convention. "Hawaii holds its nominating caucuses next Tuesday" 2. a conference of members of a legislative body who belong to a particular party or faction

tradition and refusing to make public his most recent tax returns. His supporters let it pass. They were delighted with their larger-than-life iconoclast and did not demand that he meekly follow protocol. Casting himself as a dynamic and modern ‘captain of industry’, Trump revels in his image as a deal-making, ball-breaking, no-nonsense CEO, ready to ‘Make America great again’.

## Two Years after Election, Talk of Impeachment

After two years in office, the image of this media personality who captivated American audiences before he mesmerized Republican voters has been growing thin. Continuing evidence and disturbing news of the President’s questionable business activities during his campaign refuse to go away. The role of members of the Trump family representing the president abroad while at the same time managing the Trump business empire has also given rise to convoluted tales of ethically questionable deals.<sup>6</sup> Trump, however, maintains the loyalty of his base by appearing to carry out his promises, even though the actual gains made for his constituents overall are debatable. As his term of office completes its second year, clouds of impropriety, an on-going investigation by Special Counsel Robert Mueller at the FBI focusing on widespread and far-reaching Russian interference in the 2016 presidential election, and the President’s increasingly erratic behavior and unorthodox decision-making style have led his critics to begin discussing the case for impeachment and the impact it would have on the country.

Commentators on the losing side of the 2016 election have expressed some bitter opinions related to those problems. A year and a half into the new presidency, *The Guardian* newspaper’s international edition was asking (and answering) a rhetorical question: “*Why is Trump Still So Popular? He gives his base what they want.*” *The Guardian*’s U.S. correspondent, *Cas Mudde*, offered a gloomy assessment of the unhealthy foundation of America’s democracy today:

*“...The really bad news: if things continue this way, Trump will be comfortably re-elected in 2020. Of course, the main reason for Trump’s re-election, as well as his election, is the dysfunctional political practice and system of the United States. Like in other western democracies, the white majority is overrepresented because minorities vote at much lower levels. However, unlike in most other democracies, various types of old and new acts of voter suppression actively discourage the electoral participation of non-white minorities. On top of that, gerrymandering further strengthens the disproportionate power of the white electorate, particularly in the conservative rural areas of the individual states and the country as a whole.”<sup>7</sup>*

The sad irony of *The Guardian*’s complaint is that, according to the popular vote of 2016, Trump was *not* elected to the Presidency. In the election of 2016, he received *far fewer* popular votes than his rival. Trump was elected because, in addition to a national popular vote, the Constitution also stipulates one more step that must be carried out, after the people have had their say. That is, the Electors from all the States must also cast *their* votes. Looking closely at the Constitution’s fine print, we find that in the American republic, the president is elected *indirectly*.

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<sup>6</sup> Even the appearance of impropriety of a president is disturbing, but presidential conflicts of interest are not new. The connections between wealth from the oil industry and the Bush family also raise many disheartening doubts about the American democratic system.

<sup>7</sup> *The Guardian*, Fri. 29 June 2018, ‘Why is Trump still so popular? He gives his base what they want.’ *Cas Mudde*

## America's Presidential Election: By Direct (Popular) and Indirect (Electoral College) Votes

The institution of the Electoral College reflects the conservative political environment among the American States when the nation was first founded more than 200 years ago. In a tradition that is still jealously guarded with varying degrees of radical zeal, the individual States insist that they should each have the right to cast some sort of vote, as well, in the election of the president who will have authority over them all. As a result of this significant added layer of complexity, candidates who receive *fewer* votes in the popular election are still sometimes the winners. The Constitution is very clear and concrete about this process, and the American people have historically bowed to it, though sometimes grudgingly. The clarity and concreteness of the law reminds the nation that the States, themselves, have a voice in the election, not just the populace.

The attention of the media and the public has traditionally focused on the popular vote when a presidential election is in progress. After the 2016 election, however, Americans will be reminded to be more alert to the tallying of the electoral vote as well. They will be clear again, perhaps as never before, that the winner of the election must, above all, receive a majority of votes from State electors.<sup>8</sup> In the presidential election, Donald Trump captured a total of 306 electoral votes from the 30 states where he won a majority. He thereby won 57% of the 538 possible votes in the Electoral College and became the new president. The reason why many people were taken by surprise by this win appears to be in part because Trump was carried to the Presidency on the votes of virtually all the poorest and most economically struggling States in the Union, by States with the lowest income and highest unemployment and under-employment.<sup>9</sup> He was elected in States where people felt threatened by immigrants, especially illegal immigrants, and more precisely, non-white immigrants. He was elected in States abandoned by U.S. manufacturing firms which chose to transfer their manufacturing plants overseas. Their poverty put these people at a competitive disadvantage in many ways. Their poverty and scarcity were against them, but their States still had their electoral votes, which strengthened their voice. When these many poorer, weaker States swung the same way, they showed themselves to have unexpected and formidable power in the Electoral College.

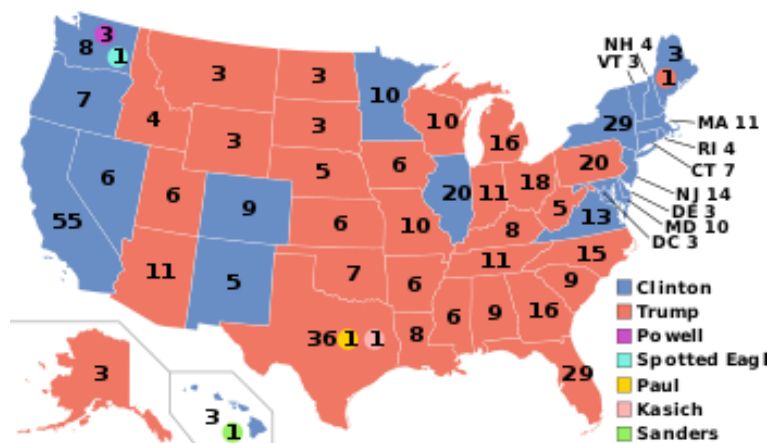
In the national government in Washington D.C., individual States are represented in the House of Representatives proportionally, according to their population. In the US Senate, the 50 States are represented equally with two senators apiece. The voting in the Electoral College mirrors this representation. The House has a total of 435 (+3) members; the Senate has 100 members. Likewise, the total number of possible votes in the Electoral College is 538. California, for example, has a very big population and has 55 representatives voting in the House. By contrast, the sparsely populated states of Montana, North and South Dakota, and Wyoming have only 3 votes each. The number of votes which can be cast in the House (435+3) and in the Senate (100) equals the number of possible votes in the Electoral College: 538.

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<sup>8</sup> There are 435 voting members in the House of Representatives and six non-voting delegates, i.e. American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands, Washington DC and Puerto Rico. The '535+3' Electoral College vote refers to the votes cast by 435 electors representing the House, 100 representing the Senate, and three cast by an elector from the District of Columbia.

<sup>9</sup> Poorest States in the United States of America: These states have the highest percentages of poverty in the country: Louisiana, Mississippi, New Mexico, West Virginia, Alabama, Arkansas, Kentucky, South Carolina, Arizona, and Georgia. Alaska, which also went for Trump, has one of the highest unemployment rates in the nation.

In most elections in the U.S., States use a ‘Winner Takes All’ approach.<sup>10</sup> That is, the candidate that gets the most votes, wins the election, no matter how small the margin is separating winner and loser. California has 55 electoral votes, Texas has 34; New York has 31; Florida, 27; Pennsylvania 21, and so on. Whoever wins in the polling in each individual state during the election, whether by much or by little, will take all the electoral votes from that state. Partly because of the ‘winner take all’ approach, winners of the popular vote have several times lost the election because they failed to gather enough votes in the Electoral College. A number of men who failed in their first bid for the presidency lost their first chance because of the Electoral vote: Andrew Jackson first lost to John Adams for this reason; Grover Cleveland similarly was defeated by Benjamin Harrison; Al Gore was defeated by George W. Bush, who won Florida’s 27 electoral votes by a hair’s breadth. Hillary Clinton’s loss, despite winning almost three million more popular votes than Donald Trump, is just the latest historical example of the flexing of State muscle in the Electoral College.<sup>11</sup>



**Figure 2** Electoral Votes for Trump. and Clinton, 2016 Election

## Removing the U.S. President from Office: Impeachment

The Trump presidency has been troubled by so much disruption at the highest levels of the federal government, so much social upheaval and disorder, and so many scandals and improprieties associated with the White House and the President and his family, that America’s allies, who depend on the stability and credibility of the U.S. Presidency, have repeatedly expressed concern, sometimes dismay. The BBC News online<sup>12</sup> has been following the story of suspicious connections dogging Donald Trump’s presidency. What follows are a very few of the matters which may be raised if there is a move to impeach: (1) Allegations that Russia interfered in the 2016 U.S. presidential election; (2) The inquiry led by Robert Mueller, a widely respected former director of the FBI making one of the most high-profile political inquiries in history; (3) the charging of five people connected with Donald Trump’s campaign and presidency with criminal offences; (4) the guilty verdict against Trump’s former lawyer for colluding with Russian agents to influence the US election in Trump’s favor when Trump was the Republican candidate; 5) contacts with Russians by at least 12 Trump associates with at least 19 face-to-face interactions with Russians or Kremlin-

<sup>10</sup> Only two states, Maine and Nebraska, do not follow the ‘winner takes all’ practice. In their own elections, they divide their electoral votes (Maine, 4; Nebraska, 5) proportionally between the candidates.

<sup>11</sup> The map pictured (picture credit: Wikipedia) shows Red/Republican states won by Trump and blue/Democratic states won by Clinton.

<sup>12</sup> BBC news (online) US & Canada, ‘Trump Russia Affair: Key questions answered.’ 12 December 2018 Russia-Trump Inquiry.



linked figures and at least 51 individual communications during the 2016 election campaign; and 6) possibly improper negotiations with the Russians between Mr. Trump's son-in-law, Jared Kushner, and ranking members of the Trump campaign in the months prior to the election.

A new book published by Oxford University Press reflects the present unrest in the media over the apparent flirtation between Donald Trump and powerful Russian interests, including Vladimir Putin. The book is "*Cyberwar: How Russian Hackers and Trolls Helped Elect a President—What We Don't, Can't, and Do Know*," by Kathleen Hall Jamieson, a well-known and highly respected professor of communications at the University of Pennsylvania. More information about Russian hacking and trolling to influence the 2016 election is coming out daily. *Cyberwar* is a comprehensive study and forensic analysis of the available evidence which concludes that Russia very likely delivered Trump's victory. Widely respected by political experts in both parties, Professor Jamieson expressed confidence that unbiased readers would accept her conclusion that it is not just plausible that Russia changed the outcome of the 2016 election—it is "*likely* that it did."

As it becomes more likely each day that some attempt to impeach Donald Trump in the third year of his first term, it is useful to consider the process set forth by the framers of the Constitution by which a sitting president can be forced from office before the legally appointed completion of his/her term. The process has two constitutionally mandated stages.

### **Impeachment in the House of Representatives and in the Senate**

An impeachment trial of a sitting American president takes place, first, in the House and, second, in the Senate of the U.S. Congress. Only a majority vote from members of the House of Representatives can legally impeach, that is, formally attempt to remove the president. Causes for impeachment are: treason, offering or accepting bribes, or "high crimes and misdemeanors". If there is such a vote in the House, the president is 'impeached'. That means that his integrity is being very seriously called into question. This is the first step.

Senator Elizabeth Warren has stated that conflicts of interest could be grounds for impeaching President Trump. In December 2016, Democratic Senators introduced a bill that would require the President of the United States to divest any assets that could raise a conflict of interest, including a statement that the failure to divest such assets would constitute "high crimes and misdemeanors" under the impeachment clause of the U.S. Constitution. *Vanity Fair*<sup>13</sup> characterized this as a preemptive effort to lay the groundwork for a future impeachment argument.

After Trump dismissed FBI Director James Comey, a number of Democratic members of Congress agreed that the President might be impeached for obstruction of justice. The President had asked Comey to drop the investigation of Michael Flynn<sup>14</sup>. Later news that Trump had disclosed classified information to Russia led to further discussions about the possibility of impeachment. Two Republican Representatives called for impeachment on the grounds that obstruction of justice charges against Trump had been proven true. Concerns have been expressed that Trump's extensive business and real estate dealings, especially with respect to government agencies in other countries, may violate the 'Foreign Emoluments'<sup>15</sup> clause of the Constitution.

<sup>13</sup> *Vanity Fair* is a magazine of popular culture, fashion, and current affairs published by Condé Nast in the United States.

<sup>14</sup> Michael Flynn is a retired U.S. Army Lt. General who served briefly as Trump's National Security Advisor.

<sup>15</sup> The *emoluments clause*, also called the foreign *emoluments clause*, is a provision of the U.S. Constitution (Article I, Section 9, Paragraph 8) that generally prohibits federal officeholders from receiving any gift, payment, or other thing of value from a foreign state or its rulers, officers, or representatives.

Immediately after Trump's inauguration, *The Independent* and *The Washington Post* newspapers each reported on efforts already underway to impeach Trump for conflicts of interest arising from his ability to use his political position to promote the interests of "Trump"-branded businesses, and because of ongoing payments by foreign entities to businesses within the Trump business empire. These also qualify as violations of the 'Foreign Emoluments' clause. In March 2017, China provisionally granted 38 "Trump" trademark applications that were set to take permanent effect in 90 days. It was noted that these favorable decisions by the Chinese came in close proximity to Trump making policy decisions favorable to China.

Investigative journalists in the many American newspapers and news magazines have followed the issues and stories surrounding President Donald Trump's exceedingly unorthodox first two years in the White House. Their work is online for the world to study and learn from. Contrary to what the President says about 'fake news' and the evils of the press, journalistic coverage of this presidency has collected, analyzed, and digested information that will provide important material for future historians.

If and when the Senate of the U.S. Congress accepts from the House of Representatives the evidence under consideration and votes, a two-thirds vote to impeach would be enough to unseat the sitting president.

In the history of the United States, no president has ever been removed by impeachment. Some have been impeached, however. Andrew Johnson was impeached in 1868, the year that King Chulalongkorn, 5<sup>th</sup> King of the Chakri Dynasty, ascended the throne. President Bill Clinton was impeached in 1998. The late former president, Richard Nixon, was forced out of office in 1984, not by impeachment, but as a result of the Watergate scandal.

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# The Legal Problems in Water Management: A Case Study of Paknamchawang Sub-District Municipality, Nakhon Si Thammarat, Thailand

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## Abstract

The objective of this research is to study the legal problems related to water management. This is the qualitative research to study the documentation and in-depth interviews from key informants. The key informants are purposively selected. The tools used in the study are structured interviews. The data is analyzed by content analysis revealing that in legal problems related to water management, several laws involve. This has caused the local administration to encounter the problem of enforcing relevant laws and lack of coordination among the agencies resulting in the delay in solving the problem in a timely manner. Besides, there are no specific laws related to water management as well as not having the real transfer of power over water management to local governments. The problem solution in managing each agency has no integration. As each agency follows their own missions, the maximum benefits do not occur to the people affected by the flood in Paknamchawang Sub-District. Therefore, that the water management of Paknamchawang Municipality can be successful requires the specific laws which are not separate and the agencies responsible for water management will need to integrate and cooperate.

**Keywords:** Problems, Laws, Water Management, Paknamchawang Sub-District Municipality

## Introduction

Thailand is located in the monsoon zone with high rainfall. There are flooding problems in many areas in almost every region. His Majesty King Bhumibol Adulyadej was always

concerned on the problems and he analyzed the physical characteristics of the areas affected by the floods. He considered the selection of methods to be used suitable for the local conditions and the capacity of the existing officials as well as the budgets for related expenses (Chaipattana Foundation, 2018). His Majesty the King gave the royal initiation in solving the flood problem such as the construction of dyke, construction of water diversion way, improvement and modification of river conditions, Kaem Ling Projects (Chaipattana Foundation, 2018). In 2011, Thailand suffered the huge flood causing severe damage. It was historical crisis of Thailand causing local administrative organizations as the main organizations for public services to be contributed in solving the problem. Local administrative organization is an organization that has the important mission in dealing with the disasters, especially flood management. According to the Constitution of the Kingdom of Thailand B.E.2550, "Individuals or communities have the right to maintain and utilize natural resources, environment, and biodiversity sustainably following the methods as prescribed by law." In addition, the Act defines the plan and procedures for decentralization to the local administrative organization B.E.2542 requiring the local administrative organization to have power to protect and alleviate the disasters for the benefits of local people. Meanwhile, the Disaster Prevention and Mitigation Act B.E.2550 (2007) empowers local government organizations to prevent and alleviate disaster in their local areas as well (Mala, Chobyos, and Phromphitakkul, 2014). Although Thailand has several mandatory flood management laws, there is no law at the level of the flood disaster management as a specific case. Thus, the disaster management is not clear and is not systematical. There is no unity as well. From the absence of specific law, it also affects the consideration on state liability in terms of the agency's liability and other liabilities (Bannasan and Cersansee, 2016).

## **Research Objectives**

1. To study the legal problems related to water management of Paknamchawang Sub-District Municipality, Nakhon Si Thammarat Province.
2. To propose the amendments of the laws related to water management.

## **Literature review**

### **Domestic laws**

- 1) Constitution of the Kingdom of Thailand B.E.2560: Constitution of the Kingdom of Thailand B.E.2560 defines the rights and freedom of Thai people in Chapter 3. Article 43 stipulates that the individuals and communities have the rights to manage, maintain, and utilize the benefits from natural resources, environment and biodiversity sustainably in accordance with the law.
- 2) Disaster Prevention and Mitigation Act B.E.2550: Although this Act is the law related to the prevention of general disasters, it has been used for the prevention and mitigation of flood disaster for several times.
- 3) Regulation of the Office of the Prime Minister on National Water Resources Management B.E.2550: This regulation is enacted to ensure the management of water resources of the country in terms of management, procurement, utilization, maintenance, development, prevention, resolution, conservation, rehabilitation, and other actions related to water resources to be united and integrated in the watershed and national levels with the participation of people in all sectors.
- 4) Municipal Act B.E.2496 and the Amendment No. 13 B.E.2552: Under municipal law, municipalities must perform the following duties; 1. To provide land and water maintenance, 2. To maintain the arts, customs, local wisdom, and local culture.

## **International laws**

### **1) USA**

1.1) Flood Control Act of 1917: The Water Quality Act 1965 is the law that enacts measures for the promotion of engineering projects and flood diversion projects to control flood and flood risk with the budgets to support the construction to be used in the management under the supervision of the US Army. The water sources having been developed by this law are such as the Mississippi, Ohio, Sacramento Rivers, etc. USA is the country that has enforced and developed legal measures to prevent flood for long time ago.

1.2) Water Resources Development Act (WRDA) of 2010 is the new law that enacts measures for the implementation of civil and irrigation engineering projects to control flood and flood risk with various projects under the direction of the United States Army Department. In addition, US Army is also responsible for the restoration of ecosystem, infrastructure for wastewater treatment, disaster alleviation, and other activities under the plan and procedures set forth by this law (Tathongduang, 2014).

### **2) Japan**

2.1) River Law 1964 is the main law on water resources of Japan. It is the law that defines the basic framework of Japanese water management. The key measures are defined to prevent floods by using river-based water management mechanisms. In 1964, the provisions of laws were amended in several issues. In 1997, the conservation and maintenance of the river's environment was added as Japan has become more concerned on the management of the river's environment. This law is intended for flood management, beneficial water use, maintenance and conservation of the environment of rivers.

2.2) Flood Protection Act 1949 is the particular law to prevent flood or storm surge. This law has a number of important issues. First of all, this law promotes decentralization so that local governments are empowered to implement preventive and mitigating public actions on direct flooding as local authorities are aware of the problems and specific geographic characteristics of each locality including the risks of flooding in different areas. Secondly, this law also defines the duties of Japanese government in flood forecast authorizing Meteorological Department of Japan to forecast and process the weather related to the flood forecast. Thirdly, such law also requires local administrative organizations to map the hazards of flood in order to determine where the risk may be affected or the risk of flooding as well as specifying the points that have already been prepared to prevent and fight the flood. For the benefit of the map identifying the danger of the flood, apart from that the government and local administrative organizations can plan or anticipate floods in the long run, it can also be another flood information to help people know the strengths and weaknesses of the terrain or geography for their communities in advance so that people can avoid the danger instantly.

2.3) Disaster Measures Basic Act 1961 is the law that regulates measures in dealing with the disasters possibly occurring and having negative impact on the public. This law lays down criteria for the government to take measures as necessary to prevent disasters possibly affecting the public. The government must also determine the responsibility for the prevention of natural disasters possibly harming the people. In addition, such law also provides 3 levels of warning measures; disaster management level by national agencies, emergency response level by the provinces and practical level for disaster alleviation by locality.

2.4) Flood Protection Act 1949 strengthened the decentralization so that locality and local people could fight flood. The cooperation between locality and people is possibly called Suibo-dan or Flood Fighting Team Working by local administrative organizations, volunteers, and people involving in preventing and mitigating the effects of flood such as community alerts, sandbag arrangement, building the dykes, for the communities, etc. (Tathongduang, 2014).

### **Related researches**

Udomsak Sinthipong (2017) conducts the research on legal problems in water resource management. It is found that water resource management is in the authority of many agencies. According to many separate laws, there is the overlapped authority in management. The problem is that there are multiple agencies and several management-related laws resulting in the difficulty in managing such resources. There should be the revision on the roles, authority, and duties of the agencies and the measures of the law that overlap. As every agency sees the importance of water resource management, they will join without considering the key elements. This research proposes the amendment of laws to serve as policy framework and implement national water resources management measures.

Sajja Banjongsi, Bamphen Kiawwhan, Palirat Kande, and Rasika Angkun (2016) conducted the research on the Participatory Water Resource Management: Case Study of the Yom River Basin. It is found that for the participatory water resource management, the favorable environments are; 1. The relevant laws are not suitable. There are many agencies that oversee and enforce. People are more aware of laws and rights about water. 2. The watershed strategy comes from gathering plans from different sectors, coordination and management of the Yom River Basin. The strategies also contain the gap. 3. The support from several sectors to people still continues.

Sumate Supatjamnian, Phanathorn Yuprasert, Gran Thanuthep, and Lalida Pakkaomayang (2016) conducted the research on the legal measures and problems in community solid waste management: Case Study of waste management in Ku Mueang Sub-District Administrative Organization, Ubon Ratchathani Province. It is found that there is no specific agency responsible for environmental management including community waste. It is the duty of the Office of the Secretary of Ku Mueang Sub-District Administrative Organization. There are local regulations related to solid waste management. However, such local ordinances are not sufficiently effective to deal with the problem of recycled waste mixed with municipal solid waste. This is because such provisions do not define and do not promote separation of waste from the sources. In addition, as the main waste disposal in Ubon Ratchathani is located in the area of Ku Mueang Sub-District Administrative Organization, when the recycled waste classification is ineffective, the amount of waste that is disposed is in the large quantity causing pollution in the area.

Rahman and Khalis (2009) conducted the research on the Water Resource Management in Malaysia: Legal Issue and Challenges. It is found that the laws are complicated in the current legal framework for water resource management in Malaysia. The problems about water resource management in Malaysia are partly due to the clear separation of power between the federal government and the state government and there are disparate water management laws.

### **Research Methodology**

1. Research form is the qualitative research studying relevant documents and in-depth interviews with the key informants.

2. Key informants and the selection of key informants

2.1 In-depth interview: The key informants and the selection are the officers of Paknamchawang Sub-District Municipality consisting of 3 Municipality Officers and 2 experts in water law totaling 5 persons. The key informants are purposively selected according to the criteria or objectives of the researcher so that it can lead to the answer to the research questions. All of the informants have the direct experienced in such issues.

3. Research tools used in the research are the structured in-depth interview forms used for conducting the research.

4. The data analysis is done by using content analysis with the synthesis and descriptive writing.

## Research Results

1. Regarding the legal problems concerning water management of Paknamchawang Sub-District Municipality, it is found that the laws on water management having problems in management are; 1. Municipal Act B.E.2496 and the Amendment (Vol. 13) Section 50(2) and (9) and the Sub-District Municipality may undertake any operation in the municipality area in accordance with Section 51(1) and Section (8), 2. The Act defines the plans and procedures for the decentralization of power to the local administrative organizations B.E.2542 which stipulate the functions of public service provision under Section 16 to authorize the municipalities to have power and duty to provide public services for their own local interests related to water management. According to the law, municipalities are responsible for managing water by maintenance, provision of other construction. If the municipality carries out otherwise, the municipality must seek permission from the relevant authorities which results in the delay in municipal work not being able to help people in a timely manner. In addition, some duties or assistance must be timely because it will affect lives and properties of people. Such laws do not favor the duties of municipal officers and the involvement of communities in water management.

Moreover, there are several laws on water management because the provision of water services is public service which can be considered as the important task of Paknamchawang Sub-District Municipality. The Constitution of the Kingdom of Thailand B.E.2560 states about the rights and freedom of Thai people in the conservation, rehabilitation, management, maintenance, and utilization of natural resources. This includes the laws on Disaster Prevention and Mitigation B.E.2550 and the Municipal Act B.E.2496, the law on the Establishment of Decentralization Plans and Procedures for Local Administrative Organizations B.E.2542. There are also the regulations of the Office of Prime Minister on National Water Resources Management B.E.2550. However, it can be found that at present, although there are many laws governing water management, the implementation to comply with the law is delayed because it requires permission. There is no decentralization to the municipality. Thus, the solution to the problem of water especially flood for public services cannot be fast affecting the well-being of people.

Furthermore, the community wants to participate in water management. However, the authority of the provincial governor to approve the dredging of the canal B.E.2543 has several processes. The law of municipalities B.E.2496 amended with No. 13 B.E.2552 and in the regulations of the Ministry of Interior except to be not related to the law of the Harbor. The municipality applied the law when dredging the canal in 2011. However, there are other laws that are not conducive to work. Some laws may be redundant and many must be retained or perhaps delayed. Regarding the Municipal Act, there is no Act but the Municipal Act. The Municipal Act on water management has not been issued. On the other hand, if it is issued as the Municipal Act on flood management, it will be related to many laws which are not beneficial to one another. Perhaps there is a limit to the law that the law has many problems and the Municipal Act cannot be issued as it has to involve several problematic laws.

In addition, the Municipal Act on the disbursement is not conducive to the practice. When there is the flood, the budget cannot be disbursed for the operation.

2. Amendment of laws related to water management

2.1 Amendment of laws related to water management services require the government to accelerate the transfer of decision-making authority to local governments in terms of materials, equipment, necessity, budget, power of water management as stipulated by law as well as helping to develop the personnel of the local administrative organizations as professional in public service.

2.2 There must be specific laws governing water management and can be enforced by law enforcement agencies. Water management can be separated into law enforcement.

2.3 Law enforcement agencies need to be integrated in working.

- The laws are needed to be updated timely and enforceable to empower the municipality to fully enforce the law so that it can help people quickly.

2.4 The government or relevant agencies must review the roles and power of the authorities in the law enforcement.

In achieving the implementation following the missions of Paknamchawang Sub-District Municipality, the community's participation in water management for the maximum benefits to the public can only be made only if prescribed by law. The present Constitution of the Kingdom of Thailand B.E.2560 defines the rights and freedom of Thai people in Chapter 3, Section 43, by providing persons and communities with the rights to manage, maintain and utilize natural resources as well as duties of Thai people. People have the duties in cooperating and supporting the conservation of biodiversity resources and the environment. Moreover, the Disaster Prevention and Mitigation Act B.E.2550 defines the functions of planning, surveillance, prevention, warning and the development of surveillance and warning. Municipal Act B.E.2496 and the Amendment Vol. 13 B.E.2552 establish the plans and procedures for the decentralization of law enforcement to the local administrative organizations B.E.2542 requiring local governments to provide public services to local residents. It can be seen that there are many laws in water management. In the absence of unity and separation, water management is delayed, unable to address the problem in a timely manner. Besides, in the management of water, there is no specific law on flood prevention. As the current applicable law will be applied after the occurrence of flood, the water cannot be managed successfully. In addition, there is no real transfer of power to the local administrative organizations. In issuing the Municipal Act of the local administrative organizations, there are no detailed plans for the evacuation of victims or alert in advance. Moreover, non-integration work between law enforcement agencies is common. There are no benefits to people and the flood victims in Paknamchawang Sub-District Municipality.

In summary, legal problems in water management are also problematic because of the wide range of law enforcement and law enforcement agencies involved. There is neither integration nor specific law in water management that causes problems in water management. The maximum benefit does not really occur to people and the local administrative organizations do not issue any precautionary measures or precautions for the evacuation.

## Discussion

1. The legal problem concerning water management of Paknamchawang Sub-District Municipality is that the law on water management has problems in management. The laws mention that the municipalities responsible for water management by maintenance, provision of other constructions. If the municipality carries out otherwise, the municipality must seek permission from the relevant authorities which results in the delay in municipal work and cannot help people in a timely manner. In addition, some duties or assistance must be timely because it will affect lives and properties of people. This law does not favor the duties of municipal officers.

Furthermore, there are several laws on water management as the water management is considered the crucial mission of Paknamchawang Sub-District Municipality. However, at present, even though there are several laws on water management, the implementation following the laws is delayed because the permission is needed to be requested.

As there is no decentralization to the municipality, the solution to problems with water, especially flood for public services is not fast affecting the well-being of people. The community wants to participate in water management but there are other laws that are not conducive to the operation. Some laws may be redundant and many must be retained or perhaps delayed. Regarding the Municipal Act, there is no Act but the Municipal Act. The



Municipal Act on water management has not been issued. On the other hand, if it is issued as the Municipal Act on flood management, it will be related to many laws which are not beneficial to one another. In addition, the Municipal Act on the disbursement is not conducive to the practice. When there is the flood, the budget cannot be disbursed for the operation. There are several laws of water management. In the absence of unity and separation, water management is delayed and unable to address the problem in a timely manner. Moreover, in the water management, there is no specific law on flood protection and current applicable law will be applied after the occurrence of flood. The flood cannot be managed successfully. In addition, there is no real transfer of power to the local administrative organizations. In the ordinance of the local administrative organizations, there are no detailed plans for evacuating the victims or alerting them in advance. Besides, there is no integration of work among law enforcement agencies. There are no benefits to people and the flood victims in Paknamchawang Sub-District Municipality at all. This is correspondent with the research of Udomsak Sinthipong (2017) revealing that the water resource management is in the authority of many agencies. According to many separate laws, there is the overlapped authority in management. The problem is that there are multiple agencies and several management-related laws resulting in the difficulty in managing such resources. This is correspondent with the research of Sajja Banjongsi, Bampheh Kiawwhan, Palirat Kande, and Rasika Angkun (2016) revealing that for the participatory water resource management, the favorable environments are; 1. The relevant laws are not suitable. There are many agencies that oversee and enforce. This is correspondent with the research of Sumate Supatjamnian, Phanasathorn Yuprasert, Gran Thanuthep, and Lalida Pakkaomayang (2016) revealing that there is no specific agency responsible for environmental management including community waste. It is the duty of the Office of the Secretary of Ku Mueang Sub-District Administrative Organization. There are local regulations related to solid waste management. However, such local ordinances are not sufficiently effective to deal with the problem of recycled waste mixed with municipal solid waste. This is because such provisions do not define and do not promote separation of waste from the sources. This is correspondent with the research of Rahman and Khalis (2009) revealing that the laws are complicated in the current legal framework for water resource management in Malaysia. The problems about water resource management in Malaysia are partly due to the clear separation of power between the federal government and the state government and there are disparate water management laws. This is correspondent with the interview of the expert on the water law,

“...The law related to the water management has the problems which are: 1. Municipal Act B.E.2496 and the Amendment (Vol. 13) Section 50(2) and (9) and the Sub-District Municipality may undertake any operation in the municipality area in accordance with Section 51(1) and Section (8), 2. The Act defines the plans and procedures for the decentralization of power to the local administrative organizations B.E.2542 which stipulate the functions of public service provision under Section 16 to authorize the municipalities to have power and duty to provide public services for their own local interests related to water management. According to the law, municipalities are responsible for managing water by maintenance, provision of other construction. If the municipality carries out otherwise, the municipality must seek permission from the relevant authorities which results in the delay in municipal work not being able to help people in a timely manner. In addition, some duties or assistance must be timely because it will affect lives and properties of people. Such laws do not favor the duties of municipal officers...”

This is correspondent with the interview of another expert on the water law,

“...There are several laws on water management. Although there are several laws on water management, the implementation following the law is delayed as it requires the permission. There is no decentralization of power for the municipality to implement instantly. This causes

the problem solution on water especially flood is not fast and affect the well-being of people. The government has to accelerate the transfer of decision-making authority to local administrative organizations in terms of materials, equipment, necessity, budget, power of water management as stipulated by law as well as helping to develop the personnel of the local administrative organizations as professional in public service..."

This is also correspondent with the interview of Municipality Officer,

"...The community wants to participate in the water management. However, there are other laws not conducive to the operation. Some laws may be redundant and many must be retained or perhaps delayed. Regarding the Municipal Act, there is no Act but the Municipal Act. The Municipal Act on water management has not been issued. On the other hand, if it is issued as the Municipal Act on flood management, it will be related to many laws which are not beneficial to one another. Perhaps there is a limit to the law that the law ..."

2. For the recommendation on amending the laws on water management, the government has to accelerate the transfer of decision-making authority to local governments in terms of materials, equipment, necessity, budget, power of water management as stipulated by law. There must be specific laws governing water management and can be enforced by law enforcement agencies. Water management can be separated into law enforcement. Moreover, the law enforcement agencies requires integration. The laws are needed to be updated timely and enforceable to empower the municipality to fully enforce the law so that it can help people quickly. There should be the revision on the roles, authority, and duties of the agencies and the measures of the law. This is correspondent with the research of Udomsak Sinthipong (2017) revealing that there must be the revision on the power and duties of the agencies and the overlapped legal measures to view the importance of water resource management. The water resource management law should be updated and improved the law to be used as the policy frame and for the implementation of policies in national water resource management. This is correspondent with the interview of the expert on the water law,

"...The government has to empower and transfer the legal authority to the municipalities or local administrative organizations. This includes the amendment of outdated laws to keep up with current events in order to be enforced quickly. There should also be the laws related to the water management..."

This is also correspondent with the interview of Municipality Officer,

"... The municipal authorities must be empowered to enforce the law in relation to water management because municipalities are close to the public. The law should be resolved on some of the laws that are still outdated which should be amended..."

## **Legal Recommendations**

1. There should be an amendment or modification to the law such as the Municipal Act B.E.2496 and amendments (Vol. 13), the Act establishes plans and procedures for decentralization to local administrative organizations, performance of officers and related agencies.

2. There should be special measures to give authority or the power in the decision-making to the municipal authorities in case of urgent problem without asking from the supervisory agency.

3. Some laws related to municipal duties should be amended because some laws are outdated. It is not suitable for the context and change of the rapidly evolving society.

4. Rules and regulations should be helpful or have gap for the officers so that the agencies can fully perform the duties because some regulations still have some limitations.

5. The government shall have specific laws related to water management and may provide agencies involving in law enforcement and water management to be separated.

6. Law enforcement agencies need to integrate in working.
7. The government must review the roles and the authority of the agencies to enforce the law.

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# Online Gambling: Nemesis or Opportunity for Thai Society

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## Abstract

The aim of this investigation is to explore the effects of online gambling and other associated business on Thai people and the society as a whole. Through technology websites such as line administrators and lottery and gambling sites have opened another avenue in people's ability to have an opportunity to earn money. This survey uses a qualitative method of random sampling. The sample group is the gambler who joined the online website. They were selected by snowball technique total 10 participants. The findings identify that line application administrators can earn profits through this new business channel. Facebook and line application can be very influential to online gambling in different forms that were previously used in online gaming sites. The new pro forma allows gamblers to purchase memberships which administrators profit from as well as supporting the website through advertising. Improvements in technology now allow on line banking and the ability to transfer funds electronically thereby increasing convenience to gamblers.. the goal of the website is to of course increase the frequency and amounts that each gambler wagers. Another trend discussed was the government role in current and future roles in the online gambling industry.

**Keywords:** Online Gambling, Traditional Lifestyle, Gambling Behavior, New Business

## Introduction

In Thailand, as well as almost every country, people are always searching for new ways to earn more money. With the ever changing advances in the internet and technology the online world is becoming much more than just a place to sell a line of products. With internet banking and electronic transfers being available many investment and opportunities are now available. Most Thais have grown up in a risk oriented society and so gambling is merely an extension of what is considered a normal practice in life. Gambling is not considered an adverse behavior unless it is affecting the well being of the family. According to studies by Devereux in 1949 it is an acceptable social behavior. It creates an atmosphere for fun social interactions as well as venting inner emotion through the thrill of winning (Bloch, 1951) and online gambling affects the intention in action as well (Abarbanel, Bernhard, Singh, & Lucas, 2015)

History shows that gambling probably spread throughout Thailand through trading with the Chinese which started some 70 decades ago. Initially it was gambling through horse racing, ox racing (Yongsawat, 2017) and other events. Some legal and others not. With the invention of the internet on line gambling has burgeoned rapidly. The technological advances,

endurance, and legitimacy of online gambling make the growth of the online gambling industry grow fast reached US\$29 billion in 2012 (H2 Gambling Capital, 2013). The newest form is LINE application in which many Thai people are currently subscribing to as an additional way to earn money. Therefore, this study concentrates in the affects of Line application and the management of individuals businesses in this new realm. Otherwise, Yuan found in China that the gamblers realize the lottery represent an unreasonable belief because it has a huge influence on the winning record but they are more likely to attend the lottery if they have a recommendation by a higher rate of returns (2015).

Line application associates the risk/reward factor using tools to motivate perspective gamblers. It will show that it is an acceptable behavior in the very risk tolerant Thai society. Thus convincing new members to join with no side effects of cultural dismissal while allowing the opportunity to make money. Providers offer online gambling services to improve the game through the Internet or even makes it easier to perform, and to promote a positive image among consumers (Humphreys & Perez, 2012). Internet gambling is mostly available worldwide depending on local laws.. it is an extremely lucrative business for owners and some governments prosper greatly through the taxation of these industries. Scenarios also exist for an individual to be both an investor and a gambler. This study will investigate the perceived risk of online gambling as well as making the comparison to Thai people both past and present. It will also identify new pathways and opportunities in the online gambling sector.

### **Perceived Risk**

The perceived risk approach has two facets; uncertainty and consequences. Risk has an indirect influence through trust and a higher influence in the consumer decision making process of using online gaming services (Lee, Lee, & Kim, 2007; Mitchell, 1992; Fortes, Moreira, and Saraiva, 2016). There are six separate categories in perceived risk; performance, finances, opportunity/time availability, safety and social and psychological loss (Cunningham, 1967). This study was focused on associating the technological environment with the traditions and culture of the Thai people. The six dimensions were studied and there was finding to show anxiety (Dowling and Staelin, 1994) and forms of psychological discomfort (Zaltman and Wallendorf, 1983). Players who continued to raise their bets were perceived to be more confident but demonstrated less control than players who kept their wager levels the same (Blaszczynski and Nower, 2007).

### **Traditional Lifestyle vs Gambling**

For generations the Thai people have had a deeply imbedded belief in "Ho ai " or the lottery system. Gambling is not perceived as being inherently bad and is actually a routine practice especially in rural areas. The risk of losing is commonly understood but there is no stigma attached to it and they are still quite willing to play the game. The games were found to promote lavish dreams and images with the possibility of winning but did not demoralize them when losing (Holtegraves, 1988). Players still displayed dignity and calm reactions even when they lost. Before the first Gambling Act of 2473 (Kampeeranon, 2015) the Thai people sought the benefits of gambling and didn't look to prohibit or control it through government. Even though the Act has been in existence for quite some time it has not diminished any social values and has spread throughout all classes of people. In fact, online gaming is predicted to increase as much as 18.3% (Kampeeranon, 2015). On the other hand, active user members of who were available in social networking sites previous, approximately 1.47 billion people around the global is expected to grow to 2.6 billion users by 2018 (eMarketer, 2013), now increase to 4 billion people users (social media users 3 billion, mobile phone

users 5 billion) around the world using internet (Kemp, 2018). Most popular messaging apps worldwide monthly active users in Thailand as Facebook Messenger 1300 and LINE 203 in millions (Statista, April 2018).

Facebook is the social networking site to be offered (Gainsbury et al., 2014a; Zainzinger, 2012) through the people can be helped friend and family stay in touch so that why social casino games was among the top rated games available. This point is the idea key that online gambling has become big changing to Thai people behavior gambling.

The Thai people have always enjoyed fun social interactions with gambling and the lottery even when they lost their bets. Wan & Chiou stated that online gambling tend to provide the non addicts with a sense of satisfaction rather than a sense of dissatisfaction (2006). For these reasons it would be reasonable to ascertain that gambling will continue to be a normal and acceptable part of the Thai lifestyle.

### **Gambling Behavior**

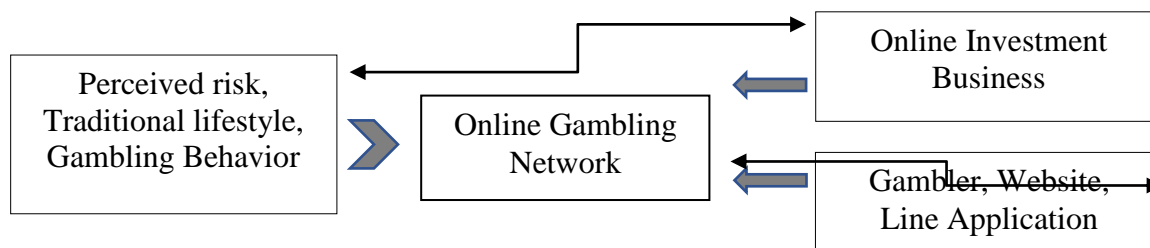
Online gambling is easy, convenient and simple and can be accessed from anywhere at any time as long as there is an Internet connection (Williams and Wood, 2007). This is in stark contrast to the traditional "brick and mortar " casino buildings. Casinos are morphing into online sites because of the lure of higher profitability ensured by lower costs of maintaining buildings with employees. Secondly gamblers can quickly switch gaming sites with the click of a button and there a gamblers identity and personality are hidden from public view. This allows some gamblers to feel more at ease and at times perhaps even willing to make larger wagers. There are two main types of in line gambling.. casino style games and betting such as horse racing (Boontawirod and Wongsurawat, 2015; Manzin and Biloslavo, 2008) and ox racing (Wua Laan) (Yongsawat, 2017).

Fun, excitement and an expectation to possibly prosper are the main reasons that people gamble.. the downside of this is that some people cannot control their emotions and gamble excessively (Lee et al., 2007). At times this may cause them to even borrow money in order to recoup prior loses but generally leads in a downward spiral where much more is lost than they can reasonably afford (Stewart and Zack, 2008; el-Guebaly et al., 2012; Lister, Wohl, & Davis, 2015).

Line application is a readily available and popular internet venue in Thailand. Most people that use it have a strong understanding of a gamblers behavior and use this knowledge to profit even more. Therefore, we would like to study line application and its correlation to gamblers behaviors as well as how it creates another stream to earning money.

Please see the framework below.

According to above, the author has designed conceptual framework to investigate online lottery gambling network which associated to perceived risk, traditional lifestyle, gambling behavior, online investment business, and gambler, website, Line Application. In addition, how these statements influence to each other in term of the making benefit.



**Figure 1** Conceptual Framework

## Methodology

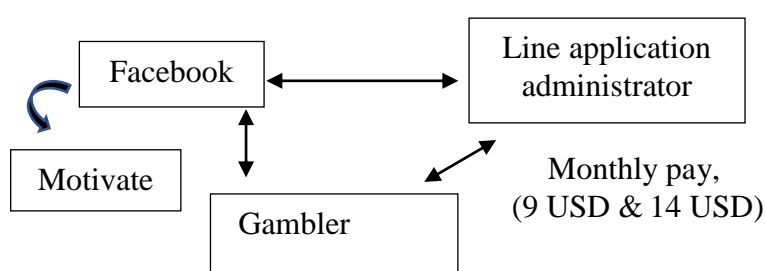
This research used qualitative in-depth research using 10 key informants. All informants were active in online gaming sites but for varying amounts of times. The snowball technique and survey were utilized in findings. The interview was performed via video call with 7 questions. The participants were from ages 26-55 and were job holders with various occupations. The survey questions can be found in appendix A.

## Procedures and Measures

The informants were interviewed using a video call format. The snowball technique was also used in order to obtain additional information. 10 key informants, due to the purpose of this survey that is the causes and why those players were motivated to join online gambling in term of using technology media as line and Facebook. Further, to survey the connection network among gamblers, online website, and business group (Line administrator and Facebook owner) which is new opportunity for Thai society that changed from previous. Therefore, the informants must already be member to the online website.

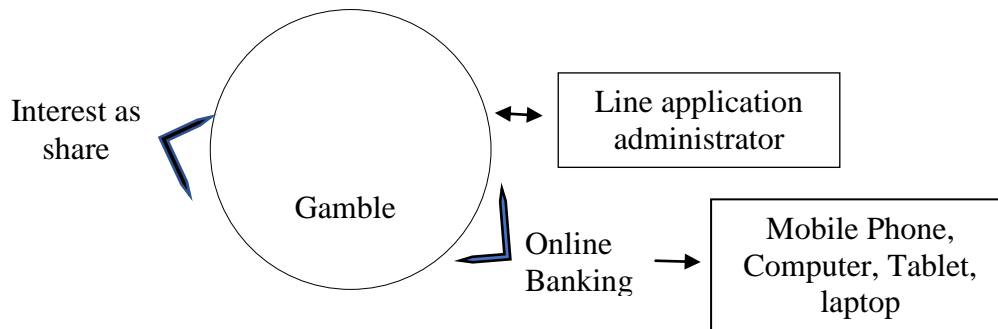
## Result

The investigation and surveys and interviews found that there are three distinctive types of online gambling users. The website owner who was an investor and business person, the Line application or Facebook administrator and the gamblers themselves. There are currently more than 30 online gambling sites that can be accessed in Thailand. The gambling network is shown in the graphic below.



**Figure 2** The relationship between gambler and interest group from online gambling

The sequence of events that are generally used is as follows; the line administrator will use much advertising about winners and even allow the prospective gambler to play a few games for free. Baiting him. When the gambler then sees that the site was correct and he could have won real money he then follows the administrator's advice in going to a private site. At this point the gambler can purchase a monthly or yearly subscription to the site. Membership price range from 9-14 USD per month so that if an administrator has 300 members they could have the potential of earning up to 50,000 USD per year.. this is a very large salary to the average Thai person.



**Figure 3** The online lottery gambling network among interest groups

Another way that line administrators broaden their memberships is by offering incentives to current members to recruit additional members for them. The gambler that successfully recruits others is given a percentage of the new gamblers revenue that is given to the administrators. The incentives and percentages vary because competition is very strong to secure new members.

A line application administrator will also try to get the gamblers to open bank accounts via online banking. The reasoning is that it is virtually impossible to gamble online without an account. This is an incentive for banks to advertise on these sites because they can get more accounts opened at their banks.

## Discussion

It was found through the participants that the average gambler wagers approximately 29 USD per day when accessing internet gambling sites. Gambling is quite widespread as recent estimates showed nearly 33 million users have used on line gambling or line application in an effort to earn more money. As previously stated there is no stigmatism against wagering in Thailand because it is a long held cultural norm to take risks.. With the easy accessibility to these site through computers or tablets or phones these numbers will increase.. Of course online banking makes it all possible and very simple for prospective gamblers.

To answer research questions; how the perceived risk of online gambling, comparison between past and present as well as identify new pathways and opportunity in the online gambling industry. There are two things that results from online gambling, namely nemesis and opportunity.

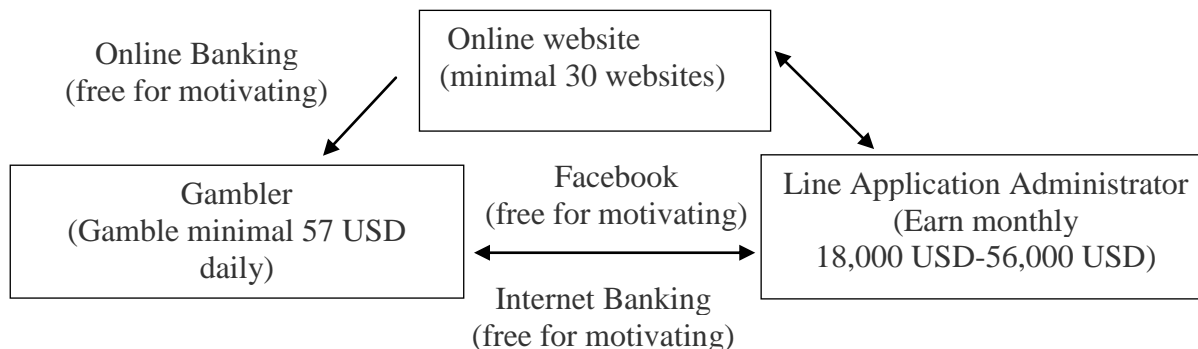
Nemesis, it reveals the gambler only losing even they tried to gamble different technique (Miller and Currie, 2008). For opportunity, definitely to both website and line application administrator work very well. Previous, it is only gambling sites can make business but now another group can do profit as well. Should education and working hard be stressed more in society than the dream of get rich quick schemes? All gambler should consider this point but as long as they remain believe on perceived risk and live on atmosphere around traditional lifestyle of Thai people, they will not change behavior (Stewart and Zack, 2008; el-Guebaly et al., 2012) from stated that:

“If I lose this time, I would win next time because online gambling websites we could gamble many times every day so it is the good chance for us rather than previous. I fail today then I will success tomorrow. If you want to get more, you should invest more as twice in the next time. It will make you more excited and fun”

Moreover, does gambling cause family problems? It is a big issue to take into consideration for them and also society although nation’ effect (Lister, Wohl, & Davis, 2015). Should the government tax earnings from gambling? There are many gambling sites obvious spread all over, it is wonder why the government ignored. They should inspect how much website and



line administrator earn as general personal income. There is nothing changed so far. It may be because of Thai society' perspective though news presentation on every channel, they do report how lottery going on with significance. On the other hand, if the person who disadvantage from the business, he will make a complaint particular through media to warn the government management.



**Figure 4** Online gambling network for new business

As the figure 4, what the progress of online gambling that is changed from previous is the influence of Line application and Facebook, they are another tool for people earning on perceived risk and traditional lifestyle of Thais. Furthermore, another point is the online banking that gambler use to gamble.

Should education and working hard be stressed more in society than the dream of get rich quick schemes.. or should Thai people be educated further on monthly investments enriching their retirements rather than taking chances with your future? These statements are interesting further for new opportunity and get away from nemesis that destroy the future of gambler (Stewart and Zack, 2008; el-Guebaly et al., 2012; Lister et al., 2015).

Due to criminal, for this case, it was not found that those gamblers would be cause of society problem because they have known how to play protecting themselves from big terrible lose. Also, they hold in job such as seller, officer, own business, housewife, public official even though some of them had debt but they can handle it that is contrast to another finding case (Yongsawat, 2017).

## Conclusion

The author found that new path of earning of Thais current walking on perceived risk, traditional lifestyle, and gambling behavior, further the internet banking system also very important point to the online gambling business for gambler. Due to traditional lifestyle in Thailand that they never think gambling negative perspective all over in their society (Kampeeranon, 2015) as social value. Otherwise, Line application is very influence to the business network in term of the center of the communication among website, gambler, and administrator and they gain interest together. The reason online gambling become rich business in Thailand, because of Thai gambling behavior. In the past, Thais started gambling over the country but they were in limited group and environment and present the gambler is changed into other level such as educated group who like to gamble but they want to hide themselves from public. Therefore, the online gambling using mobile phone that access to internet and internet banking become to new path for business investor, i.e., website and Line Application Administrator.

It is a phenomenon that occurs in Thai society due to the behavior of the Thai people. It is likely to expand in the near future, with the convenience of accessing this type of online

business. In addition, the government's cost reduction plan includes: National E-payment, PromptPay. Therefore, that is the way to encourage the online gambling into low class group who is majority of gambler in the past.

### **Research Implementation**

In the future, the gambling online will be wider to people particular in Thailand situation because of the government trying to change monetary system spending. They are trying to support changing how Thais spend money via internet banking as using barcode transferring to seller without cash so that means the people likely getting opportunity attending to circle of gambling online business over all level soon. Furthermore, what Thai government performance nowadays is encouraged into gambling online business. This research finding might more news to others who never know and they are looking for a chance to risk as well. The good point to consider for next case is to survey how the people know the online gambling changed and very simple to access and the trends of players in the future.

### **Limitations**

This investigation lacks of deep information that is exactly assure how much the online lottery gambling website gain from the business because the author could not enter to them. Moreover, author could not reach players who are teenage so the results may not cover other ideas from them. Some persons who is introduced, they were refusal to provide information as well. On the other hand, what various people perspective think to online gambler who has educated and holding a good job and how they know about online lottery gambling network.

### **Compliance with Ethical Requirements**

This study was officially approved by the Institutional Review Board (IRB) in Boromarajonani College of Nursing, Rachaburi, the Ministry of Public Health coded as BCNR 2017/0005.

### **Conflict of Interest**

This study does not have any conflict of interest. This study was funded by Rajamangala University of Technology Thanyaburi<sup>16</sup>. The budget sponsor gives full authority to researcher to make use the data and to publish it. The author can fully access and responsible to the data and analyze it as well as to publish.

### **Research involving Human Participants**

**Statement of human rights:** Respondents were interviewed after verbal consent was agreed. The interview was done by trained enumerator in order to ensure the data quality collection. The next step was the interview guided by an interview form. An interview was considered finished when a respondent had answered all questions or withdrew his/ her participation from this study. Incomplete questions were excluded from the study.

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<sup>16</sup> This research is supported by Rajamangala University of Technology Thanyaburi and the participants who has given willing deeply information.

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## Appendix 1

The interview form:

1. Why are you interested in online gambling? How long have you been doing it?
2. How did you first learn about Line Application administrator website? Why are you willing to pay to be a member?
3. How do online gambling sites motivate gamblers and get more members?
4. Whether you lose or win, why do you still continue to gamble?
5. Have people attitudes towards you changed since they discovered you have become a gambler?
6. What is the advantage of being a Line Application Administrator compared to basic online gambling?
7. What are the barriers and inconveniences to online gambling?

# The Development of an Effective Model for Implementing Information Management Strategies in Higher Education Institutions

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## Abstract

This research aimed to: 1) study the components of the information technology management strategies' implementation in higher education institutions; 2) develop an effective model for information management strategies' implementing in higher education institutions. This research used quantitative research methodology. The study indicated that there were 8 components of the information technology management strategies' implementation in higher education institutions which was, database development and information system security, budget allocation, information systems strategic assignment and review before implementation, leadership, organizational culture, organizational capabilities, internal communication and rewards an incentives. The result of Bartlett's Test of Sphericity includes all components in accordance of Chi-Square statistically significant at the 0.05 level and the Kaiser-Meyer-Olkin Measure of Sampling Adequacy was 0.850. The result of the development an effective model for information management strategies' implementing showed that causal relationship was consistent with the empirical data. The first three of causal factors which had directly influence on organizational capabilities was internal communication, information systems strategic assignment and review before implementation and leadership. And the causal factors which had influence on organizational capabilities was information systems strategic assignment and review before implementation, leadership and organizational culture.

**Keywords:** Strategy, Implementation, Information Systems Management

## Introduction

The world was constantly evolving and changing based on various factors that cannot be clearly defined Alvin Toffler (1980: 30) use waves as a sign of change. It was divided into 3 ages, starting from the first wave or the agricultural society. Later, a second wave or industrial era. And into the third wave or the information era. This era of information had been transformed from the era of the industry that using of machines instead of human power only for work efficiency and standard. Although the information era was still dependent on the traditional industry but more focus on the information. And it was noted about the nature of the third wave that the information society was a society where the majority of the population works in information more than works in factory. Farmers in this era were mostly service workers who use the brain more than labours. And education was very important in preparing the population into the information society in order to be able to adapt to the

current development stress and pressures. As well as depending on technology and innovation in information system to facilitate the work management to be more flexible.

To improve the quality of human life in the changing world. The institution that plays a major role except a family institution was educational institution. It was a social institution that shaped a humanity into a stronger, in term of academic and everyday life. Especially the higher education institutes that were affected by the civilization and the development direction including the rate of population decline continuously. It cause the results of high competition. New administrators needs to determine the strategies that can create competitive advantage and modern. The implement of proactive information system operations or the management of information technology to meet the needs both inside and outside the organization was important which mean to focus on the staff, the students and the people who will enrol to class including the expansion of knowledge through the telecommunication network as a link between data which help to immediate coordination. The study of information in higher education institutions found that most of universities set up and implement strategies for managing information systems. The strategic plan was related to overall university's strategic plan. Then divided into sub strategies so that it was easy to understand. However, it also had problems in manage of information systems such as lack of the readiness in term of modern technology development, the limitation in and lack of information systems to exploit in planning future systems. (Boonprasert et al., 2006: 2)

From the mention above, it lead to this research to the development of an effective model for implementing information management strategies in higher education institutions to identify the components which lead to a guideline for managing the information systems in higher education institutions or other universities as well as interested person.

## **Literature Reviews and Conceptual Framework**

The implementing in information systems management strategy in higher education institutions was the first important after setting the strategies by administrator in higher education institutions. It was included in the university's strategic plan. As competition in the present day places emphasis on bringing information technology to the advantage of competition. The information technology was the key tool to drive the strategy to achieve the goal. However, the upgrading requires systematic planning and organization capabilities. Therefore, it was necessary to find an effective development model for implementing information management strategies in higher education institutions. In order to promote the work process in a quick and accurate way, the researcher studied the components of the implementation of information technology management strategies in higher education institutions by studying theories and related research as follow;

### **The principal strategic implementing tasks**

Thompson and Strickland (Thompson and Strickland, 2003: 271) mentioned that Strategy implementation of the manager was required not only adjusting to external circumstances, but it was also required a key principal implementing tasks in 8 components were: 1) Strengthening the organization to be strong, capable, competent, and resourceful, to be used in the implementation of the strategic plan to achieve success. 2) Budgeting to control the resources available and sufficiently to use in the chain of values. 3) Define policies and procedures to support the strategy. 4) To set up the best practices and to push for continuous improvement. 5) Install the information system, communication and operations to help staff in able to carry out their strategic role in each day 6) Provide rewards and incentives for accomplished staff who achieve objectives and strategic management. 7) Create a work environment that supports the strategy and organizational culture. 8) Use the necessary strategic leadership to push work forward.

Feuzi Okumus (2001: 327-338) presented the research on: Towards a Strategy Implementation Framework. The research's objective was to develop a conceptual framework for the implementation of the strategy by grouping the variables related to the implementation of the strategy into four groups: strategic content; organizational process, strategic outcome and organizational context; environment context.

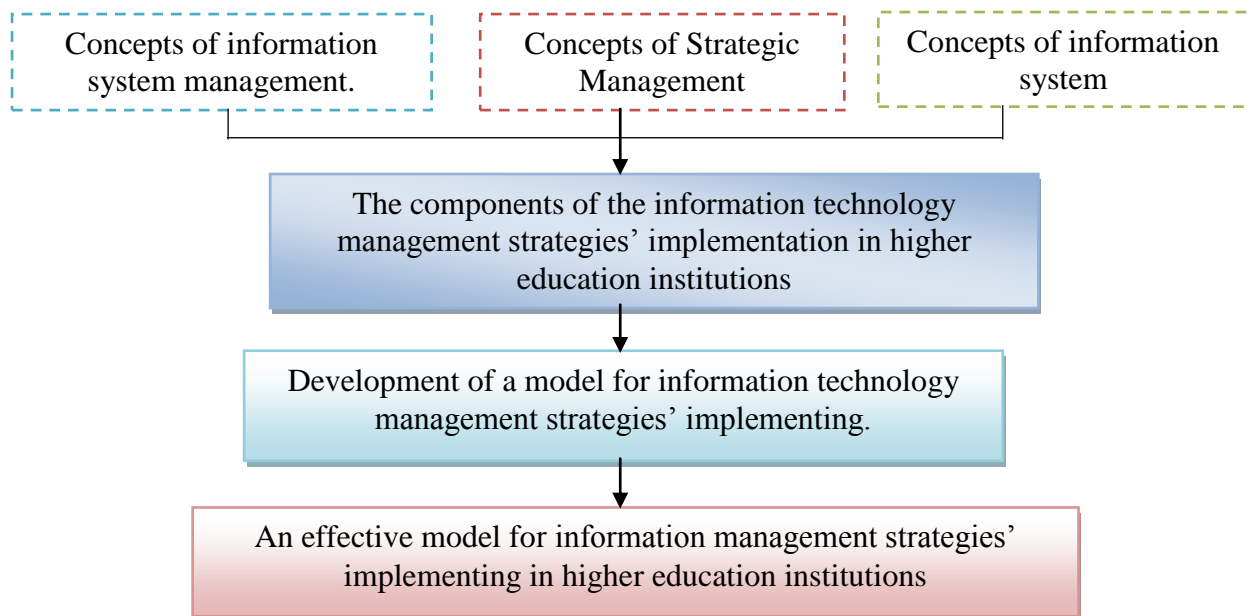
It was evident that the implementation of the strategy will be closely related to strategic planning. But what was different and important was that the understanding of the strategies and the work. Therefore, both administrator and staff need to study the content of the strategy and management procedures including the expected results after the strategy had been implemented in advance.

### **Concepts of Information Systems Management Strategies**

The use and the progress in the use of computer and information technology in organizations create an attention and seek for different tools to facilitate and service the need of the users. In the present, the adoption of modern technology alone cannot make the organization completed other organizations. If not analyzed and study the needs of users to the system thoroughly, it may be more disadvantage affected more than beneficial since the device was expensive which considered as one of limitation of information system as Suchada keernant (1998), Kowalski (2003), and Lockard and Abrams (2004) stated that the information systems were developed as information science or Informatics. Thus, Information technology was a system that has a significant component of computer hardware. database software, System developers, system users, to work together to put data into memory storage, which can process the data into grouping, sorting, prioritizing and ordering to be informative. It was useful to set policies, planning, monitoring and management for the work in government or private sector. In order to understand the information system, it will explain in details in the next section.

Sakchai Tangwannawit (2012: 57) stated that the reason that businesses need information technology to manage the system to use for strategic planning for business competition. It also support work to be more efficiency. Therefore organizations need to allocate a budget for continuous management of information systems. It was important to understand the use and the structure of the information system. The components of the information system are consist of 3 parts: 1) the tool to create information management system. Refers to the components or infrastructure that were integrated into the management information system. 2) Method or process of information processing. To get the results or information as required, it must planned and processed correctly. 3) Display of the results. Once the data had been processed according to the methodology. It may be presented in tables, graphs, pictures, or voices. The effective presentation depends on the data characteristic and purpose of data use. Moreover, Ward and Pepper (Ward and Peppard, 2002) described that organizations require strategic in information systems, at the same time, the development of information systems requires information technology strategies for information collecting and processing as well as information communicating including the scope of information systems implementation and information management strategy to support the use of information systems in various fields. Consequently, the information management strategy and information technology strategy was related to information system strategy. The strategy of the organization was the core or framework for other strategies to follow in a clear goal.

The conceptual framework is as follows.



**Figure 1** Research Conceptual Framework

## Research Methodology

**Participants:** There were 25 samples such as the national universities, the governmental universities, rajamangala university of technology, rajabhat universities and the private universities. These samples were selected to represent an information system management at universities from the world's top 100 university ranking by purposive sampling, totally 879 respondents.

The quantitative research, participants were divided into 2 parts.

1. University level: Vice President for Planning and Information Technology, Director of Planning and Information Technology Division, and Operation Officer, Planning and Information Technology.
2. Faculty Level: Associate Dean for Planning and Information Technology, Chief of Planning and Information Technology, and Operation Officer, Plan and Information Technology.

**Data collection:** Data collection through using questionnaire about the components of information management strategy's implementing. The quality of the tools was checked through the method of content validation (IOC) as an index of Item-Objective Congruence (IOC), which considers the IOC value of more than 0.80. Then try out a revised tools to collect data and analyze the reliability. The reliability of the questionnaire was calculated by using Cronbach's coefficient ( $\alpha$ -coefficient) (Cronbach 1984: 126). The process of collecting data was as follows. (1) Coordinate the staff in higher education institutions in target areas. The educational institution issues an official requested letter for assistance in answering the research questionnaire. (2) Collect data by sending a questionnaire by post and wait for response in 2 weeks. The method of telephone call for requesting to answer the questionnaire and return was used when there was no responses from the post after 2 weeks. (3) Compile all collected data, data validation and data analysis.

**Data analysis:** After data was collected, researcher used the following statistics: (1) Descriptive Statistics were the statistics used to describe the characteristics of the data collected from the sample. The statistics were frequency, percentage, arithmetic mean and standard deviation. (2) Inferential Statistics were the statistics used to analyse the components that influence to the development of effective models for information management strategies'



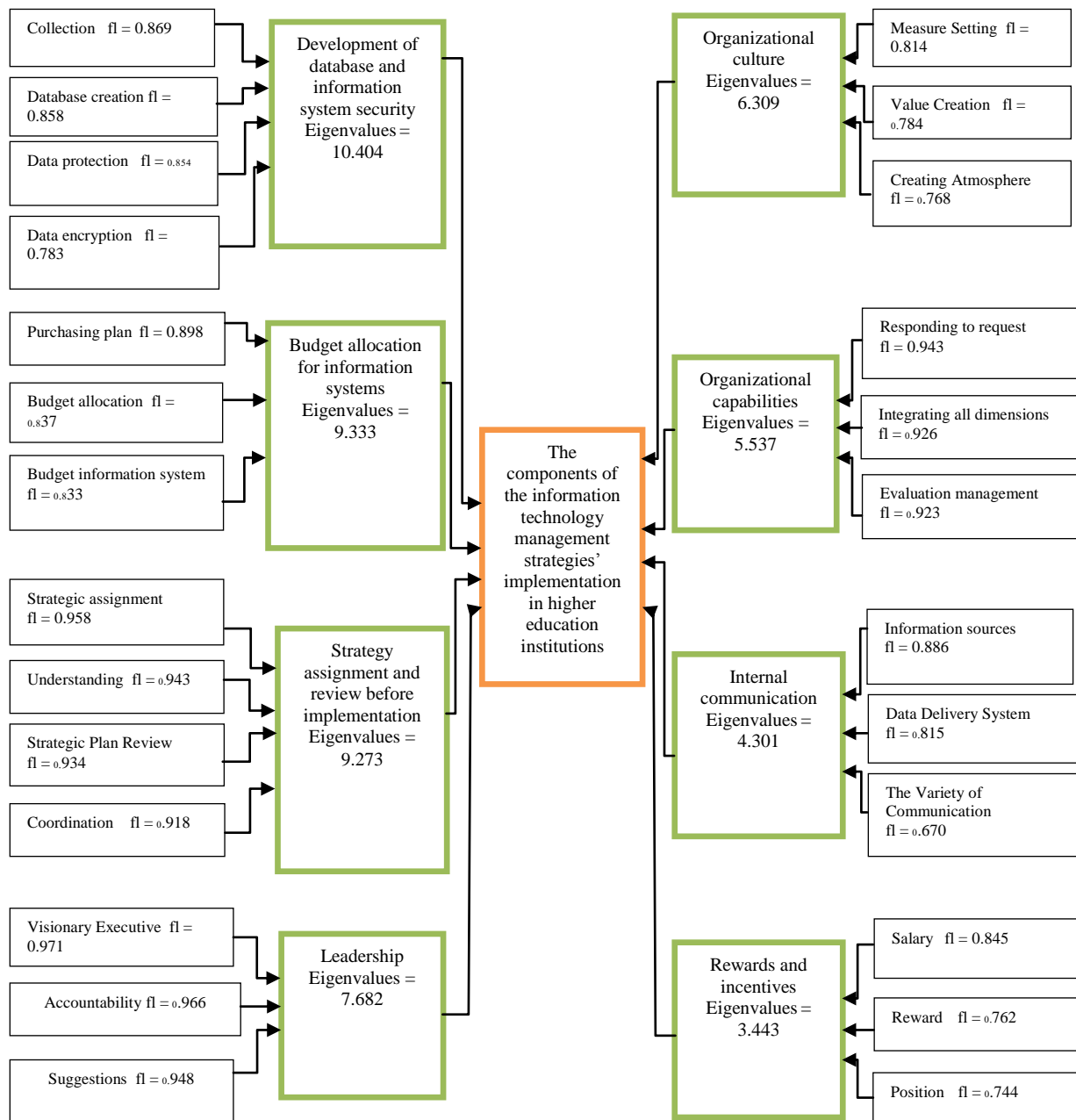
implementing in higher education institutions which was Factor analysis and for modelling of effective of information management strategies' implementation in higher education institutions was Path analysis. The analysis was analysed by using a Statistical program to study the consistency of empirical data and the model from the study.

## **Research Results**

### **Analysing of components of Information Systems Management Strategies' Implementation**

An analysis of the level of feedback on the components of the implementation of information technology management strategies in higher education institutions by considered on the average ( $\bar{x}$ ) and standard deviation (S.D.), found that the overall variance of 70 variables was ( $\bar{x}$ ) between 3.35 - 4.49. The standard deviation (S.D.) was from 0.23 to 0.75 which mean that the informants stated on the level of variables was from moderate to high. When analyzing the exploratory factor through the Bartlett's Test of Sphericity in a total of all components showed that Chi-Square statistically significant at the 0.05 level which indicates that the correlation matrix of the variables and the data obtained can be analyzed for the components. In addition, the KMO (Kaiser-Meyer-Olkin Measure of Sampling Adequacy (KMO)) of all components, equal to 0.850, represents a sufficiently high level of data availability. It can be used to analyze components at a very good level. And the components which had Eigenvalues more than 1.00 were 8 components. The variance of the components can be explained as 82.018%

Exploratory factor analysis was used to determine the critical variables by analyzing of the Maximum Likelihood Analysis to obtain the critical variables. It presented that the components of the implementation of information technology management strategies in the higher education institutions was 8 components. Component 1 was the development of database and information system security. The second was the budget allocation for information systems. The third was strategy assignment and review before implementation. Component 4 was leadership. Component 5, organizational culture, Component 6 Organizational Capabilities, Component 7 Internal communication and component 8 Rewards and incentives. The link diagram can be summarized as follows:



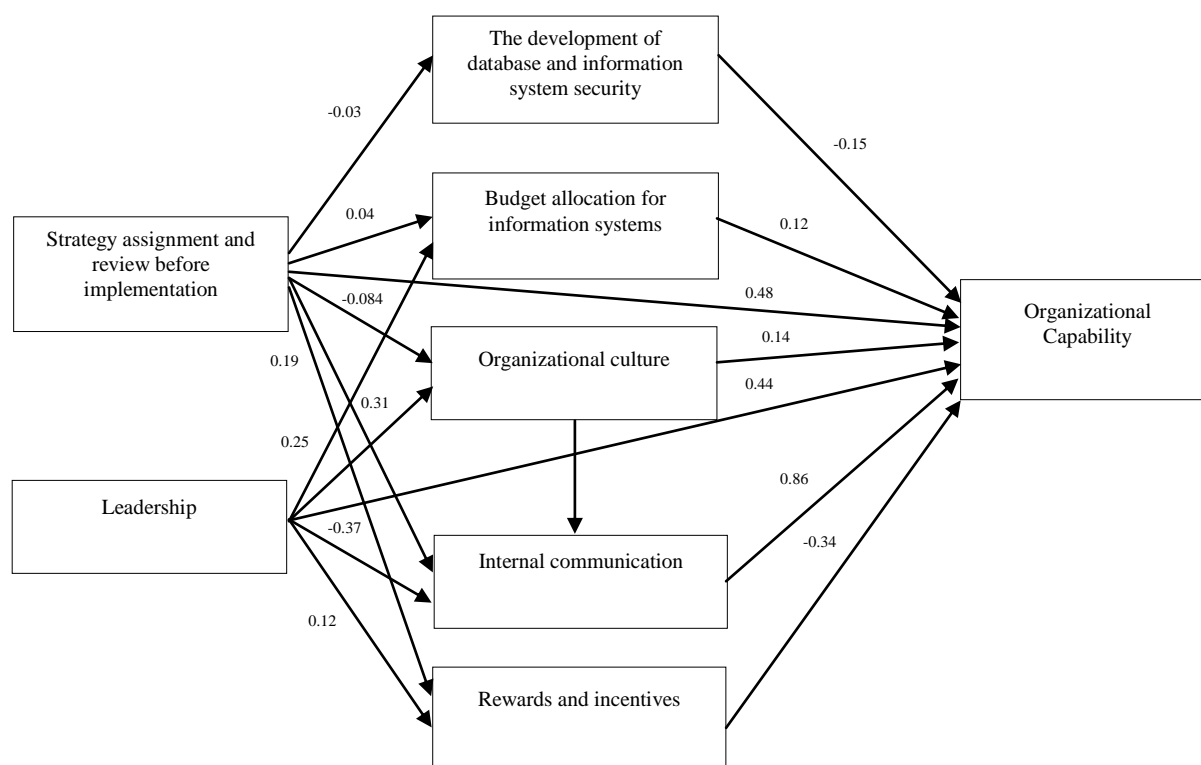
**Figure 2** Result of analyze component

### Developing an effective model for implementing information management strategies in higher education institutions.

The results of the causal relationship analysis of effective models of implementation of information system management strategies in higher education institutions in accordance with empirical data.

The correlation between the model and the empirical data showed that the chi-squared ( $X^2$ ) value was 432.25 ( $P = 0.00014$ ). The results showed no significant difference in statistics which mean an effective model of implementing information management strategies was consistent with empirical data. In addition, value-added indicators can also be considered in such as the Goodness Fit Index (GFI) and the Adjusted Goodness of Fit Index (AGFI) that value was near 1, GFI = 0.92 and AGFI = 0.91, which was more than 0.90, it indicated that an effective model of implementing information management strategies was consistent with empirical data. The Root Mean Squared Residual (RMR) value was 0.058 indicated that a

model was consistent with empirical data, the Index Root Mean Square Error of Approximation (RMSEA) was equal to 0.045, which ranged from 1 to 0.05, indicating that the model was consistent with the empirical data in a good level. The reliability of variables in the measurement model was measured by the total confidence (Composite Reliability (CR) value) of 0.70 and above. (1) Convergent Validity was determined by Average Variance Extract (AVE) with a value of 0.50 or higher, and (2) Discriminant Validity was determined by the value of Maximum Shared Variance (ASV) and Average Shared Variance (ASV), which was less than AVE (Hair et al., 2010). It found that confidence value and the reliability of the model in this research meets the criteria. The correlation coefficient between the components of the information management system in the higher education institutions was found to be statistically significant at 0.05 and 0.01. The analysis and interpretation of the results from the computer program can be shown as follows.



**Figure 3** The result of path analysis

## Discussion

Information technology was a process for information analysis and dissemination to improve efficiency, accuracy and usefulness for organizations. Nowadays, information technology was important to the development of the organization such as distance education, internet searching and information system through computer network. Turban et al. (Turban et al., 2001: 17) stated that the information management system was compiled, data processing, data analysis and dissemination. Jeerakan Temponsin (2006) states that the Management Information System (MIS) was a system that collects and stores data from both internal and external sources of information to process and format to support the work and decisions making of administrators of the organization. The information system was used in many organizations especially in higher educational institutions was use information system to develop organization work. Based on the study of key components in the implementation of information management system through exploratory factor analysis was conducted from the

sample of 25 higher education institutions to identify most important variables through Maximum Likelihood Analysis. The implementation components of the strategy in higher education institutions were 8 components: database development and security of information systems. Budget allocation for information systems, strategic assignment and review before implementation, leadership, organizational culture, organizational capabilities, internal communication and awards and incentives. Each components was consistent to the theory and research as follow:

Component 1: Database Development and Security of Information Systems was an important component in the implementation of information technology strategy according to the concept of Sakchai Tangwannawit (2012: 57) which stated that note that database was the core of information management system. Quality information was based on good, reliable, up-to-date information and systematic management including user can access and use it quickly and easily. Therefore, the database was an important component to ensure completeness and effectiveness of system. It was also related to the research by Nattawut Uttgrit (2007) who studied The Development of Information System Management, from King Mongkut's Institute of Technology North Bangkok. The research found that development and management of information systems should develop human resources database, research database and researcher database.

Component 2: Budget allocation for information systems. It was an important component in bringing information systems strategy to implement according to Thompson and Strickland's concept (Thompson and Strickland, 2003: 271) which mentioned that Strategy implementation of the manager was required not only adjusting to external circumstances, but it was also required a key principal implementing tasks in 8 components. One of the important components was budgeting to control the resources available and sufficiently to use in the chain of values. Therefore, education institutions had budgeted for information systems will result in greater efficiency in driving the work.

Component 3: Strategic assignment and review before implementation was an important component in the implementation of information technology strategy according to Pitts and Lei (2000: 301), mentioned that "Understanding of strategic implementation was very important since the success of any organization depends on how well the people in the organization work together. To transform the strategic plan into action, managers and employees were the most important to gaining competitive advantage. It was related to Boonkiat Chivatakulkit (2005: 172-177) which stated that strategic work that assigned to various agencies to share their responsibility, it help helping each agency realize their vision and mission (Shared vision).

Component 4: leadership was an important component in the implementation of information technology strategy regarding to Somyot Naveekan (2003: 930-933) stated that one of the key factors in strategy implementation was leadership which mean the ability to influence individuals to adopt behaviors behaviours for strategy implementation. Leadership was related to communication, motivation and cultural change. Administrators or executives who try to implement a new strategy may need creating an understanding to individual, establishing the partners and encouraging the middle managers to accept company's vision. If the leader allow other executives to participate in the strategy, the strategy implementation was easier. Because those executives will understand and engage with new strategies. Leadership was used to motivate people to adopt new behaviours and cultivating new values and attitudes as a new organizational values. It was also related to Wilson's research (Wilson, 1996) which studies the use of information systems in public organizations management: a case study of Richmond, Virginia. The research aimed to study the attitudes of senior administrator in city of Richmond on applying information systems in public organization management. The research results showed that senior administrators had positive attitude to

apply information systems into organization management. It was an important tool of management.

Component 5, organizational culture was an important component in the implementation of information technology strategy as Brenes and others (2008: 590-598) conducted a research study on key success factors for strategy implementation in Central America. The research presented that organizational culture was a critical success factor for implementing strategies which related to Wheelen and Hunger (2006: 248-249) stated that organizational culture can influence the behavior of all employees. It can affect a company's ability to change its strategic direction.

Component 6 Organizational Capabilities was an important component in the implementation of information technology strategy regarding on the concept of Pakpajong Wattanasin and Phasu Decharin (1999: 285-304) stated that the ability of an organization to effectively apply the strategy depends on the quality of its staff. Before implementing a strategy, the executives must build their own organization to be competent and effective. It should recruit an appropriate person for the position then build their capacity in term of skills and competency according to organization requirement. And lastly the process of work decision making and systematic to implement the strategy as effectiveness.

Component 7 Internal Communication was an important component in the implementation of information technology strategy as the concept of Anivat Kaewjamnong (2008: 9-10), strategic implementation was the work of individuals at all levels in the organization. With each manager applying and creating an understanding the strategy implementation. It was necessary to communicate to the people in the organization to understand and follow the strategy. If it cannot be done, it may result in the implementation of the strategy and directly administrators. Lawrence Herbiniak, (2008: 276, 359) stated that the responsibility and monitoring of all functions must be clear. If all workers know who to contact as well as understanding or responsibility of others, the strategy will be successful. It will create the exchange of information between each other and the transfer of knowledge which affect to organizational capabilities. Defining responsibilities or the role of supervision including strategies monitoring as well as delegation of duties and responsibilities to ensure that those involved in the change were aware of it was a great need for effective management.

Component 8: Rewards and incentives was an important component in the implementation of information technology strategy as the concept of Sakorn Suksriwong (2008: 2001-2) mentioned motivation makes the person happy to perform their duty. Motivation was very important since when organization issued new strategy and implementing new strategies. it create the change, and those change may be offensive to the people in the organization, or may not be consistent with the expectations of the people in the organization. Therefore, the executive need to encourage and motivate staff to follow the strategy. Herbiniak (2008: 346) had the idea that compensation motivates will encourage a performance-oriented behavior, which strengthen the strategy implementation and also be as a mechanism that helps to validate and correct the process, as well as encourage the learning and change within the organization. The incentive compensation and control was an important factor that drives the strategy to be concrete.

## **Recommendations**

### **General recommendations**

1. Database development and information systems security: Management administrators and executives of the university and the faculty should set policies and implement measurement as follows: information systems database's security, a database controller, creating a new database which faster and easier access to information in each section and also updates every month. Develop or provide effective prevention systems for information systems (Hackers).

Setting the password for users in the organization which can check the usage throughout the period. Staff was able to change their access password. The period of changing password might set at every six months.

2. Information systems' budget allocation: Management administrators and executives of the university and the faculty should designate the responsible department for procurement of IT equipment according to their needs and appropriateness by calculating the return on investment (monetary and non-monetary costs) and building credibility of return on investment assessment from the first step to report results. Need assessment must be conducted every year and it should consistent and link to strategies, operation plan and information systems development for budgeting and financial management so it can be used as a budget management information in each department.

3. Strategy assignment and review before implementation: Management administrators and executives of the university and the faculty should delegate the information management strategy to the responsible person based on their abilities and experiences including create an understanding of information management purpose and objectives to all staff before implementation. In addition, the strategic plan for the information management system should review annually though emphasizing the coordination between the key responsible and the co-responsible person at all stages.

4. Leadership: Management administrators and executives of the university and faculty should demonstrate a clear vision on information management and adhered to as well as increasing responsibility of managing information systems to meet the needs of the staff including should allow the staff to independently express their opinions in the process of information management systems and also bring those ideas to improve the work to be more efficiency.

5. Organizational culture: Management administrators and executives of the university and faculty should set social measurement to allow staffs in the organization able to use the information system such issues as information publishing to a person who do not use the information system in their work including clearly create value in the work of information management system through academic progress 'atmosphere in term of information technology using as a media for learning in all the activities in at each level. As well as promote the integration of organization's activities and benefits of information technology using without feeling forced.

6. Organization Capabilities: Management administrators and executives of the university and faculty should set policy that promote the comprehensive use of information systems at cover all levels and dimensions including evaluate through a balanced scorecard that covers in term of the client's financial, the operations and information systems innovation and learning to prevent an error and able to develop system in a timely manner.

7. Internal Communication: Management administrators and executives of the university and faculty should support the establishing of information resources to assist staff in implementing the information management strategy, such as the meeting preparation and knowledge management for new knowledge delivery and sharing including increasing channel and system for swift information exchanging between staffs, both inside and outside the organization, such as telephone, internet, meeting rooms and vehicle reservation system to ensure the speed and not duplicate of work.

8. Rewards and incentives: Management administrators and executives of the university and faculty should promote motivation by raising salary based on the achievement performance. Moreover, should create an encouragement by giving a reward to staff who manage of ad hoc information system successfully including the system of position promoting according to the achievement or those who use the information system to scale up and increase the

effectiveness of work as well as those who present or link the benefits of using information systems, such as the importance of employee welfare systems.

### **Recommendations for future research**

1. Should study the problems and limitations of information management strategies' implementing in higher education institutions which lead to effectiveness of the information system development plan in higher education institutions.
2. Should develop a strategy for managing information systems in higher education institutions as a long-term development plan for managing information systems in the organization.
3. Should study of the human resources' potential to drive the development of information systems in higher education institutions which lead to human resources development in advanced IT.

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# Characteristics of Elderly Home Care Volunteers in Western of Thailand

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## Abstract

Research characteristics of elderly home care volunteers in Western of Thailand have several objectives 1) to study the factors affecting the characteristics of elderly home care volunteers 2) to compare the differences in characteristics of elderly home care volunteers by personal factors and 3) to study the problems and obstacles while serve as an elderly home care volunteer. This research was mixed methods research. Key informants in the qualitative research were 20 elderly home care volunteers. Population in the quantitative research was elderly home care volunteers 17,760 people, area scope was province of Western Thailand which were Ratchaburi, Kanchanaburi, Tak, Prachuap Khiri Khan and Phetchaburi. The instrument used to collect data was semi-structured interview and questionnaire. Statistics used in data analysis were frequency, percentage, One -way MANOVA and Multiple Linear Regression Analysis. The results of this study revealed that most volunteers had a hard working and satisfied with their work. Elderly home care volunteers with different in gender, age, religion and occupation had the same characteristics, except the level of education, marital status and period of time work as the volunteers. All factors affecting the characteristics of elderly home care volunteers. Problems and obstacles that occurred when being an elderly home care volunteer was a multitude of bed ridden elder, participation with local government organizations is not high and there is a lack of participation from the elders.

**Keywords:** Characteristics, Elderly Home Care Volunteers, Western Thailand

## Introduction

The increasing number of elderly people is a consequence of the advancement in the medical profession, it results in a longer life expectancy and increased survival of the baby. Those have making Thai society face the crisis of aging society. In 2010, Thailand has over 70 million elderly people aged over 60, accounting for 11 percentage of the country's population 65.4 million people. The proportion that has risen slowly from 7 percent in the last 30 years has been rising rapidly. It is expected that the number of elderly people will increase to 25 percentage in 2030. In Thailand, there is one elderly in Thailand every 10 people. In the next 20 years, there will be one elderly in every four Thai people. The advancement of the aging society leads to an increase of dependency people both economically, socially and healthily. (Foundation of Thai Gerontology Research and Development Institute (TGRI), 2011: 7-8)

If the public service to the elderly is mentioned, the government is the main operator for example elderly allowance, elder foster home, supplementary occupations, habitat welfare, elderly recreation programs, healthcare utilization of the elderly. The provision of services to the elderly by the private sector is likely to increase in number and needs such as nursing homes for the elderly. New Public Service was a concept that emphasizes the involvement of stakeholders in public service who influencing public service in Thailand and the concept of reducing the size of the government, public service providing problems such as inequality in

service provision such as healthcare utilization of the elderly (Netithanakul, 2015) as well as decentralization to the local government. As a result, the public service of Thailand can not only be done by a single government agency but the nature of public service provision has become a collaborative effort between various agencies such as the government, the private sector and the public to provide public services to the people as well as provide public services to the elderly people.

In many countries around the world, volunteers are an important means of providing public services to the people. Volunteers support the community to participate in local and national development and support the community to access resources for local development and to improve needed services. The research, for example, studied a non-governmental organization (NGO) in Porto Alegre, Brazil found that volunteer work is a mechanism to promote quality of life among the elderly. (Souza, Lautert & Hilleshein, 2011) For Thailand, the participation of public especially "volunteers" are the mechanism of the state to help organize public services. It has been around since the reign of King Rama V called "Sala U-Nalom Red" or "The Thai Red Cross Society". The first volunteers called "Wild Tiger Corps", established in during the reign of King Rama VI, assisted the authorities in maintaining inner peace and at war. For volunteers who care for the elderly are called "elderly home care volunteers" built up around 2003. They involved in as the mechanism of the government to care for the elderly and work with the local government by helping careless, neglected, cannot self-help, overlook and amiss care of elderly, provide knowledge about the benefits to the elderly, educate family members and people in the community to properly care for the elderly, and also serves as a medium to coordinate and delivery of social welfare services to the elderly as well as provide social welfare services to people suffering misery and disadvantaged in the community. (Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups, 2010) Elderly home care volunteers worked with sacrifices, but they faced many problems for example, elderly family collaboration, time problem, travel, shortage of equipment, lack of volunteers, inadequate skills, redundant work due to other work and the problem from the government such as no budget support for making it work discontinuously, no compensation, lack of training to increase knowledge. These problems made recruiting volunteers to care for the elderly more difficult. The lack of elderly home care volunteers brings to the research question that what are the characteristics of elderly home care volunteers, what are the factor affecting the characteristics of elderly home care volunteers and what are problems occurred when being an elderly home care volunteer. Understanding the characteristics of elderly home care volunteers means that understanding characteristics of elderly home care volunteers will help the government comprehend the identity. Relevant agencies can recruit, maintain and motivate these volunteers to help the government to care for the elderly.

## **Research Objectives**

Research about characteristics of older persons home care volunteers in Western of Thailand have three objectives 1) to study the factors affecting the characteristics of elderly home care volunteers 2) to compare the differences in characteristics of elderly home care volunteers by personal factors and 3) to study the problems and obstacles while serve as an elderly home care volunteer.

## **Literature Review**

Researchers have divided the variables into two levels: personal factors and social factors. The details are as follows: Personal factors, factors affecting volunteerism personal factors include their own capital, such as skill, gender, age, duration of volunteering, career, religion,

social class and activity (Becker and Dhingra, 2001; Casey, 2001; Hilal, 2003; Collins, 2001) In this research defines variables as 1) personal factors, including gender, age, religion, education, marital status, occupation, and duration of volunteering, career. Social variables and skills are not used as variables because both variables are the variables used in the study in western societies where there is color separation, which does not appear in Thai society. The research hypotheses are as follows.

Assumption 1: The characteristics of elderly home care volunteers by personal factors differs. On the issue of characteristics formation, Berger and Luckmann (1966) argue that characteristics is created by social processes. Plummer (1981) states that the meaning of characteristics is created within the context of social interaction. The characteristics does not naturally occur. It is a process of socialization. It takes place from the social agency (social agency) that plays a role in socialization for members in society. The main social actors in this role are: 1) family 2) school 3) friends 4) religious agents 5) mass media 6) occupational groups and interest groups In addition, the researcher found additional variants from qualitative research, namely, community and governmental agencies. Both variables were analyzed to confirm the findings.

Factors based on the concept of characteristics from Presthus (1962) McLeod (2008) Burke and Stets (2009) and Urairat Sirisupadilokpat (2017) divided into 4 type by hard working - not hard working and satisfied and unsatisfied in work, so that the characteristics in this research were 1) Upward Mobiles 2) Indifference 3) Ambivalent-Conservers and 4) Ambivalent-Zealots. The researcher has set the following assumptions:

Assumption 2: Factors that affect the characteristics of elderly home care volunteers are families, educational institutions, friends, religion, mass media, occupational groups and community interest groups, community and relevant government agencies.

## Methods

**Population and Sample:** Phase 1 for finding factors that affecting the characteristics, researcher selected key informant as elderly home care volunteers 20 people from 5 provinces; Ratchaburi, Kanchanaburi, Tak, Prachuap Khiri Khan and Phetchaburi as provinces where elderly home care volunteers having a high involvement in public service with the government. (Whangmahaporn, Whangmahaporn, & Simmonds, 2018) After that draw lots two districts per province and draw lots again to get one local government. The selection of key informants by using snowball technique appropriated to study because it allows the researcher to check backlinks between each key informant. The criteria of choosing key informants were the elderly home care volunteer under the local government and worked as elderly home care volunteer at least 1-2 years. Research instrument used to collect data was In-depth interview by using semi-structured interview. Researcher took the results from the qualitative research obtained from the interview and literature review about theories and related research are combined as variables used in quantitative research. As summarized, the synthesis of variables in Table 1

**Table 1** Synthesis factors from qualitative research and literature review, theories and related research

Factors	Qualitative research	Literature review, theories and related research	Factors used in Quantitative research
Personal factors		Becker and Dhingra,2001; Casey, 2001; Hilal, 2003; Collins, 2001	
Gender		✓	✓
Age		✓	✓
Marital status		✓	✓
Occupation		✓	✓
Religion		✓	✓
Education		✓	✓
Period of time work as the volunteers		✓	✓
Factors affecting characteristics		Berger and Luckmann,1966; Charon,1980; Plummer,1981; Adivattanasit et al., 2001	
Family	✓	✓	✓
School	✓	✓	✓
Religious doctrine	✓	✓	✓
Community Support	✓		✓
Government Support	✓		✓
Friends		✓	✓
Mass media		✓	✓
Occupational groups and community interest groups		✓	✓

Factors based on the concept of characteristics from Presthus (1962) McLeod (2008) and Burke and Stets (2009) divided into 4 type by hard working - not hard working and satisfied and unsatisfied in work, so that the characteristics in this research were 1) Upward Mobiles 2) Indifference 3) Ambivalent-Conservers and 4) Ambivalent-Zealots.

Phase 2 for study factors affecting the characteristics of elderly home care volunteers, compare the differences in characteristics of elderly home care volunteers by personal factors and study the problems and obstacles while serve as an elderly home care volunteer. Sample were elderly home care volunteers 400 people from population 17,760 people by using Taro Yamane sample size at acceptable error  $\pm 5\%$ . If the population were 15,000 people, the sample size would be 390 people. Researcher determined sample size 400 people by using multistage sampling. First, researcher used cluster sampling to divide population as Ratchaburi, Kanchanaburi, Tak, Prachuap Khiri Khan and Phetchaburi provinces and used simple random sampling by draw lots districts from each province to get two districts per province. Then, researcher draw lots 10 local governments and sampling 40 elderly home care volunteers who under each local government. Lastly, researcher used accidental sampling by asked for cooperation of local government to distributed questionnaire to elderly home care volunteers and collected for those sample within 3 weeks.

**Level of Measurement:** This research used questionnaire to measure personal factors and factors affecting characteristics as below.

Personal factors had 7 questions to measure gender, age, marital status, occupation, religion, education and period of time work as the volunteers

Family: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "You have been a volunteer because parents or family members are generous to help others." "The instruction or statement of parents or family members make you conscious of helping others or community activities." "Parents or family members have activities to help the community or others, so that you want to help others or the community as well."

School: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "You participated community activities during the course in the school." "During the course, you have learned and understood how to help others or the community from school. Schools are an important part of getting you to work as a volunteer."

Friends: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "Your friends accept and praise your knowledge." "You take the example of helping others or the community from your close friends." "Group for your close friend help each other and share both joy and suffer together."

Religious doctrine: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "You frequently visits temples, churches or mosques and also helps with activities in there." "You are very generous and have compassion for others because of your religious doctrine." "You often have the opportunity to discuss religious doctrine with monks or priests and apply it to life."

Mass media: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "You regularly follow the news to help the underprivileged or victims from media such as television, newspapers, radio, etc." "You have model to be a volunteer that you see work to help others from media such as television, newspapers, etc." "By following up on news from the media to help the underprivileged or the victim, you have the means to help others or your community."

Occupational groups and community interest groups: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "Your colleague support to your volunteer work." "You were praised by colleague as being generous to others." "Discussion or activities with your colleague motivate you to work as a volunteer."

Community: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "People in your community honor and accept your role as a volunteer." "Community leaders or people who play an important role in your community see the importance of your volunteer." "You proud of being part of your community because you have contributed to the activities in your community."

Relevant government agencies: had question to measure 3 items which are 6 rating scale; strongly agree to strongly disagree: "Government agencies support your work of volunteers to help others or your community." "You have been accepted and praised volunteer work from relevant government agencies." "Relevant government agencies regularly organize and support volunteer activities."

Characteristics of elderly home care volunteers: were the question about the characteristics of elderly home care volunteers and were 6 rating scale, strongly agree to strongly disagree that consist of hard working and work-satisfied, not hard working but work -satisfied, not hard-working, and also unsatisfied in work and hard -working but unsatisfied in work. Each characteristic were 5 items as:

1. Hard working and work-satisfied: "You serve as a volunteer to take care of the elderly at home with full capacity." "You are dedicated to be a volunteer and you achieve your goals such as the health of the elderly improved." "When you work as elderly home care volunteer, you have been praised by the government for example get the certificate and acclaim" "When you work as elderly home care volunteer, it make me known and accepted by people in the

community.” “You feel self-valued because you have helped the government work for the elderly in the community.”

2. Not hard working but work -satisfied: “You feel satisfied with your volunteer work, even if you are not able to work with full capacity.” “You sometime help the government work by being elderly home care volunteer, but you are willing to work.” “You are conducive to government work by helping older people in the community even if you have not done completely, but you are proud of yourself.” “Even if you are not fully work as elderly home care volunteer, but it make you are known and accepted by people in the community.” “You use half the effort in caring for the elderly because I have to work to support my family, but I'm happy for now.”

3. Not hard-working, and also unsatisfied in work: “You perforce work as elderly home care volunteer and you do not want to do it” “Goals of elderly care such as the health of the elderly improving did not succeed because you were not hard working.” “ You work as elderly home care volunteer with not exceed the government regulation because you feel that volunteer work is not fun.” “Your work as elderly home care volunteer is not fully done, it make you unknown and did not accepted by people in the community” “You work for the elderly as far as you can, you will not be blamed from the community.”

4. Hard -working but unsatisfied in work: “You unsatisfied your volunteer work even you do your best.” “ Even if you are fully dedicated to be volunteer, but you still cannot achieve the goal as the health of elderly did not improve.” “Even you work hard to be an elderly home care volunteer, but the government does not accept and praise or give anything in return for your intentions.” “ Your fully work as elderly home care volunteer, but you still unknown and did not accepted by people in the community.” “You help the government to fully care for the elderly in the community, but you still feel worthless.”

**Quality of Instrument:** Researcher checked the quality of instrument by take the questionnaire to let the experts who have knowledge and experience in the research 5 people check all items for validity check, after that researcher calculated Item Objective Congruence: IOC which were 0.8 - 1 and compared it to the criteria of 0.7 is considered. Then, researcher try out 40 questionnaires, analyze Cronbach alpha coefficient and determine level of confidence is more than 0.7 As a result, Cronbach alpha coefficient of this questionnaire is 0.935 which is acceptable.

**Data Analysis:** General data analysis of elderly home care volunteers and identifying the type of characteristics used frequency, percentage, standard deviation, one - way MANOVA and analysis of factors affecting the characteristics of elderly home care volunteers used multiple linear regression analysis.

## Results

The result in comparison of personal factors on the characteristics of elderly home care volunteers, study factors affecting the characteristics of elderly home care volunteers and study the problems and obstacles while serve as an elderly home care volunteer found that

**General information:** From 400 questionnaires have send to sample, researcher got back all 400 questionnaires, it calculated to 100 percentage. Result of personal factor analysis revealed that majority of respondents were female, it calculated to 82 percentage. Respondents age between 50-59 years old, it can calculate to 30.30 percentage and respondents are Buddhist, it calculated to 97.50. Respondents graduated primary school, it calculated to 46.30 percentage, married calculated to 64.50, employee calculated to 24.30 and have more than 6 years work as elderly home care volunteers calculated to 40.30.

**Characteristics of elderly home care volunteers:** the characteristics of elderly home care volunteer's analysis showed that characteristic of hard working and work-satisfied have average score at 4.96, not hard working but work -satisfied have average score at 4.95, not hard-working, and also unsatisfied in work have average score at 2.73 and hard -working but unsatisfied in work

have average score at 2.90. The average of characteristic indicated that characteristic of hard working and work-satisfied, and not hard working but work -satisfied were in high level, the average of characteristic of hard -working but unsatisfied in work was in moderate and the average of characteristic of not hard-working, and also unsatisfied in work was in low level.

Factors affecting the characteristics of elderly home care volunteers: there were 8 factors affecting the characteristics of elderly home care volunteers and all 8 factors had average in high level which in descending order as the highest average was religion factor which calculated to 5.18, family calculated to 5.15, friends calculated to 5.10, occupation calculated to 5.07, community calculated to 5.04, school calculated to 4.99, mass media calculated to 4.90 and the lowest average was government support, it calculated to 4.89.

Comparison the differences in characteristics of elderly home care volunteers by personal factors: found that the volunteers who have different in marital status, education and period of time work as the volunteers will have different characteristic. Elderly home care volunteer without learning has a level of characteristic as format 3 (Not hard-working, and also unsatisfied in work) and format 4 (Hard -working but unsatisfied in work). Elderly home care volunteer who were single has a level of characteristic as format 3 (Not hard-working, and also unsatisfied in work) and format 4 (Hard -working but unsatisfied in work). Elderly home care volunteer who work more than 6 years as volunteer has a level of characteristic as format 3 (Not hard-working, and also unsatisfied in work) and format 4 (Hard -working but unsatisfied in work). This research result revealed that whether male or female, how old they are, believe in what religion and what occupation they do, elderly home care volunteers were hard working and work-satisfied for being volunteers. The elderly home care volunteers who were single (10 percentage), unlearned (10 percentage) and more than 6 years work as volunteer (40 percentage) had characteristic of not hard-working, and also unsatisfied in work. Tin Pratchayaphrut called them as not active working groups, but balance with unsatisfied in work, so they do not harm for the agency as same as withdrawn group of Barber. This type of person focuses on duty for replace acceptable from others in the low level. It was because they unsatisfied in work, the volunteers with this characteristic (more than 6 years work) will tend to quit.

Correlation coefficient of factors and characteristics of elderly home care volunteers: Correlation coefficient ( $r$ ) between independent variable ( $X$ ) 8 variables have positive relationship with dependent variable at the level of significant 0.01. According to linear regression analysis, all 8 independent variables had  $VIF \geq 10$  and Tolerance = 1 that can be conclude that all 8 independent variables had not multicollinearity or the problem that independent variable had too high level of relationship with each other. After Linearity test found that  $F$  was 13.13 at the level of significant  $< 0.01$  (Sig = 0.00) that means independent variable and dependent variable had linear relationship at the level of significant followed the regulation of linear regression analysis. About sampling distribution reveals that at significance level of the test Sig. = 0.164 and Kolmogorov-Smirnov test = 1.118 which more than the level of significant (Sig.  $> 0.05$ ) showed that there was normality or normal distribution followed the regulation of multiple linear regression.

Result of multiple linear regression analysis: factors affecting characteristic of hard working and work-satisfied elderly home care volunteer at the level of significant 0.05 were 2 variables in descending order as government support factor ( $X_8$  Beta = 0.15) and occupation factor ( $X_7$  Beta = 0.06). Factors affecting characteristic of not hard working but work-satisfied elderly home care volunteer at the level of significant 0.05 were 2 variables in descending order as religion factor ( $X_4$  Beta = 0.21) and school factor ( $X_6$  Beta = 0.16). Factors affecting characteristic of not hard-working, and also unsatisfied in work elderly home care volunteer at the level of significant 0.05 were 2 variables in descending order as community factor ( $X_5$  Beta = 0.25) and friends factor ( $X_2$  Beta = 0.23). Factors affecting characteristic of hard -working but unsatisfied in work elderly home care volunteer at the level of significant 0.05 were 3 variables in descending order as

Community factor ( $X_5$  Beta = 0.21), friends factor ( $X_2$  Beta = 0.16) and mass media factor ( $X_3$  Beta = 0.15).

**Table 2** Correlation coefficients (r) between independent variables and dependent variables

Dependent Variables (Y)	Independent Variables (x)	hard working and work-satisfied (y1)		Not hard working but work -satisfied (y2)		Not hard-working, and also unsatisfied in work (y3)		Hard - working but unsatisfied in work (y4)	
		®	Sig.	®	Sig.	®	Sig.	®	Sig.
Factors affecting characteristics of elderly home care volunteers	X1Family	0.32	.00**	0.22	.00**	0.42	.00**	0.31	.00**
	X2Friends	0.36	.00**	0.28	.00**	0.31	.00**	0.23	.00**
	X3Mass Media	0.33	.00**	0.37	.00**	0.39	.00**	0.36	.00**
	X4Religious	0.38	.00**	0.40	.00**	0.28	.00**	0.29	.00**
	X5Community	0.34	.00**	0.38	.00**	0.24	.00**	0.39	.00**
	X6School	0.45	.00**	0.39	.00**	0.33	.00**	0.42	.00**
	X7Work-related	0.40	.00**	0.39	.00**	0.29	.00**	0.28	.00**
	X8Public Organization	0.38	.00**	0.30	.00**	0.34	.00**	0.44	.00**

**Table 3** Determinants predicting characteristics of elderly home care volunteers.

IV DV		X <sub>1</sub>	X <sub>2</sub>	X <sub>3</sub>	X <sub>4</sub>	X <sub>5</sub>	X <sub>6</sub>	X <sub>7</sub>	X <sub>8</sub>
y <sub>1</sub>	<b>B (a) = 1.48</b>	0.93	0.02	0.03	0.11	0.07	0.03	0.20	0.14
	<b>S.E.(a)=0.32</b>	0.06	0.05	0.06	0.07	0.07	0.07	0.07	0.05
	<b>P-value</b>	0.09	0.73	0.65	0.09	0.36	0.67	0.00**	0.00**
	R = 0.52 R <sup>2</sup> = 0.27								
y <sub>2</sub>	<b>B (a) = 1.16</b>	0.10	0.08	0.13	0.27	0.14	0.21	0.10	0.07
	<b>S.E.(a)=0.37</b>	0.07	0.06	0.07	0.08	0.08	0.08	0.08	0.06
	<b>P-value</b>	0.12	0.21	0.04	0.00**	0.10	0.01*	0.17	0.23
	R = 0.50 R <sup>2</sup> = 0.25								
y <sub>3</sub>	<b>B (a) = 2.53</b>	0.18	0.42	0.21	0.27	0.56	0.17	0.14	0.11
	<b>S.E.(a)=.73</b>	0.13	0.12	0.13	0.16	0.16	0.17	0.15	0.12
	<b>P-value</b>	0.16	0.00**	0.12	0.09	0.00**	0.29	0.36	0.35
	R = 0.28 R <sup>2</sup> = 0.08								
y <sub>4</sub>	<b>B (a) = 2.06</b>	0.00	0.31	0.32	0.10	0.50	0.05	0.21	0.09
	<b>S.E.(a)=.77</b>	0.14	0.13	0.14	0.16	0.18	0.17	0.16	0.13
	<b>P-value</b>	0.99	0.02*	0.02*	0.53	0.00**	0.78	0.19	0.46
	R = 0.27 R <sup>2</sup> = 0.07								

Problems and obstacles while serve as an elderly home care volunteer were elderly home care volunteers in Western of Thailand faced a lot of bed ridden elder problems that was 132 people, it calculated to 33.00 percentage of respondents and lack of participation with local government organizations was 95 people, it calculated to 23.80 percentage of respondents as well as lack of participation from the elders was 66 people, it calculated to 16.50 percentage of respondents. In addition, researcher found that relevant government agencies did not



accept and support volunteer work was 65 people, it calculated to 16.30 percentage of respondents and volunteers faced travel problem was 57 people, it calculated to 14.30 percentage of respondents.

## Conclusions and Discussion

The comparison of characteristics of elderly home care volunteers classified by personal factor based on the findings of this research. Whether male or female of any age, any religion and occupation, when deciding to be an elderly home care volunteer. These volunteers hard working and work-satisfied for the elderly. Single elderly home care volunteers (10 percentage), unknowledgeable (10 percentage) and have more than 6 years work as elderly home care volunteers (40 percentage) were the characteristic of not hard-working, and also unsatisfied in work. Tin Pratchayaphrut called them as not active working groups, but balance with unsatisfied in work, so they do not harm for the agency as same as withdrawn group of Barber. This type of person focuses on duty for replace acceptable from others in the low level. It was because they unsatisfied in work, the volunteers with this characteristic (more than 6 years work) will tend to quit.

Unknowledgeable, single, more than 6 years work as volunteers of elderly home care volunteers who had the characteristic of not hard-working, and also unsatisfied in work or Zealots concept of Downs (1964) were the quest of power and the glory of their own, optimistic, active and hard-working, but never satisfied in their work. The agency must be careful and find a solution. Otherwise, they can do something foolhardy and reckless, so relevant agency should be cautious this volunteer group about resigning from the elderly home care volunteer because if they unsatisfied in work because local government are not be able to respond this group working. Volunteers will resign and it is difficult to find new volunteers. The recognition and facilitation of these volunteers to work happily will keep the volunteers from continuing to work with the government.

Result of Multiple Linear Regression analysis supported the concept of characteristics and factors affecting characteristics that was the characteristics created by social processes, it may be fixed, modify or even change the style depending on the situation and the social relationship. Characteristics is a blend of interaction through interpersonal interaction in the organization. (Presthus,1962; Berger and Luckmann,1966; Hall,1976). Factors affecting characteristics such as family, school, friend, religion, mass media and occupational group (Adivadhanasit et al, 2000).

Volunteers who have characteristic of hard working and work-satisfied believed that working is a part of life and live for work, respect rules and working processes, set the high life goals, valuable for organization and advance towards achievement (Presthus,1962; Barber,1992). Factors affecting characteristic of hard working and work-satisfied the most was government agency factor for example central, provincial or local government agencies which involved in elderly home care volunteer's work play a role in supporting the budget, materials, equipment, buildings, training, facilities, and coordination, thus supporting and facilitating for elderly home care volunteers make elderly home care volunteers work without pay, built satisfaction, motivation, willingness to work, and pleased with work. Government support was the main factors that make the work of the volunteers successful. Furthermore, adaptation for unstable work such as changing local leader that may reduce the government support make volunteers must adjust so that this group of volunteers has the ability to adapt for uncertainty.

From the concept of the characteristic, the characteristic of not hard working but work -satisfied was people who do not claim authority, status or role are rarely harmful to the organization (Presthus,1962) and the characteristic of not hard working but work -satisfied the most was religion factor such as religious doctrine that elderly home care volunteer

believes in. It affects elderly home care volunteer work or way of life. These behaviors are consistent with the concept of Prosocial behavior which said that motivation of behavior for community links with altruism. Factors affecting are religious practices because all religions teach people to help the underprivileged. (Knickerbocker, 2003; Collins, 2001)

From the concept of the characteristic, the factor that impact the most on the characteristic of not hard-working, and also unsatisfied in work as elderly home care volunteers were community factor because of unacceptable work from the community. The community felt that elderly home care volunteers were strangers who distrustful in accordance with Barber's (1992) about Withdrawn concept. According to this concept, this type of person focuses on duty for replace acceptable from others in the low level or they tend to quit or escape from conflict.

Factor affecting the characteristic of hard-working, but unsatisfied in work as elderly home care volunteers were community factor. It was because elderly home care volunteers work as volunteer because they need to be accepted from other people in the community (Thorard, 2001) especially relatives of the elderly who care for themselves. Volunteer requires that the relevant government agencies, especially the local government, promote the work of elder home care volunteers so that they are known to work effectively and to be accepted. The influence of community factors on this type of characteristic is not different from not hard-working, and also unsatisfied in work.

Result of multiple linear regression analysis found that Family factor did not affecting any characteristic. It is not followed in the concept of socialization that values the family as an influential role model. Parents will provide direct training with verbal precautions or actions to let children know what to do or not to do and indirect training that children have to observe themselves which is a training unconscious (Adivadhanasit et al, 2000). In contrast, family factors have no effect on the characteristic of elderly home care volunteers. Thai society in the rural, children are often not with parents and always with grandparents because parents have to work in the city. The duty of training is to become a school. The influence of friends, mass media, religion, community, and relevant agencies are more affecting the characteristic than family.

The result of the research indicated that a lot of elderly people currently need help while the number of volunteers who care is insufficient. Elderly home care volunteers also work as other types of volunteers so that volunteer's work is a hard task and have not time for self and family. As a result, the lack of people who want to work as volunteers. The proportion of volunteers who taking care of elderly per person is high. Besides, some elderly home care volunteers suggest that local government still do not provide the opportunity to participate and support the budget and equipment that causes problems and obstacle in volunteer's work such as projects that do not meet the needs of the elderly and lead to lack of motivation to work as elderly home care volunteers. Many local governments have limited support because the elderly home care volunteers of any local government depend on preparedness, it was not a compulsion from the Ministry of Social Development and Human Security. The preparedness means the budget to support work and the realization of the volunteer's importance in the responsible area of the leaders of the local government. There is no formal volunteer support available, it depends on preparedness which make elderly home care volunteer's work is not sustainable in some areas. The operational policy changes over the tenure of the leader and with or without support budget. As a result, the work of elderly home care volunteers became a liaison with other volunteers in particular in village health volunteers. Elderly home care volunteers will be more closely than public relations or public relations activities such as the work of village health volunteers.

## Recommendations

The results of the study found that factors the most affecting the hard-working and work satisfied characteristic of the elderly home care volunteer's work was the relevant government agencies, this type of characteristic is desirable of the government sector. Therefore, the relevant agencies need to facilitate, provide support to elderly home care volunteers in the form of budgets, materials and encouragement and praise them because volunteers work with the mind. Prioritizing and accepting volunteers will enable them to continue to work fully.

The results of the research found that factors the most affecting hard -working but unsatisfied in work characteristic of elderly home care volunteers and factors affecting not hard-working, and also unsatisfied in work characteristic of elderly home care volunteers were community factor such as the trust, acceptance and the cooperation of people in the community. Hence, the local government should be publicized and informed about the role and benefits of elderly home care volunteers to people in the community. It will make volunteers who unsatisfied in work or do not want to work give up to the government work.

The results of the research found that factors the most affecting not hard working but work -satisfied characteristic of elderly home care volunteers was religion factor. This type of characteristic of elderly home care volunteers was inferior to the hard-working and work satisfied characteristic. People who sacrificed and do social benefits were rare. Government agencies such as the Ministry of Education and Ministry of Social Development and Human Security should be instilled social benefits in the youth, you reap what you sow, know the sacrifice, help other people by taking the youth to temple or do activities for the community.

The results of the research found that elderly home care volunteers with different in gender, age, religion and occupation will have no differ about the type of characteristic except the level of education. It means learned volunteers will be hard-working and work satisfied and not hard working but work -satisfied characteristic of elderly home care volunteers, but the elderly home care volunteers who unlearned will be the third type of characteristic (not hard-working, and also unsatisfied in work) and the fourth type of characteristic (affecting hard -working but unsatisfied in work). The number of volunteers who did not attend school was small, but due to lack of people want to work for the collective and to keep the unlearned volunteers continue to work. The government cannot determine the criteria for the study to be used in the selection of volunteers. If they want hard-working and work satisfied characteristic of the elderly home care volunteer, they cannot choose the high education volunteers. Ministry of Social Development and Human Security and local government must provide training for general health knowledge, physical therapy, nutrition, and mental health to the elderly home care volunteers continuously.

Based on the findings of the study, marital status as single of elderly home care volunteers was the third type of characteristic (not hard-working, and also unsatisfied in work) and the fourth type of characteristic (affecting hard -working but unsatisfied in work). According to the interview reveals that single 40-50 years old work for the family but the majority of married, widowed and divorced elderly home care volunteers are aged 50 and over who were the hard-working and work satisfied and not hard working but work -satisfied characteristic. Elder people or retirees some have children take care or have more free time or was the farmer. They can spend more time volunteering and work more. Therefore, in order to receive those who wish to work as elderly home care volunteers, it is recommended that people aged 50 and over. To increase the number of elderly home care volunteers to younger people in order to continue volunteer's work. Ministry of Social Development and Human Security and local government should organize volunteer programs for elderly people to cultivate volunteerism and citizenship in all ages.

The results of the research found that about period of time work as volunteers, the volunteers who work as volunteers more than 6 years was the third type of characteristic (not hard-working, and also unsatisfied in work) and the fourth type of characteristic (affecting hard - working but unsatisfied in work). It shown that people who work as volunteers for long time may less put to work and unsatisfied in work or people were more time work as volunteer, they were fainter. In government sector such as local government should encourage elderly home care volunteers who work long time for example organizing field trips to study local government organizations that have been successful in organizing activities for the elderly and praise the teamwork to make the volunteers feel accepted.

The results of the research found that problems and obstacles while serve as an elderly home care volunteer were a lot of bed ridden elder but the number of elderly care volunteers at home is small. Ministry of Social Development and Human Security and local government should increase number of volunteers by issuing regulations for elderly home care volunteers, have welfare and travel insurance as an incentive to work.

Based on the findings of the study, elderly home care volunteers were lack of participation for working with local government. Therefore, giving the opportunity to present projects for elderly, participating in the planning and evaluating made elderly home care volunteers were accepted and local government will have more projects that solve problem and meet the needs of the elderly.

Based on the findings of the study, elderly home care volunteers did not get participation for elderly and elderly's family. Local government must introduce volunteers to be known even if many elderly home care volunteers already were other type of volunteers. The role of elderly home care volunteers was also essential.

Based on the findings of the study, elderly home care volunteers faced travel problems. Thus, Ministry of Social Development and Human Security or local government should be head of elderly home care volunteers and provide legal support elderly home care volunteer's work by taking the regulations of village health volunteers may be used as an example.

### **Recommendations for Future Research**

The elderly home care volunteers are responsible for helping government to provide public services. The work of these volunteers reflects the civic commitment to sacrifice for the public by caring and imparting knowledge to relatives and lineage of the elderly. In the next research, researcher should study the knowledge management of elderly families who received the information from volunteers. If the elderly families have good knowledge management, it shows that people in the community can help themselves.

Some elderly home care volunteers received elderly home care volunteers prize so that the next research can study the process of transferring knowledge from these elderly home care volunteers as an example to future volunteers.

In the next research, research can be conducted on the factors of success in knowledge management of elderly home care volunteers. The variables that may be studied such as culture, technology leaders, etc. and should be mixed method both quantitative and qualitative research. In qualitative research, group discussions should be organized.

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# Book Review: Cybersecurity and Cyberwar: What Everyone Needs to Know

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Singer, P. & Friedman, A. 2014. **Cybersecurity and Cyberwar: What Everyone Needs to Know**. Oxford: Oxford University Press.

This book also provides an inclusive explanation of various case studies of cybersecurity and cyberwar including the insider interviews and several dramatically statistics for raising the awareness of its drastically impacts. If you would like to understand the ways to protect malware and cyberattacks, this book will be the one that suits your interests. Over the past decade until the present, we could not avoid the problems of cyber insecurity and the worst scenario may lead to the cyberwar. Thus, we have had to deal with these problems by setting up the promptly preparation and protection. It is important for all of us to become knowledgeable persons and involved in the management of cybersecurity. The contents of this book cover all issues of cybersecurity and cyberwar as well as public policies to solve the problems of cyberattacks. Thus, this book will be useful for the everyday internet user to the policymaker with the essential tools to better understand cybersecurity and the threats that face the impacts of cyber insecurity in order to protect national security as much as we can.

The format of this book is structured in conversational questions and answers from beginning to the end and it seems to be easy to read for who appreciate the importance of information security. This book begins with and overview of information technology and internet development. The authors attempt to offer a wealth of cybersecurity and cyberwar information especially on the cyber threats and the needs for the secure information systems on that internet. In terms of cybersecurity and cyberwar, author also provide the information of public policies and national security schemes with the insightful information. This book also explains the major challenges of United States (US) government has to pay attention to the attribution of cybersecurity and the complexities of cyberwar especially on the protection of information bleeding to China. The bleeding of information to China led to the vulnerability of infrastructure systems in the US which needs many resources to fix the problems and its consequences. As a result, these impacts have increased their awareness of the importance of cybersecurity issues among the US government authorities.

Therefore, the nature of cybersecurity incidents that are the central of serious discussion over the past decade which indicates the increasing importance of the protection of cybersecurity and the prevention of cyberwar. Both authors also provide their discussion around the concept of “resilience” which refers to systems and organizations are prepared for attacks and can maintain their functions. Thus, we should focus on how to building the information systems on the net to be more resilient to resisting a variety of different types of threats. However, both authors summarized that there are no one (or many) methods to deal with the impacts of cyber insecurity and its attacks. Thus, we have to learn and adjust the strategies to solve these problems.

In conclusion, this book is an impressively must-read for everyone who interested in cybersecurity issues. Both authors provide a helpful guidance and informative breakdown of current cybersecurity and their suggestions to protect the cyberwar, and which roles (or capabilities) of national and international institutions can play in cyberspace (such as cloud computing, big data, the mobile phone revolution) as we are living in the era of “internet of thing”.



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