

STUDY OF LAWS PROBLEMS THAT RELATED TO THE LIABILITY OF THE GOVERNMENT, UNDER THE ACT OF TORT LIABILITY OF OFFICERS, 2539

by

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ABSTRACT

According to the liability of Thai state, it is not cover government officials. They have to responsible by themselves as the state denies helping and solving with officials. Although, they are a part of the state and have authority under the state power, problems and liability are responsible of only officials. Therefore, they are caused of government official performances and work barrier. Tort Liability Act BE 2539 set the new rules. It illustrated that "By the Government of the State is liable for violations of state officials in the performance of duties, in the case of a State that is not violated by willful act or gross negligence. Moreover, the Departments of State has liability in damage issues that caused by the fault or defect from deficiency of the agency or the operating system as a whole". These issues are a part of the government liability, not official liability as the victim has the right to seek remedies and damages from the government without having to bring the case to court. The research found that there are several problems for example; the law does not clearly define the extent of the liability. As a result, the law cannot protect the public and government official more efficiency. This includes the long period of judgment as victims encounter waste time and expenditures. Hence, they have to sue in courts by themselves. So the researchers propose adding transitional provisions. The details are related to set up scope of law and clearly. Furthermore, the period of judgment should be short and suitable in current situations. In case of public relations, the government should support many media to educate people. These are shown efficiency, fair and support in laws accordance with the intent and purpose of the law.

KEYWORDS

Liability, Government Official, Thailand

HISTORY AND IMPORTANCE OF PROBLEM

Previously government limited role and rule in public service for residents due to the state had sovereignty and command by state power. State is disclaimer in state or officers operations then state had trend to expand and change role of state to be welfare state. It makes the resident has the right to call for state public service operation for example economic, social and political and more at the same time the state also expands more role due to there is war factor, economic crisis and technology development. State or state officials and staffs have opportunity caused the damage more too because the public operation of state is doing for their public interest so state and all residents are liable on the whole. From those reason caused the concept to expand liability of state more therefore victims have to been gotten compensation.

Liability of state or administration unit is from lawful acts such as contract, tort or other causes like civil penalties. Currently, liability was from lawful acts and unlawful acts for public interest of state in law system each of system has principles for private who was the victim able to claim compensation from state or state officials. Common system law, those rules were from tort rule or the law of tort accordance with private law. In those laws assumed that the meaning in that tort to fore private and state and state staff and the court has power to consider the liability of administration unit such as the Court of Justice. The countries enforce this law for instance England and German. In Civil Law system in Europe for example French, the private victim can claim compensation under private law and court has the power to consider the liability of administration unit such as the state officials must be liable damage happened from unlawful acts.

Liability of state in the Kingdom of Thailand law, the previous one that state had no liability from act itself after that it has been extended the limit of liabilities in any laws. Constitution of The Kingdom of Thailand B.E. 2540 has been extended liabilities of state by regulations that state must be liable in compensation in any cases such as to give effort and victim in criminal case has the right to get necessary and properly compensation from state. The victim in criminal case

has been imprisoned during judiciary that final judgment is who is not offender or defendant acts not fault. They have been gotten the right compensation and properly expense covered the right lost from that operation duties accordance with the conditions and law enforcement method. Beside the regulations still regulate state officials must be liable for tort acts of state operation and liability for loss from fault or disability of state official or operation. In case of the staff is tort acts who is not willful indifference or gross negligence of Tortious Liability of Officials Act B.E.2539 from now on.

Due to rule enforces state liability for that lawful act is difference with the liability from unlawful act included liability on contract not for general contract or state sector contract has different from tort liability so it is necessary to study another article. This research has objectives to study the state liability only in case tort liability of state in Thailand whether it has suitable or relate to current situation or not. The problems and unsuitable are specified the rule of liability by taking guidance of comparison with international law exclude the liability on contracts or in any cases. For it is guidance to analyze study to liability of state in Tortious Liability of Officials Act B.E. 2539 is necessary to study why the state or official state must be liable for violation of administration and why the state or state officials is liable for violation of staff in performance of duties because the liability of state is when state can be duty right holder and liability by enterprise. In preliminary shall say about the definition of type and status of enterprise then say about law is able enforced and the court has authorization still included liability of state and state officials.

Therefore, public service operation is the one of government rule. State must operate to pass state officials or government officer is representative state to respond people demand. The authorized representative government to operate the public service for example preventing life and property, nation defense, supervision in execution of lawful, to stipulate rule, operation in economic, social utilities of state officials or government officers have opportunity to taking the damage for private sector. Although that public service operation of state officials or government officers are administration unit to operate anything for highest benefit accordance with legal state. All of this must be lawful act therefore to assure the right and freedom of people is been free by administration unit. The Tortious Liability of Officials Act B.E. 2539 has been separated tort liabilities of officer caused by both the duties and not duties when the damage was been happened by state officer operation, refrain from acting, leave from operating duties or gross negligence to other people cause death, body, health, freedom, property, right or any. State officials must pay compensation before. In the part of government officer how much who are liable have had been recourse to later. By state officials must be liable for state tort duties. In case of staff is tort act by without willful act or gross negligence but in case to prove that tort act of staff in performance of duties was done by willful act or gross negligence. The law has specified the state officials have the right to recourse from government officer. However, the right of recourse from government officer must have the matter of fact that this officer had operate by willful act or gross negligence but it has not specify clearly how are the willful act and gross negligence? Just only specifies that those duties are investigating commission to be operator to consider about the liable person and amount of compensation. The rule of the Prime Minister's Office of operation principle of the Tortious Liability of Officials B.E. 2539 that recourse right from officer, in case of state official paid compensation to victim then it had the right to call those compensations from officer within one year from officials paid the compensation to victim. The limitation period of those recourse right if in case of there is apparent evidence that those operation was been happened by gross negligence, it was no problem to officials, it would be able to operate the right of claim on time but in fact it may know that operation of those officer is willful act or ordinary negligence or willful act or gross negligence because it must to detect the matter of fact, The fact in some case must take long time to detect. From set the investigating commission process of unit, investigation process, the fact happened had complicated in fact so it may take long time to seek the fact and collect adduce evidence. For one year specified by law as the right for the right of official to recourse to shorten time for officer operated duties by willful act or gross negligence as a result the fact is error so the consequential damage may be liable of government officer. Nevertheless law specified the principle of liability for damage was caused by the fault defect by state official or operating process as a whole by broken the liability portion of liable state for damage caused by fault or defect by state official or operating process as a whole from liability of government staff as Tortious Liability of Officials Act B.E.2539, those principles were not specified principle of liable portion between state officials and staff obviously. As a result, it may not cover state officers and victims who are gotten compensation comfortable and fair.

PRINCIPLE AND CAUSE

Currently state officials have start the rule and to be close with people. The government officer is representative of state unit must relate to people so the barrier of conflict authority law of state officer is going on all the time caused going to sue. Thought law currently has specified principle about liability for damage caused by fault or defect of state unit as the Tortious Liability of Officials Act B.E. 2539, in some case in this law still has deficiency in some case. Therefore, this research study emphasize the core of real barrier to build fairness and solving problems become visible both government officer gotten more fair and people also gotten remedies instantly caused from state officer operation duties.

RESEARCH OBJECTIVES

Current generation is started to change. State unit also start to big size and the authority more liable duties too included government official is liable for any parts not only middle sector, region sector but also local sector. The barrier between government officials and government officer or state officer and people is more on going. One part is happened by misunderstand. The law is not covered the law enforcement caused the barrier then more. This research is taken those problems and studied the core of law then analyzed and compared to international law also proposed to improve and revise hence it is fair for any unit and to create the efficiency in law enforcement then. The objectives of this research study are: 1) to study about history, evolution, guidance of concept, theory related to tort liability of officials, 2) to study about the model and process of tortious liability of officials and the recourse right of officials, 3) to study The Kingdom of Thailand law and international law related to tortious liability, and 4) to analyze the barrier of law related to tortious liability of officials.

Since Thailand enforced the Tortious Liability of Officials Act B.E. 2539. Suing or claim from government officials for liability of that government officer still lack principle in any case included limitation period of recourse right in case of damage happened from state officer operation duties unsuitable in fact as a result the law enforcement has not meet the objective and real intention

SCOPE OF THE STUDY

Researcher is studying and analyzing the barrier of liability of state official as the Tortious Liability of Officials B.E. 2539. To stipulate of Prime Minister's Office of operation principle related to Tortious Liability of officials B.E.2539 included principles and conditions of tortious liability of officials in order to highest benefit of efficiency law enforcement

EXPECTED RESULTS

1. To acknowledge of history, evolution, concept, theory of tortious liability of officials.
2. To acknowledge of model, method and process of tortious liability of officials and recourse right of government official.
3. To acknowledge of The Kingdom of Thailand law and international law related to tortious liability of officials.
4. To acknowledge of the barrier of law related to tortious liability of officials.

CONCLUSION AND RECOMMENDATION

1. There are problems with the state agency responsible for the command and control measures official liability to pay compensation for the taking authorities to seize and auction. The government cannot sue in court to get a court order or judgment of liability to pay compensation to the officer.

2. Problems with the rules and scope of liability as to any offense committed by an intentional act or gross negligence will be the responsibility of public officials. Guidelines and scope and that the only one who is at fault or the fault of the government or the public.

3. There are problems with length of time in legal action against the government. Although, the law provides for the right of victims to be filed with the state agency directly, but it does not have a specific time limit. It must be the age of 1 year from the date of knowledge of a violation and shall be used to realize a claim under Section 448 of the Civil and Commercial Code. The time limit is too small for the exercise. Hence, it may result in a lawsuit filed not in time and the case expires.

SUGGESTION

1. It should have a central or federal agency responsible for the enforcement of the order and the person liable to pay compensation under section 12. The government agencies, in addition to the command and the regulatory authorities must have the same standard.

2. It should be the basis and scope of liability actions clearly show that the framework will be considered a willful act or an act of gross negligence will be the responsibility of public officials, guidelines and scope, as well as the only one who is at fault or the fault of the government or the public. In addition, it is important to government officials and agencies to have a clear division of responsibilities. This will help shorten the duration of the investigation and the evidence sought.

3. It should be amended in the time length of legal action from the 1 year to the limit time of two years, or as appropriate.

REFERENCES

Kamonchai Rattanasakaowwong (1994). general knowledge basic, German Administrative Law Principle. 1st printing. Bangkok: Nititham printing official.

Kamonchai Rattanasakaowwong (1997). The summary press of Administrative Law. 1st printing. Winyuchon Publication House Co.,Ltd.

Kuanchai Santasawang (1997). Comparative Administrative Law. 1st printing Bangkok: Jiraratkarn printing.

Kuanchai Santasawang (1998). Juristic Person Under Public law. 1st printing. Winyuchon Publication House Co.,Ltd.

Chanchai Sawangsuk. Collecting explanation of the Tortious Liability of Officials Act B.E. 2539. 1st printing. Bangkok. Winyuchon Publication House Co.,Ltd, 1998.