Problems and Threats in Law Enforcements and Performances of Criminal Justice for Prosecution of Trafficking in Persons

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ABSTRACT

This study was a qualitative research aimed at studying the problems and obstacles in the law enforcement and performance of the criminal justice system in the prosecution of human trafficking cases under the Anti-Trafficking in Persons Act B.E.2551. Field research was conducted through in-depth interviews and focus group meetings. Sample selection of the study was conducted by Purposive Sampling method from the Key Informants of the agencies of the justice process (Police officers, Prosecutors, Court, Lawyers, Corrections) and the Agencies involved in the enforcement of Anti-Human Trafficking Law. Data were collected from November, 2016 to November 2017.

The government of Thailand is currently trying to tackle human trafficking problems in various significant efforts including the establishment of the policy to prevent and suppress human trafficking as a national agenda and by urging all relevant sectors to seriously step up their litigation against perpetrators and focus on aiding trafficking victims. Furthermore, the budget from the government was increased to tackle human trafficking problems in the amount of 3,208 million Baht; an increase of 23.88% from the year 2016.

Unfortunately, these steps have not been as successful as had been hoped. Officials are still encountering problems in law enforcement, the interpretation of human trafficking, difficulties with procedures, problems of knowledge and expertise of personnel, of fostering a system between government officials and entrepreneurs, and of government officials getting involved in or receiving benefits from human trafficking cases resulting in the Thai government being unable to fully enforce the law on human trafficking.

Therefore, the prosecution of human trafficking case in terms of quality rather than quantity of the cases both domestically and internationally requires the cooperation of all relevant agencies. In particular, officials need to be knowledgeable, serious, and continual in law enforcement to ensure the effective performance of justice through all relevant agencies involved in the prevention and suppression on human trafficking.

Keywords: Law Enforcement, Criminal Justice, Prosecution, Trafficking in Persons.

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BACKGROUND AND SIGNIFICANCE OF THE PROBLEMS

Human trafficking is a violation of the fundamental rights and freedom of an individual as well as human dignity (Saengchan Manoi, 2014) which is a global problem that every country is trying to solve. To ensure effective protection and suppression of human trafficking in each country in the world, the United States has enacted the Trafficking Victims Protection Act of 2000, or TVPA, to suppress human trafficking, particularly human trafficking for sexual services, slavery, or other similar purposes in the United States and various countries around the globe (Sira Sawangsilpa, 2014) through the prevention process, protection of victims from human trafficking (Protection), litigation, and law enforcement to punish the traffickers (Prosecution).

In Thailand, at present, a policy mechanism and driving force for the prevention and suppression of human trafficking has been developed by adopting the Anti-Trafficking in Persons Act B.E. 2551 as a guideline to be consistent with the 20-year National Strategic Plan (B.E. 2560 – B.E. 2579) (Ministry of Social Development and Human Security, 2017) and to focus on driving anti-human trafficking in 5 aspects (5Ps) namely; policy development (Policy), litigation (Prosecution), protection and aiding in recovery (Protection), Prevention, and the cooperative development with networks (Partnerships)

Detail of the comparison of statistics on human trafficking and Thailand Tier Ranking during 2008 - 2017 are as follows

(From: Office of the Attorney General, Office of the Human Trafficking Prosecutor Division, Statistics of the number of cases prosecuted by the investigating officers during 2008 – 2017, May 2, 2017).

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According to the statistics of criminal trafficking conducted during 2008 - 2017, Thailand was ranked as Tier 2 in 2008-2009 with 12 lawsuits in 2008 and 43 lawsuits in 2009. The Trafficking in Persons (TIP) Report in 2009 (U.S. Department of State Diplomacy in Action, 2009) mentioned that Thailand was ranked as a Tier 2 country which means that the efforts of the Thai government to suppress human trafficking have not met the minimum standards. The victims are often Thai children and children from neighboring countries. Although the Thai government has attempted to suppress trafficking by enacting the Anti-Trafficking in Persons Act B.E. 2551 (2008) that came into force on June 5, B.E. 2551 to criminalize traffickers, it was found that state officials who jointly commit trafficking offenses cannot be prosecuted. As a result, during 2010-2013, Thailand was downgraded from Tier 2 to Tier 2 Watch List (U.S. Department of State Diplomacy in Action, 2013). In 2010, there were 75 lawsuits, in 2011, there were 44 lawsuits, in 2012, there were 61 lawsuits, and in 2013 the number of cases increased to 652 lawsuits.

The report indicated that although the process of segregating trafficked persons is progressing, the law enforcement process in Thailand is still failing as there are many limitations that can be caused by several reasons, whether this is knowledge of the law, negligence of law enforcement, or the corruption or exploitation of relevant officials. It is a major concern that the Thai government cannot seriously enforce the law on human trafficking, allowing trafficking to continue. These violations of human rights lead to a severe negative impact on the overall image of Thailand.

Due to the above-mentioned causes, Thailand was ranked Tier 3 in 2014-2015 (U.S. Department of State Diplomacy in Action, 2015) which means that the country does not fully comply with the minimum standards in line with human trafficking laws of the United States and have not shown significant efforts to tackle trafficking. Therefore, Thailand was ranked in Tier 3 for both consecutive years after 2014.

Moreover, the TIP report also indicated that the Government of Thailand does not fully comply with the minimum standards for the elimination of trafficking, and is not making significant efforts to do so. Thailand investigated and prosecuted some cases against corrupt officials involved in trafficking but trafficking-related corruption still existed and continued to impede progress in combating trafficking.

As a result, increased emphasis and law enforcement, as well as government efforts from April 1, 2015 to March 31, 2016, enabled Thailand to move to the Tier 2 Watch List in 2016 – 2017. There were 408 lawsuits in 2016 and 65 lawsuits in 2017. From the TIP Report 2017, the United States continues to rank Thailand as Tier 2. The report indicates that the Thai government still does not fully comply with the minimum standards.

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Statistics show the corruption of government officials in Trafficking Cases during 2012-2017 (Interviews with international NGOs Sample group: International Non-Government Organizations. *Statistics of Corruption of State Officials in Trafficking Cases 2012-2017.* Interviewed April 27, 2017).

The Corruption of Goverment Official's Complicity							
Corruption	Years						
	2017	2016	2015	2014	2013	2012	Total
Police	4	10	8	3	1	1	27
Military	-	-	6	1	-	-	7
Civil Servants	-	-	1	1	-	-	2
Local Politicians	1	-	12	2	-	-	15
Total	**5**	**10**	**27**	**7**	**1**	**1**	**51**

From the statistics in **2012-2017,** there were **51 government officials** involved in

corruption in trafficking cases. In *2012* and *2013*, Thailand was ranked as Tier 2 Watch List. In 2012 one government official (1 police officer) was involved in trafficking. And in 2013 there was one government official (1 police officer). In *2014* and *2015*, Thailand was ranked as Tier 3. There were 7 government officials involved in trafficking cases corruption (3 police officers, 1 military officer, 1 civil servant, and 2 local politicians). In *2015* there were 27 government officials involved in trafficking cases corruption (8 police officers, 6 military officers, 1 civil servant and 12 local politicians). In *2016* and *2017*, Thailand was ranked as Tier 2 Watch List. In 2016 there were 10 government officials involved in trafficking cases corruption (10 police officers). And in *2017* there were 5 government officials involved in trafficking cases corruption (4 police officers and 1 local politician). Corruption of officials is still a big problem in Thai society and remains a major obstacle to the effective enforcement of criminal law in human trafficking.

Therefore, the most important factor in helping to solve the problem of human trafficking in Thailand is for officials working in the justice system and law enforcement agencies that deal with human trafficking cases should be required to be knowledgeable, serious, and continual in law enforcement, which is consistent with the context and changes in the current situation. In addition, all sectors should be integrated to operate in the same direction in order to be more effective and successful in tackling, preventing, and suppressing human trafficking in Thailand.

Research Objectives

To study the problems and obstacles of law enforcement and the practice of justice in criminal proceedings against human trafficking.

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Conceptual Framework

System Theory (Michael I. Harrison, 1987) has been adopted as a conceptual framework to describe covers for four main components namely: 1) Input- convention, law, policy and strategy on human trafficking. 2) Process- methodology and coordination to the relevant agencies. 3) Output – of Law Enforcement and Performance of Criminal Justice for Prosecution of Trafficking in Persons. And 4) Feedback- the analysis to result of the study on problems and threats on law enforcement of Criminal Justice for Prosecution of Trafficking in Persons.

Scope of the study

Scope of the Sample

1) Sample of in-depth interviews was used by a purposive sampling selection method by selecting the key informants who have a lot of social work, have a lot of primary information, have special knowledge of any discipline more than anyone else, other important factors, such as career and experience were also considered of the 31 persons.

Organization	Persons
Police Officer of Anti-Trafficking in Persons Division and Metropolitan Police Division.	5
Officer **of Department of Anti - Human Trafficking office of the Attorney Central.**	2
Judge of the Criminal Court (Human Trafficking Division).	2
Officer **of Department of Special Investigation (Anti - Human Trafficking Center).**	2
Officer **of Ministry of Social Development and Human Security (Anti-Trafficking Division)**	2
Officer **of Department of Consular Affairs (Ministry of Foreign Affairs)**	2
Officer **of Anti-Money Laundering Office (AMLO)**	2
Officer **of Central Employment Registration and Worker Protection Division**	2
Department of Labour Protection and Welfare (Ministry of Labour)	2
Officer **of Department of Provincial Administration**	1
Executive of international organizations dealing with Human Trafficking	2
Academics Officer	2
Practitioner in NGOs	3
The public in society	2
Total	**31**

2) Organize the Focus Group meeting to brainstorm the opinions on problems, weaknesses, and obstacles in the conduct of criminal human trafficking of the justice process under the Anti-Trafficking in Persons Act B.E. 2551 by selecting from scholars who have academic work related to trafficking. As for the operators, they were selected from persons involved in the prevention and suppression of trafficking for more than 3 years including trafficked persons and the general public.

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The 1st focus group consisted of 30 persons who are the experts from:

Organization	Persons
The Anti-Trafficking in Persons Division (Royal Thai Police)	3
Office of the **Attorney General**	2
The **Court of Justice**	2
The **Institute for Justice Research and Development (Justice Affairs)**	1
Anti-Human Trafficking Center DSI	1
Department of Corrections	2
Department of Consular Affairs (Ministry of Foreign Affairs)	1
Department of Employment	1
Department of Labour Protection and Welfare (Ministry of Labour)	1
Anti-Money Laundering Office	2
The Ministry of Social Development and Human Security	2
The **National Human Rights Commission of Thailand**	1
Non - Government Organizations (NGOs)	5
International Organizations	1
Academic Officers	4
The **public in society**	1
Total	**30**

The 2nd **focus group** consisted of 29 persons who are experts who have experience of at least 1 year and have knowledge and expertise on the Anti-Trafficking in Persons Act B.E. 2551 and **Academic Officers.** Incidentally, the sample populations of the 1st and 2nd focus group were not unique.

Organization Persons

Organization	Persons
Court of Justice	1
Office of the **Attorney General**	3
The **Police Officers of Anti-Trafficking in Persons Division and Metropolitan Police Division**	6
The **Office of Justice Affairs (Ministry of Justice)**	2
The **Anti-Human Trafficking Center DSI**	2
Department of Labour Protection and Welfare (Ministry of Labour)	2
The **Anti-Money Laundering Office (AMLO)**	2
The **Ministry of Social Development and Human Security**	2
The **National Human Rights Commission of Thailand**	2
Department of Provincial Administration	2
Non - Government Organizations (NGOs)	3
International Organizations	2
Total	**29**

Timeline: November, 2016-November, 2017

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Research Result

A result of the study on the problems and obstacles on law enforcement, and the operation of justice in criminal trafficking cases displayed the results of qualitative data analysis on the following important issues:

1. Problems and obstacles of the police officer

1.1 Legal problems and Criminal Procedure in Human Trafficking

The study indicated that are several related laws on human trafficking, such as the Prevention and Suppression of Prostitution Act, B.E. 2539 (1996), Child Protection Act B.E.2546 (2003), the Anti-Money Laundering Act B.E. 2542 (1999), Criminal Procedure Code B.E. 2557 (2014), the Trial on Human Trafficking Act B.E. 2559 (2016) because in some cases, there is a need to implement other relevant laws in the trial. However, it was found that certain laws impede the enforcement or the operation of police officers in certain areas such as **problems of interpretation** of the definition in Article 6, **difficulties in the procedure** in Article 11, in the case of trafficking outside the Kingdom, the investigator has no authority to proceed with the Criminal Procedure Code, Article 20 resulting in some cases not being able to track the offender to prosecute. **Also, the issue of the limitation of the period of temporary protection** to persons who are reasonably believed to be trafficked persons in Article 29, as the law provides temporary protection for those victims of no longer than 24 hours, which can be extended for a period of 7 days. In this case, there must be a sufficient need for the court to allow for the extension of time, but the police officers are unable to seek details of the facts or evidence to widen the litigation with major perpetrators.

1.2 Problems of personnel

The results showed that some personnel lacked knowledge, understanding, and experience in the operation of trafficking litigation due to relocation or transfer assignment, so the litigation was unsuccessful. As a result, the capacity and efficiency of the litigation and the operation decreased.

1.3 Problems of coordination

The study found that in some cases there was a lack of coordination in terms of the information and the assignment for clear tasks and responsibilities to the relevant agencies to prepare for the pre-operation. As a result, the collection of evidence at the scene and the custody of the accused was not as effective as it should have been.

2. Problems and Obstacles for the Prosecutors

2.1 Legal problems and Criminal cases operation in Human Trafficking

From the results of the study, it was reported that the problem of legal obstacles in some articles was not consistent in the operation, such as examining a witness in advance; the law states that, when there is reasonable cause to believe that a witness will leave the Kingdom, no dwelling place, or have a resident far from judicial court, or there are reasonable grounds to believe that there will be interference either directly or indirectly with the witness or that evidence, or any other necessity that would be difficult

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to bring these witnesses to be investigated in the future. In practice, it was found that the evidence is insufficient to prosecute or to use as a reason for the investigation in advance. Additionally, in some cases, there is no clear reason for the investigation in advance, or there may be no need for an investigation. There are therefore obstacles towards the offender or the accused to have a chance to cross-examine.

In addition, some laws also contain ambiguity in terms of the definition, for example, if there is a seizure of identity documents, it is suddenly considered human trafficking, which in practice, prior consideration should be given to the context and circumstances of the incident to use in determining whether it is a trafficking offense or not.

2.2 Problems of Personnel

The findings showed that since trafficking cases are often complex and there are many related laws, personnel are required to have skills, knowledge, understanding and experience, so that they will be able to enforce the law effectively. But due to the problem of job transferring or task changing, new personnel were inexperienced and lacked skills; as a result, the effectiveness of law enforcement and criminal trafficking was reduced.

2.3 Problems of Coordination

The study found that in some cases of the offenses committed outside the kingdom, the coordination to destination country in terms of the information or the perpetrator's trace, did not receive as much cooperation as it should have done. With regard to the coordination of international agencies, there was some delay in the procedure in some cases, affecting the information and evidence gathering, as well as circumstances beneficial to litigation, preventing prosecution of traffickers outside the Kingdom.

3. Problems and obstacles of the Court

The study found that in criminal justice trafficking cases in the Court of Justice, most of the sufferers, witnesses or victims are aliens or foreigners who use local dialects or minority languages, so it is imperative to have an "interpreter". This is so the multidisciplinary teams can jointly work with the sufferers, the witnesses or the victims to enable the officials to understand and operate the work properly and fairly. Currently, the Ministry of Social Development and Human Security has set up an interpreter account with 251 interpreting accountants (Ministry of Social Development and Human Security, 2017). However, the third-language proficiency of the interpreter is frequently insufficient to perform effectively which is a major problem in the criminal proceedings of human trafficking cases. In some instances, the witnesses are aliens or foreigners who use minority languages. Thus, it is a matter of coordination or cooperation in obtaining official interpreters who specialize in a third language. In addition, in some cases, there is a dispute over the interpretation of an interpreter. Therefore, the interpretation needs to be reviewed for validity, which takes time and causes delays in the human trafficking trial.

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4. Problems and obstacles of Corrections

The study indicated that there were 332,908 prisoners (Department of Corrections, 2017) in total, but only 200,000 prisoners (Nathee Chitsawang, 2017) could be effectively accommodated in the prisons throughout the country. In addition to affecting the efficiency of control, correction and improvement of their behavior, a problem of the insufficient number of officials compared to the number of the inmates, has become increasingly common, especially in prisons that are old, defective, cramped, and crowded. In these prisons the efficiency of control, correction and improvement of behavior of the inmates does not succeed because there is not enough area or space.

Furthermore, Thailand's accession to the ASEAN Community (AEC) in 2015 resulted in the Corrections Department being obliged to increase its duties. In addition to having to control foreign inmates, crime has become more complex, and different forms of crime have been developed. Criminal cases involving human trafficking are linked to local and transnational organized crime; therefore, the Corrections Department needs to specially control these inmates which is a practical problem as the prisons or Correctional Institutions lack the separation system for treatment of inmates individually. In addition, some officers treat the offenders in human trafficking cases similarly to the inmates in general lawsuits. It is therefore somewhat worrying that the methods of committing crime or types of complicated criminal cases can be transmitted to the inmates in other groups.

5. Problem of corrupt government officials

The study found that the main factors leading to the problem of human trafficking in Thailand were not resolved successfully because the beneficiaries of these activities were often government officials and influential people in the area, who were stakeholders, or had partnerships with businesses that were guilty of trafficking. In addition, some government officials supported and protected the offenders from prosecution so the arrests and prosecution could not be extended to the important principal and the victims were not treated fairly.

Further information from the study found that most government officials became involved in corruption in human trafficking because of the money available to them and therefore the chance for them to change to a higher level. The reason for this may be the fact that some government officials receive a low income, or because Thai culture is based on a fostering system. Some local politicians are involved in the exploitation of human trafficking in the form of brokering or engaging in the provision of persons by virtue of illegal means.

Due to the causes mentioned above, government officers are unable to enforce the law to prevent and suppress human trafficking seriously and effectively which is a major obstacle to solving the problems and criminal proceedings on human trafficking of the agencies of the justice process of Thailand.

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Conclusion

The results of the study found that there were problems and obstacles in Law Enforcement and the Justice system. Inquiry officials had some difficulties in interpreting the law, their performance, victim screening, and personnel displacement all affected their working continuity and they experienced problems. When the attorney had to examine witnesses early, the defendant did not have any chance to reject the accusation. Moreover, some Sections were still ambiguous. In the Court's investigation, there were not enough interpreters who were capable of a third language or ethnic languages. Moreover, there were not enough prison officers and many of the prisons were old, damaged, and crowded.

Suggestions

From the results of the study regarding the problems and obstacles in law enforcement and the practice of the justice process in criminal proceedings against human trafficking, there are important suggestions in the following areas:

1. Amendment of the law or practice regarding the conduct of criminal cases of human trafficking

1.1 There should be some amendments to the law relating to human trafficking. Specifically, the definition should be clear and not ambiguous. For example, the Anti-Trafficking in Persons Act (No. 3), B.E. 2560 (2017), Section 6, Paragraph 3 (pp.19-20), Illegal Exploitation. The meaning of other forms of sexual exploitation, the law prescribed that ..no matter whether that person consents or not…The term "person" should be obviously expanded and cover the status that may be the victim from human trafficking in order to solve the problem of different interpretation in identifying trafficking offenses or being trafficked.

Including the issues related to the role of agencies under the Anti-Trafficking in Persons Act B.E.2551 (2008), (pp.32-33) to tackle the problems of overlapping power and the operation of the agencies of justice process and relevant agencies involved in the prevention and suppression of human trafficking.

1.2 Provision should be amended for temporary protection periods for the purpose of seeking the facts of a person who has reasonable grounds to believe that he or she is the victim of a trafficking offense under Section 29 for longer protection period of the victim to ensure that the detailed investigation is effective and be able to greatly expand the effectiveness of the suppression of major offenders more effectively.

1.3 ACTAMENDINGTHECRIMINAL PROCEDURE CODE (No.115), B.E.2557 (2014), Section 20, should be amended which indicates that the Attorney General has the power to investigate or assign the person in charge to investigate the offenses committed outside the Kingdom. Clear procedures should be established when there is a prosecution outside the Kingdom in order for the officials of judiciary or other related agencies on the prevention and suppression of trafficking to work correctly and have more understanding of the law so they can operate the work effectively in the same direction.

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2. Personnel

2.1 The selection of qualified, skilled, suitable, and competent personnel should be conducted to operate the work in prevention and suppression of human trafficking in a systematic and concrete manner by anticipating the situation of trafficking in Thailand in the future to determine the quantity of staff to work well enough at both central and regional areas.

2.2 Reduce position or job moving as it affects the implementation of anti-trafficking tasks because the knowledge and expertise of staff does not only occur through training, but also with the experience of the staff.

2.3 Training should be provided to staff of various agencies involved in the prevention and suppression of trafficking to improve the skills of separating the victims. This training should cover techniques for interviewing the persons who may be victims, such as defining the issues to cover the investigation, extension and arrest of human traffickers including the skills to observe the victim's environment. Additionally, training should also include content related to the caregiver's approach and assistance to each sufferer.

3. Coordination

3.1 Authorities and agencies involved in the prevention and suppression of human trafficking should be integrated both inside and outside the country whether the coordination is to exchange information about the prosecution or the offender, notifying the information of the offender, providing information about the habitat or hiding place of the offender, in order to activate effective human trafficking cases and reflect better management of human trafficking in Thailand.

3.2 There should be a coordination between agencies dealing with criminal trafficking about the information in order to prepare for pre-operational work which consists of the preparation of a multidisciplinary team prior to arrest and aiding which is regarded as an important step. This will ensure that clear roles and responsibilities are assigned to relevant agencies starting from the agencies responsible for helping the victim of trafficking immediately up to the agency responsible for collecting evidence and controlling suspects for the efficiency in aiding and protecting them, as well as gathering the evidence to bring the offender to court in a timely manner.

4. Problem solving and combatting corrupt government officials

4.1 Corruption of government officials- Government officials should receive higher salaries with adequate welfare and government officials at all levels should submit an account of their property.

4.2 Agencies involved in the prevention and suppression of the corruption of government officials - the provisions of the law should be amended or supplemented to cover the prosecution of both the giver and the recipient of a bribe, the potential of a fair and speedy litigation should be promoted, and there should be serious penalties against government officials who commit corrupt practices.

4.3 A system for storing the assets of government officials that can be verified should be launched to ensure transparency. Litigation information should be disclosed to the media and the public so that the public can access information and monitor the officials' operation.

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4.4 Participation of law enforcement agencies and all sectors involved in criminal proceedings on human trafficking both nationally and internationally should be promoted in the process of arresting, trial, investigation and assisting the victims of trafficking. Better teamwork should be able to analyze and solve the problem of corrupt government officials in trafficking cases in the right way.

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