



The Review Literature on Law, Criminal Justice Process and ASEAN cooperation on criminal justice for the preparation toward The Association of Southeast Asian Nations: ASEAN

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■ Abstract

Central to understanding the practice and use of law in ASEAN member Countries is discovering the different between law obedience among the ten countries. This research looks at criminal and justice factors which affect people in the ASEAN Region in order to resolve the main issues concerning people's lives. The aim was to learn more about the criminal justice system focusing on specific topics such as drugs, fraud, human trafficking, illegal migration and so forth. The aim of this research is to help Thailand, signatory to the agreement of ASEAN, to be successfully integrated into one community by 2015. With this in mind the research team arranged an international meeting among the ten member countries which was separated into two working groups in order to provide a formal documentary system, important data and appropriate answers from the ASEAN member countries.

A survey was taken to establish the regard of law enforcement in these all ten countries. The research team received all of the results they had expected. The research team met with delegates from all ASEAN member countries and completed its goals through discussion, asking questions, and presentation by delegates, in order to elicit information about the criminal justice system. The research team was delighted that the research was completed successfully with acceptable results through the cooperation of the ASEAN community.

■ Introduction

The Association of the Southeast Asian Nations or ASEAN is an organization of countries in Southeast Asia. It was established to accelerate economic growth, social progress and regional peace and stability. It also promotes cooperation between ASEAN and foreign countries or international organizations. The policy of ASEAN is set forth at ASEAN Summit meetings of nation leaders, ministers and ASEAN senior executives. The ASEAN Summit meetings of nation leaders

provide general policy and a chance for country members to declare mutually beneficial goals and the long term plan of the ASEAN community. Meetings of ministers and ASEAN senior executives provide specific policy. At the ASEAN Summit in 2003, the leaders affirmed their strong commitment to accelerate the establishment of an ASEAN Community by 2015 and signed the Declaration of ASEAN Concord II or Bali Concord II. The ASEAN Community is comprised of three pillars, namely the ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC) and ASEAN Socio-Cultural Community (ASCC).

The establishment of the ASEAN Community will result in migrant populations and workers and the creation of new international businesses that will have an effect on national economics and stability, as well as adding to the problems of crime. It is necessary for Thailand to prepare itself for possible problems resulting from international business, criminal case prosecution, civil case prosecution, and business dispute

settlement, by putting in place an international agreement and strategic cooperation framework. In addition, a review of the criminal justice system should be conducted to the same direction or should it be a uniform

Therefore, preparation for a law and criminal justice system mechanism that supports the cooperation of governments, organizations, or individuals should be the first priority to achieve a successful ASEAN Political-Security Community. Thailand's criminal justice system has been criticized for inefficient law enforcement under international standards of human rights and protections. Moreover, delays in the criminal justice system are often mentioned since statistics of criminal cases pending trial during 2006-2009 showed 67,174 cases at the Court of First Instance, 63,969 cases at the Appeal Court, and 60,807 cases at the Supreme Court. The resulting delayed trials caused unfairness to suspects and defendants who were remanded in custody longer and without any compensation. A regular Court day of First Instance trial should

be finished within a year, but there are many cases that have taken longer than a year. Actually, some cases took 5 years before going to trial (Court of Justice, 2010). These delayed trails resulted in justice delayed or justice denied. Hence, it is necessary to review the law and criminal justice system of the trial process and prosecution measures in order to service the community promptly, accurately and fairly in both law enforcement and individual rights protection for preparation toward integration into the ASEAN community.

■ **Research Objectives:**

The aims and purposes of this research are:

1. To study the problems of the law and criminal justice system regarding law enforcement and individual rights and freedom protection in Thailand, with emphasis on

1) Criminal justice system

2) Alien procedures and illegal alien immigrants

3) International human trafficking protection and problem solving

- 4) Foreign criminal prosecution
- 5) International cooperation of crime issues;

2. To compare the law and criminal justice systems of Thailand and other ASEAN member countries;

3. To evaluate the risks and opportunities of the criminal justice system after Thailand joins the ASEAN Community, focusing on law and criminal justice system dimensions.

4. To provide guidelines for developing the criminal justice system, law enforcement, international agreement, law and practice amendment, and national strategic plans for preparation toward integration into the ASEAN community.

■ Research Questions

- 1) What is the Criminal Justice Process and Legal system?
- 2) How do you organize the Justice Process?
- 3) Does the age of an offender have a determining effect on punishment?
- 4) Does your country have protection rights for children and

women?

- 5) What are the processes and procedures of a trial?

■ Literature Review

Issues associated with drugs, fraud, human trafficking, narcotics, illegal migration and other organizational perspectives on criminal justice were examined. These perspectives were then applied to a study of the pre-sentencing process. Data collected in ASEAN countries indicates a division in the judicial wisdom regarding the use of probation officers, as advisors, in the pre-sentencing process. An analysis of cases in which pre-sentence recommendations are requested reveals an influence of variables emphasized in the conflict perspective: the offender's race and socio-economic status. Somewhat more pervasive in their impact are intervening variables emphasized in the Criminal perspective: the probation officers' perceptions of demeanor and evaluations of success prospects. A comparison of cases where recommendations are, and are not, received, adds further support to the

view that involvement of probation officers in an advisory capacity encourages an intrusion of extra-legal considerations into the sentencing process. These findings are discussed in terms of a viewpoint developed in the work of the ASEAN community that affects the law and criminal justice system of Thailand including the impact to legal and illegal migrant workers. The migration of workers to another country relates to the economic cooperation framework of international investment and trade. In regard to legal migrant workers, it was necessary to review the present Thai Labour Law to see if it is similar or different from other countries and to negotiate with countries which had lower standards of labour protection in order to improve labour protection standards for Thai labours working abroad. As for illegal migrant workers, this was one of the most important issues raised in the 21st United Nations Commission on Crime Prevention and Criminal Justice.

Besides having to deal with the illegal alien immigrant problem, the ASEAN community was set up during changes to countries economics,

politics, cultures and society. Therefore domestic problems such as human trafficking, transnational crime, etc., have an international problem. The ASEAN member countries need to adapt to these situations and develop their competency to cope with problems in order to strengthen and reinforce mutual bargaining power.

Regarding transnational crime, there is already official cooperation for anti-terrorism among ASEAN member countries under the ASEAN Plan of Action to Combat Transnational Crime including 8 types of crime: Illicit Trafficking in Drugs, Women and Children Trafficking, Piracy, Armed Trafficking, Money Laundering, Terrorism, Transnational Economic Crime, and Cyber Crime. Thailand participated in the initiation of gathering cooperation from countries by promoting these issues into an agenda of the ASEAN executives meeting and the ASEAN Foreign Affairs Ministry Assembly which issued the Mutual Legal Assistance in Criminal Matters Treaty of ASEAN-MLAT ASEAN. The country has not ratified the treaty. ASEAN plan (Roadmap for an ASEAN

Community 2009– 2015). Thailand is affected both directly and indirectly by transnational crime since Thailand is located at the center of Southeast Asia and allows visa-free travel. Moreover, transnational crime nowadays is conducted in complicated forms and worldwide networks. Since transnational crime is often committed using advances in technology development, offences are committed across the borders of two or more countries. Therefore it is a problem for officers to effectively deal with these crimes because their authorities of law enforcement are abrogated outside their territory. Transnational crime is borderless. To proceed with the criminal prosecution of transnational crime, there are many problems obstructing the process such as the delay of procedure, the expenses of criminal procedure, the inharmonious cooperation of criminal procedure between countries, and the lack of tools to improve the criminal justice process. Therefore, it is necessary to review the law and criminal procedures for foreign offenders as well as the international cooperation of the criminal justice system in various

dimensions which will be useful for law improvement and legal practices corresponding to the ASEAN framework of international cooperation.

As to the importance placed on the problems mentioned above, the Office of Justice Affairs, Ministry of Justice in cooperation with the Royal Police Cadet Academy, Royal Thai Police has engaged in “The Review Literature on Law, Criminal Justice Process and ASEAN cooperation on criminal justice for the preparation toward ASEAN Community”. The aim of this cooperation is to review the law and criminal justice system in various dimensions such as law enforcement, individual rights and freedom protection, alien procedures and illegal immigrant problems, international human trafficking protection and problem solving, foreign criminal prosecution, international cooperation of crime issues; and to study and compare those dimensions among ASEAN member countries. The outcome of this cooperation will provide information about law, the criminal justice system and cooperation of crime issues in the ASEAN

Community that could be used to improve the effectiveness of the law and criminal justice system of Thailand to meet ASEAN goals.

■ Research Methodology

1. Procedure

The team of researchers collected data with multi-data collection methods such as gathering and synthesizing related documents, in-depth interviewing of the officers of the justice system, conducting a focus group of experts and executives of the justice system, a field study visiting the justice system, work units in ASEAN countries, and seminar and group discussions. Documentary research that was conducted to review academic documents, research papers, lawsuit opinions, and Supreme Court convictions to learn more about the law and criminal justice system in law enforcement and individual right protection in ASEAN countries. A Focus Group of 50 scholars and experts in the criminal justice system was conducted to examine problem statements of law enforcement, individual rights and freedom

protection. The focus group's agenda was selected by experts who have lectured and presented about the ASEAN Community. Thailand's strategic plans in the ASEAN community, and challenges for Thailand's criminal justice system were followed by a discussion, knowledge and experience sharing session. At the same time, the team of researchers also conducted in-depth interviews with executives of the criminal justice system relating to their opinions toward problems of law enforcement. Criminal case studies were reviewed, both existing cases and possible future cases after the ASEAN community is established in 2015. For illegal immigrants and illegal alien immigrants, drugs, and fraud, case studies, researchers focused on the law principles which related to trial procedure, case limitation, and advantages or disadvantages of mutual law enforcement. A conference for policy makers from executive units of both domestic and international organizations was set up in order to make problem statements to each working unit, to understand the future working cooperation and practices, to share information of law improvement

and practices corresponding to international agreements and the cooperation mechanism, and to present an ASEAN strategic plan regarding the ASEAN Community. The conference report and suggestions were published and used as the draft version of suggestions for improving the law and the criminal justice system mechanism. Moreover, a guideline for criminal justice system improvement, law enforcement amendment, international agreement and related law development were also used as the draft. In addition, seminar sessions promoting information were set up to gather opinions to provide principles and standards of law development involving the criminal justice system, law enforcement improvement, international agreement, and the development of related laws.

2. Data Analysis

The quantitative data derived from in-depth interviews was used in a focus group discussion of domestic and international experts and specialists. A field study visit and documentary research was summarized individually. For the Criminal Justice

Process Structure, a study of the criminal justice process of each country within ASEAN showed similarities among ASEAN member countries in major law enforcement units that comprised police force, prosecutors, courts and corrections. In the justice system of ASEAN member countries it was found that there are four similar steps in investigation and arrest, litigation, trial and judgment, and punishment and penalties. The step of Investigation and Arrest is under the responsibility of police officers. The step of Litigation is conducted after the police officers gather all evidences completely, verify the offense of the offender, and specify the offense whether the offender is held in custody or not. The police officer makes a case file and submits it to the prosecutor to litigate a case in court. The duration to litigate a case depends on the penalty of the case. The step of Trial and Judgment starts at the Court of First Instance conducting a trial where the prosecutor or victim litigated a case to court. The step of Punishment and Penalties happens after the court finds guilty and the defendant does not make an

appeal to a higher court. Moreover, it was found in the process of giving pardon in many countries, the prisoners themselves or their relatives could file a form of general pardon or royal pardon with result depending on the legal system, degree of offense, and penalty.

■ Result

A qualitative approach was taken to analyzing the data. Most of the ASEAN countries showed rights protection of children or juveniles by mentioning age to receive legal measures and punishment. Some countries mentioned child offenders aged less than 7, 15 or 18 years old could not be brought into the trial process the same as adult offenders but they could be brought to a specific trial process and given punishment which was suitable for their physical and mental conditions. For example, the punishment for child offenders in many countries was to detain them in a detention house where they received treatment and training by specific government units, except in Myanmar. Problems and barriers of dealing with

the justice process in Thailand were lack of knowledge and understanding about law enforcement and rights protection, and also confusion about codes of law and conflict. One problem concerning crime prevention and suppression of crimes is there is no continuity especially in dealing with transnational crime which was found to be increasing. One problem in dealing with narcotics prevention is that drug offenses in the ASEAN region were considered in different ways.. Problems and barriers concerning Transnational Human Trafficking focused on the pattern of human trafficking nowadays where crime organization were using modern technology to counterfeit government documents such as passports, and people were having facial surgery to look the same as a face on an ID, or simply duplicating an ID number. When dealing with illegal migrant workers, the main problem is the legal proceedings of a criminal case committed in a country must be performed under the criminal law of the domestic country. The offense of fraud was found to have developed a new pattern where the actual offender

could not be identified because the offender used modern technology and committed the crime outside of the country. These reasons demonstrate the importance for the ASEAN community to discuss Strategic Suggestions regarding the criminal justice process. The Thai government must provide administrative strategies and develop the Thai criminal justice process in 5 dimensions.

First, there needs to be development and adaptability of the criminal justice process so that the ASEAN community regional organizations will function in both policy making and coordinating with other units of the justice process, or to establish sub-units to operate an ASEAN policy. The ASEAN community must set up an ASEAN Investigative Team consisting of staffs of work units; police, prosecutors, courts, customs, and immigration offices. The ASEAN Investigative Team can be started in the form of a short-term project, medium-term project, or long-term project. The ASEAN community must propose to appoint specific committees to study the possibility of establishing

a regional organization of the criminal justice process such as an ASEAN Court of Justice, ASEAN Prosecutor Office, as well as ASEAN Police. The government must establish a unit dealing with transnational crime. Law enforcement units of some ASEAN countries were found to have differences; for example, police officers in Myanmar and the Socialist Republic of Vietnam have extreme authority to question, investigate, arrest and litigate a case to trial. Whereas in Thailand, the Lao People's Democratic Republic, and the Philippines, authority is balanced between the police authority and other law enforcement units.

Second is the development of law, regulations, policies and administrative systems. The ASEAN community must jointly provide legal measures in various dimensions both in official and unofficial forms in preparation of regional expansion of ASEAN. For instance, legal measures regarding money laundering, legal measures against terrorism, legal measures in support of ASEAN human rights, and legal measures for offenders

and victims of human trafficking, etc. It is expected that in 2015 when the AEC begins, there will be migration of the ASEAN population to ASEAN countries, resulting in increased criminal offenses caused by migration.

On the other hand, the ASEAN community could harness the tools and systems used within other countries such as the search warrant system, Interpol database, and ASEAN police database. This could help in solving cases related to transnational crime, terrorism, arms smuggling, transnational fraud, maritime fraud, cyber-crime, economic and monetary crime, and environment crime. It could also allow the use of databases of other countries as evidence of a crime which could be used in the trial against an offender. Governments must amend laws and regulations related to public services, propose channels to reach information and knowledge of rights and rights protection, as well as to make complaints, improve mechanisms for quality control, examine and monitor complaint reports, build up information technology competency, support public cooperation in consumer rights protection, stimulate consumers'

awareness of rights protection in products and services, and encourage community responsibility of private companies. Governments must designate transnational crime as a national problem and provide guidelines prevention in preparation toward integration into the ASEAN community by 2015. The transnational crime problem requires a reorganization of law enforcement units and budget allocation to deal with this kind of crime. Governments need to instruct law enforcement units to cooperate in dealing with the transnational crime problem. Governments must appoint committees to review and amend laws related to the criminal justice process where the committees consist of representatives from related units in accordance to international law or regional laws. For example, the amendment of the law related to the Act of International Cooperation in Criminal Matters and the legislation of laws in regard to organized crime which are both under the responsibility of the Office of General Attorney. Governments should give opportunities to private organizations and non-government organizations such as

Royal Lawyers Council, International Red-Cross Organization, International Human Rights Organization, and the Woman Care Organization to participate in helping crime victims, defendants, and even offenders according to international human rights mentioned. Governments should make policies and plan to develop the ASEAN community in the criminal justice process within a country with the assistance from other countries regarding labour migration, transfers of illegal immigrants back to their home country, and practices to deal with children and women, etc. The policies or plans can be made in the form of a Memorandum of Understanding, Code of Conduct, or Best Practices Guidelines such as the practices for foreigners in an ASEAN trial case in court.

Third is the development and reinforcement of government officers. In this strategy, the ASEAN community must appoint personnel to work in regional organizations especially officers that function in investigation and legal coordination and the officers' qualifications require multi-disciplinary

knowledge in international law, technical law, procedural law, case inquiry, investigation, and English language ability in order to join an ASEAN investigative team. Governments must stimulate people to be aware of being ASEAN citizens and to be concerned with international human rights. Country citizens realize that there are differences among ASEAN countries in the justice process, procedural steps, rights of the accused, process to trail in court and the request for assistance from the mother country. Governments must provide knowledge of the justice process of ASEAN member countries to people in the country such as forms and how to contact the government when involved with a crime outside of their country as well as information on the cultures of ASEAN countries. If people can understand and respect the differences between peoples it could reduce conflict between countries.

Fourth is the development of International Cooperation. Each ASEAN member country must support the learning of the criminal justice process and law enforcement units of ASEAN

country members. ASEAN countries can join in making a database of international law, criminal law and criminal procedural law of ASEAN member countries. ASEAN member countries must support cooperation in various dimensions especially in tourism, immigration, legal and illegal labour migration, etc. In Thailand, the government should make an agreement under the AEC framework to allow the 7 professions with mutual qualifications and skills free migration to Thailand. Those professions are engineer, nurse, architect, surveyor, medical doctor, dentist and accountant.

The final strategy is the development of others. This means that Thailand must educate Thai people and stimulate them in awareness of the justice process regarding types of guilt in criminal law, legal procedures and justice procedures of Thailand and other ASEAN member countries in order to help them understand and act correctly when moving to other ASEAN member countries, temporarily or permanently. After migrating to other countries, Thai people should be able to gain information of the justice

process via ASEAN mechanisms such as ASEAN Secretariat, Embassy, Consulate, and Office of Embassy Police.

■ Discussion

Although countries in the ASEAN region have close interrelationships and similarities in population, cultures and societies, it was found there were differences in the legal systems, structure of the criminal justice process, and law enforcement according to the different political systems of each country. Law enforcers of each country had authority and performed legal practices differently, so the differences would affect the cooperation between countries in fighting transnational crime which was found to be systematic with complicated networking. The research team evaluated and analyzed the background, causes, opportunities and possibilities in order to resolve problems, improve the legal system and the criminal justice process, in order to better cooperate in criminal cases between Thailand and other ASEAN member countries. There are two levels

of cooperation, domestic and international. On the domestic level it was found that official cooperation on law enforcement among ASEAN countries which have criminals in neighboring countries such as Lao People's Democratic Republic, Myanmar, Cambodia, and Malaysia, was ineffective because there was no act of legal assistant or act of transfer of offenders between countries. Inconsistency of law principles and legal practices of law enforcement units dealing with transnational crime were also a barrier. There was a lack of a major organization responsible for transnational crime, and officers lacked the working skills necessary to deal with transnational crime. On the International level, there was a lack of practice mechanisms to convey policy of cooperation between law enforcement agencies among ASEAN countries. The gaps in law for transferring people back to their mother country or requesting to transfer an offender back obstructed the effectiveness of dealing with transnational crime. There was no principle of law or mutual agreement

among ASEAN member countries mentioned in the jurisdiction of law to trial for transnational crimes committed in more than one area.

■ Conclusion

The research team, according to the literature review, identified levels of functionality in the ASEAN Community and social practices between Thailand and ASEAN member countries. These levels of effective integration can predict ASEAN satisfaction and ASEAN citizen persistence. Further predictors include individual competency, ASEAN regional relationships, and financial or economic crisis.

This study has categorized the major concerns of ASEAN member Countries especially Thailand with keywords as follows: *Justice Law, citizen Ability, Local Relations, International Relation, Drugs using, Human-Trafficking, Fraud, Illegal migration and narcotics* . These form the basis or framework for a model that can be applied to the question of concern for ASEAN member countries.

This model can be used over time and adjusted to improve its predictive ability for the ASEAN community.

Owing to the delegates who gave their valuable ideas the researchers have found that every country in the ASEAN Community needs to be cautious and aware of criminal Justice law because it will affect all ASEAN citizens who are involved in a crime.

The ultimate goal of being able to come to an understandable conclusion with regards to the nature of making trouble and attrition in our community is a long-term document that requires more research. This lengthy procedure may also involve frequent revision of some of the steps with the discovery of new data. One of the earlier stages is to determine the potential issues affecting the people in our community that have happened, not only in Thailand, but also in other ASEAN member countries. The problems that the researchers have mentioned above continue to

happen and are also the main obstacles to the future development of ASEAN. One step which was successfully initiated by this research was raising the awareness and understanding of criminals and the Justice process. This has been achieved by compiling this list since understanding and being up-to-date with the issues of satisfaction is an integral part of the ASEAN Community by 2015. This study took an important first step by creating a practical list of relevant issues that could be referred to when composing future goals and our declaration.

■ References

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