

Abstract

The object of this thesis is to study laws and law theories relating with the burden of proof on causation in environmental cases. By comparing Thai laws in other in other cases with foreign cases only the part that is relevant to the burden of proof . In order to analyze an appropriate way to improve Thai environmental law and to find a proper interpretation of the court to protect an injured person to receive a suitable remedy.

The outcome of the study shows that the law enforcement in environmental trial no matter the filing is based on the Civil and Commercial , The Enhancement and Conservation of the National Environmental Quality Act B.E.2535 or Hazardous Substance Act B.E.2535 the burden of proof on causation lies on the plaintiff. This creates several drawbacks because it is difficult for the plaintiff to prove to the court that the damage is occurred by the act of the defendant. If the plaintiff is unable to show that, the court can not rule in favour of the plaintiff. It is difficult to prove the causation between the defendant act and the damage in environmental cases because mostly the fact has to be proved by scientific method. For instance, in order to find toxic chemical in contaminated water. It has to be done by the specialist and there is a cost for that. An injured person normally has no knowledge and has limited budget to proceed the trial. Therefore, he/she might not get any compensation if he/she won't continue the trial.

The author would like to suggest some solutions as follows;

1. Factual Presumption Principle should be applied in Environmental Cases. This principle can be found in the civil procedural Code section 84/1 stating that "In case that the law provides that Factual Presumption the benefit party has a burden to proof only factor required by the law".

2. Theory of Conditions should be applied in a case that the plaintiff has the burden of proof about the causation between the defendant 's act and the damage, it has to consider the possibility case by case.

3. Exclusive Knowledge principle should be applied. If the fact is known by one party only, that party has a burden to prove such fact. This will reduce the burden of proof on causation for the plaintiff.

4. The law should be revised and provides a burden of proof on causation in environmental cases in particular. The author suggests that the new law should state that "Some dispute have to prove fact about the processes that cause pollutions , chemical composition or other dispute. If the court convinces that such facts are known by the polluters, the burden to proof those fact are shifted to the polluters".