

Abstract

The study of “the Problems Relating to the Procedures of Investigation of Human Rights Violations by the National Human Rights Commission of Thailand” has an object to study the principle, competence, and responsibilities of national human rights Institutions accordance with the law including other issues relating to the investigation proceeding of the violation of human rights by the National Human Rights Commission of Thailand. National human rights Institution has an important role in linking the execution between United Nation and all international human rights institutions and it is investigatory mechanism for protection of human rights in Thailand. Also, it is a constitutional organization according to the Constitution of the Kingdom of Thailand B.E. 2540. Regarding to the first period of the performance of the Commission’s duties, the Commission confronted problems, disputes, and limitation in the investigation of the violation of human rights that have an effect to the efficiency of human rights protection.

The results of the study is that the investigation proceeding of the violation of human rights has the important problems following:

Firstly, the problem is related to the beginning of the investigation procedures of the violation of human rights. According to the National Human Rights Commission Act B.E. 2542 and related regulations, the Act and regulations do not provide clearly the method of the consideration an investigating complaint or the subject that the commission may undertake without any complaint clearly including rules pertaining to complainant, person and organization that are under the investigation of the National Human rights Commission including the rules concerning which subject matter of a complaint should be considered or not should be considered by the Commission and the rejections of complaints. Also, it cannot show the actual definition of the human rights so that it has to be interpreted in the limitation of human rights accordance with human rights treaties. In

addition, there is interpretation problem relating to the investigatory powers within the Commission's sphere of competence for conducting investigations of the acts of government and the matter of complaints being litigated in the Court or that upon which the Court has already given final order or judgement and the problem pertaining to substantive issue in the investigation of violation of human rights between two private persons that is different from civil suit. Moreover, stipulated regulation relating to the procedure of complaint is inconsistent with the Act so that the complaint is not about violation of human rights issues and has to be terminated by the Commission later. Therefore, the National Human Rights Commission Act B.E. 2542 and related regulations should be amended in the part of complaint section including complainant, the subject matter of complaint that which complaint should be or should not be admitted or rejected and the time of accepting complaint and interpretation issue.

Secondly, the problem is concerned about power of investigation. The study found that the National Human rights Commission has limited investigation power comparing with foreign human rights institution. Namely, the Commission is not vested power to visit prison or detention or protective facilities to conduct an investigation and has no legal capacity to call upon expert assistance to testify to the Commission to complement the investigation since the penalty of violation the Commission's order does not cover to state agencies and public officers. Also, even though there is the penalty of violation the investigation power for individual, juristic entity, or private company, it is not efficacious in practice so that it minimizes the concept of listening to every party. Therefore, the Act should be added the subject matter about this competence and amended the penalty or sanctions to cover to the individual and the entity both government and private who violate the investigation section concerning in order to enforce the Act efficiently and seriously.

Thirdly, the problems relating to mediation that is the important measure to cease the violation of human rights problems still lack of the efficient operation system since it lacks of experts who have knowledge and experience in dealing with human rights problem specifically. Also the lack of clear regulation and guideline makes mediation not effective and limited. The study found that the mediation is significant that should be concerned to develop the regulation and guideline clearly and encourage experts to participate in the procedures or appoint the mediation sub - committee to be responsible particularly.

Fourthly, the problem pertaining to making a report of investigation in which contains the detail of issuing fact that relating to the human rights violation, the reason provided by the Commission opinion, and offering solution of human rights problem has limitation in either the case that there is not the enactment of the law accordance with the Constitution or the enforceable law before the declaration of the Constitution that lacks of the matter concerning with the protection and encouragement of human rights including the limitation on the use of international treaties to solve human rights issue. These problems and limitations have an effect to the manifestation and reliability of the investigation report that will be used in practice and the human rights study in Thailand. Thus, the office of the National Human rights Commission of Thailand should give the importance to the development the investigation system and to produce the investigation report efficiently by imposing the clear fact and reason when making an opinion. Also, it should collect the guidelines of the Commission's investigations in order to establish the standard of human rights proceedings and encourage the study and research of human rights procedure in both national human rights institution and foreign human rights court to complement the National Human rights Commission's investigation in imposing the principle of investigation of human rights violation and collecting, studying, analyzing, and counseling to the National Assembly and the Council of Minister in order to stimulate the enacting of the law that recognizes and

protects any right in accordance with the Constitution including proposing that Thailand should join more into the member of international human rights treaties.

Fifthly, problem is related to the process after finish the investigation of alleged human rights violations that has to notify the investigation report to the person or agency that related to the characteristic of complaints. However, there is not regulation that related to this matter. The important of this problem is that the follow up the result of the relating parties that have the duties to follow up the results of human rights investigation is not enforceable and legal relationship protection with administrative agency and the National Assembly is not clear because it is only unilateral duty of the National Human rights Commission. Factual achievement of proceeding is depended on cooperation of relating person or agency, or Prime Minister or the National Assembly. If the relating parties do not pay attention to it, it might cause delay the achievement of resolve violation rights. In urgent issue, when it is necessary to resolve problem, this problem should be solved by providing the National Human rights Commission has the power to order a provisional remedies for a violated victim and impose the relating regulation and the process of consideration clearly. Moreover, the Office of National Human rights Commission should evaluate data, analyze problems that governmental office did not execute the measure of solution of human rights violation and unfair practices including the issues that have reported to Prime Minister but there have no any command to resolve the problems and the Commission should publicize this information in general to the public in order to solve problems systematically.

According to the study, the investigation process of human rights violation by the National Human rights Commission of Thailand in some process is neither consistent with international standard of human rights nor it is explicit when compare with other countries human rights institution. Beside amendment the rule of law and regulation, it should clarify the specification of the operation relationship between the Commission

and relating parties, to enhance knowledge and comprehension of human rights, to strengthen the trustworthy and acceptable in the process and potential of human resources and to improve management in order to strength the protection of the human rights by the Commission .