

Abstract

Concerning the costs regime, it is collection of legal expenses - related rules in litigation and its order in inter – relations. Accordingly the costs regime is significant matter to be considered in all cases and relate to a large amount of money, including a factor which effects vitally to access to justice of people that causes namely citizen's decision in filing a lawsuit, defending case, and proceeding in litigation. At this point, people are exploited because of such litigation has less advantages. This also brings about preferences between parties who possess distinct financial affordability. All in all, if the costs regime is set effectively and justly, it will facilitate access to justice.

This thesis studied and analyzed the costs regime of Thailand which is enacted in the Code of Civil Procedure, by considering and comparing concepts and theories regarding the costs regime and the costs regime of foreign countries: The United Kingdom, The United States of America, the Federal Republic of Germany and the French Republic; for the purpose of analysis and assessment whether the costs regime of Thailand which presently enforced is actually effectively and justly. Moreover, in order to improve weakness part into more perfect. According to research, the costs regime of Thailand deserves to be reformed as followings;

1. Costs Assessment

Reference to pre – pay costs, for court fees, state has better prescribe as minimum as possible while maintaining quality of service; since state has public service missions, including administrative justice mission. Following this, state should avail simpler and clearer court fees calculation method than nowadays. In respect of lawyer fees, state ought to allow applying contingent fees basis which is governed by law and court. This will assist people to be able to afford willful and skilful lawyers.

In view of party – party costs, it should be increased in order to cover pre – pay costs; while, it should not increase over rate as a result of inflation. Since legal costs, especially lawyer fees in table six and litigation expenses in table seven of the Code of Civil Procedure, enacted on purpose of basic indemnification.

Therefore, party – party costs is much less than pre – pay costs and unable to reflect the actual costs of litigation.

2. Costs Liability

Costs Liability in the Code of Civil Procedure hasn't enough various rules to accomplish purposes of costs particularly indemnification, deterrence, and encouragement of settlement which cover efficiently overall respects. So as to eliminate these mentioned imperfections, I would like to propose determining the rule of costs liability in the event of excess claim, the rule of punitive costs liability, the rule of costs liability of third party and the rule of costs liability to encourage pre-action settlement which able to enforce both plaintiff and defendant.

Besides, I would suggest to determining the rule of costs liability for family case in particular, that is to say each party shall bear his own costs without realizing result of case; due to sensitive relationship between parties from same family who have prior mutual affection, not serious defense for the highest benefit as if general cases.

3. Legal Aid

In accordance with the Code of Civil Procedure, legal aid is restricted assistance for parties who unable to afford partial or total court fees. Realizing that deciding eligible person importantly depends on each court discretion which can be different. Applicants are unable to acknowledge whether he will receive such legal aid unless court decided. Thus, the eligibility determination should consider the applicant's income and specify fix and clear calculation method that the revenues of the applicant must not exceed fixed financial eligibility for complete or partial legal aid.

In addition, legal aid in the Code of Civil Procedure restrict only court fees, not including other type of litigation expenses. This can be comprehended that if applicant is unable to afford court fees, he is even unable either afford other type of expenses. In respect of these reasons, it should to expand extent of legal aid into include all the costs necessarily incurred by the assisted person and the assistance of a lawyer. Envision purposely poor people able to access to justice equal person who has superior financial status.