ABSTRACT

This thesis on “the settlement of environmental dispute in the Administrative Court” aims to study the problems on the environmental case proceedings in the Administrative Court. The nature of environmental administrative cases involves a dispute between the administrative agencies or the State officials or other agencies that are entrusted to exercise the administrative power or to carry out the administrative acts and private persons or among the administrative agencies or State officials or other agencies that are entrusted to exercise the administrative power or to carry out the administrative acts. It is a dispute in relation to an unlawful act or the neglect of official duties required by the Enhancement and Conservation of National Quality of Environment Act to be performed or the performance of such duties with unreasonable delay or to be liable for the performance of official duties according to such law. Alternatively, it is a dispute in relation to an administrative wrongful act or an administrative contract related to the environment and so on. It is a dispute under Section 9 of the Act on the Establishment of the Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) in connection with the power to file the environmental cases to the Administrative Court. This Section provides such a broad meaning of a person who is entitled to file a case. Since Section 42 paragraph one under the Act on the Establishment of the Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) prescribes that the person who is entitled to file the case to the Administrative Court shall be aggrieved or injured or may inevitably be aggrieved or injured, it is quite open for the plaintiff who has been

aggrieved or injured or who may inevitably be aggrieved or injured in consequence of impacts or grievance from the environment to be entitled to file a case to the Administrative Court in such a way that the law shall be enforceable and it shall be alleviation of such grievance arising from the natural resources and the environment. Under the administrative case proceedings in connection with the environment by the Administrative Court, the main principles in the court procedure system of the Administrative Court which are prominent for the alleviation of grievance in the environmental cases under the adjudication of the Administrative Court are the application of the "Inquisition System". In other words, the Administrative Court's judges play a crucial role in the case proceedings at the beginning by determining the issues, sending the pleadings, documents, the acquisition of witness, evidences and facts in which the judges think they are useful for the case. In this regard, the parties do not need to submit any request to the court. In doing so, the judges are able to acquire the adequate facts of the particular cases in order to adjudicate the cases with the justice.

It is found from this thesis that:

1. In the Thai legal system, there is not any specific definition of "the environmental administrative case". The environment law is dealt with the protection of public health and nature including man-made surroundings. To file the environmental case to the Administrative Court, it shall be the case where there is a dispute involving the use of powers of administrative agencies or State officials to carry out under the two groups of environmental laws viz.: direct law and indirect law;

2. Since Thailand has separated the establishment of the Administrative Court from the Courts of Justice, so called “the double court system”, the environmental case proceedings are related with the jurisdictions between the Courts of Justice and the Administrative Court. That is to say, the nature of environmental cases can be civil, criminal, labor and administrative. With regard to the environmental administrative cases, what is the scope is based on the consideration of jurisdictions of the Administrative Court for the case adjudication;

3. With regard to the conditions to file the administrative cases in connection with the environment on the part of the person who is entitled to file the cases, Thai Administrative Court relies on the principles of the French Administrative Court in the board meanings. However, there are still problems on the scope of the person who is entitled to file the environmental administrative cases. The problems include the determination of decree of the Administrative Court on the problems of determining the injury on the environment, sanitation and the retrieval of the natural resources and environment;

4. The acquisition of facts through the inquisition in the environmental administrative cases on the part of related witness and evidence of which their natures are different from other types of cases. Since the contents of environmental cases are generally scientific technical, it is difficult for the judges to understand the specific issues of the said technical matters.

This thesis suggests as follows:

1. The Act on the Establishment of the Administrative Court and Administrative Court Procedure including the Rule of General Assembly of Judges in the Supreme Administrative Court on the Administrative Court Procedure should be amended on the part of the person who is entitled to file the environmental cases, damages determination or the enforcing method as per the request of the plaintiff exceeding the request which appears in the decree of plaintiff in the certain cases;

2. The court fee should be exempted for the person who is entitled to file the cases which affect a large number of natural resources or affect the health of general people in order to promote the people to access the justice procedure more easily;

3. The steps to carry out the environmental administrative cases and the provisional measures before judgment should be set forth to expedite the adjudication. In this regard, the plaintiff should be entitled to file the request for the Administrative Court to render the order to provide the provisional measures before judgment if all conditions as provided by law attain;

4. The submission of appeal against the judgment of the Administrative Court of First Instance should be provided by prohibiting the parties to appeal to the Supreme Administrative Court in the factual problem of environmental cases and from disputed properties with the amount of claim not exceeding the fixed rate. However, the parties should be entitled to appeal only on the legal issues;

5. The system of judges or associated judges should be provided in the courts having jurisdictions to adjudicate the environmental cases. The judges or associated judges

should be selected from those who are technically knowledgeable and expertise on environment to ensure that the adjudication of environmental cases shall be the most legitimate and fair;

6. The Institute of Environmental Administrative Law under the Office of Administrative Court should be established in order to develop the academic intelligence on the environmental law and scientific technical problems, which are necessary for judges in the Administrative Court, the administrative case officers, the officials who enforce the laws. This includes the provision of the name registration of experts in each branch of knowledge in the said institute.

Other suggestions are that the Enhancement and Conservation of National Quality of Environment Act, B.E. 2535 (1993) should be amended by adding the alternative dispute settlement rather than the court in order to reduce the quantity of cases as well as the extension of the scope of the compensation or damages for more certainty.