

Abstract

The main purpose of thesis “Making good defects in procedure and form of defective administrative acts” were:1) to study sources, theories and legal effects of administrative acts on the status of curing of illegality 2) to investigate the problem of implementation of Section 41 of the Administrative Procedure Act B.E. 2539 in comparison with Section 45 of the Administrative Procedure Act 1976 of Federal Republic of Germany. This thesis was based on legal text books and legal articles written by distinguished Thai and foreign scholars, decisions of the administrative court, legal opinion of the council of state and decisions of the commission on administrative procedure.

Based on this study, it was founded that “Making good defects in procedure and form of defective administrative acts” under the section 41 of Administrative Procedure Act B.E. 2539 has derived from the model that corresponds to the Section 45 of the German Administrative Procedure Act 1976. “Making good defects in procedure and form of defective administrative acts” means to eliminate defects on the form of administrative acts or to cure the illegality of administrative acts. A provision on curing of illegality of administrative acts is the exception of the principle of legality of administration action. As a result, this will lead to disintegration of administrative procedure. However, the spirit of the provision on curing of illegality of administrative acts was to allow state official to exercise their duties effectively. In addition, the purpose of this measure were to guarantee rights and liberties of citizens and reduce bureaucracy in order to enhance effectiveness.

Making good defects in procedure and form of defective administrative acts could be implemented under the condition that the defects are not very gravely. Moreover, this procedure can only be done under the Administrative Procedure Act B.E. 2539. Section 41 of the Administrative Procedure Act B.E. 2539 provides that the provisions relating to procedure or form may be ignored if 1) the application necessary before taking of administrative acts has been made subsequently 2) the necessary statement of reasons is

subsequently provided 3) the necessary statement of hearing is subsequently provided 4) the necessary collaboration of another authority is subsequently obtained. All types of defective administrative acts must be cured within prescription stipulated in Paragraph 3 Section 41 of the Administrative Procedure Act B.E. 2539.

A defective administrative act may be cured and then converted into a legal administrative act under the condition stipulated in Administrative Procedure Act B.E. 2539. As a result, this administrative act is not subject to challenge on the ground of failure to observe any provision on procedure or form any more.

The spirit of section 41 of the Administrative Procedure Act B.E. 2539 is to reduce bureaucratic procedures. In practice, this provision has been rarely applied due to the problems of the wording in the provision. The author therefore purpose that the implementation of section 41 of the Administrative Procedure Act B.E. 2539 should not be limited with the legal content. On the contrary, this article should be interpreted in accordance with the spirit of law. In order to meet the standard stipulated in the Administrative Procedure Act B.E. 2539, the author therefore suggest amendment Administrative Procedure Act B.E. 2539 Section 41 Paragraph 1.