

## Abstract

Before court accepts any cases or after court accepts any cases, whether court will have authority to take into consideration or pass the judgment or not, it depends on the examination of court in prerequisites for prosecution. The examination of court in prerequisites for prosecution; therefore, means examination of incidents or facts that grants or withholds authority of court in proceeding with the case. We call these incidents or facts that the conditions of granting authority in proceeding with the case (prerequisites for prosecution) or conditions of suspending the case (negative prerequisites for prosecution). It is the issue of law concerning peace and orders of people. It is a "Lead Problem" that must be adjudicated first. They are the conditions of taking into consideration and passing the judgment of the case on the merits to consider whether the defendant has conducted wrong act or not. Court will examine in precondition of criminal proceeding in both accepting the charge and trial. The principle of examination of court in prerequisites for prosecution is that court must enact before any other acts in the case (Prerequisite). It must consider them *Ex Officio* at every stage of the case. The reason of doing so is to protect rights and freedom of the defendant in criminal prosecution as in case that court judges the issue prerequisites for prosecution such as authority of instituting criminal prosecution before and in case that it appears that the prosecutor has no authority of instituting criminal prosecution, court must consider dismissing the case and let the defendant go. Therefore, the defendant does not have to be under the control of the state. The defendant does not need to bail himself out. Also, the defendant does not need to identify himself before court in passing the judgment. The judgment must be conducted forthrightly before the defendant, so that court can protect rights and freedom of the defendant before hand.

In practice, on the other hand, court has not determinate in prerequisites for prosecution as stated by the principle, but court has ordered waiting for the adjudication of the issue of law concerning prerequisites for prosecution during judgment such as Mr. Anan Panyarachun's cause or the election commission's case or issue of law is

brought up the appeal court and supreme court. For example, court of first instance has adjudicated that the prosecutor has an authority of instituting criminal prosecution, Moreover, court has considered that the act of the defendant is a wrong act; therefore, the defendant has been sentenced to imprisonment by court. Later, the defendant appeals or dika appeals about the issue of authority of instituting criminal prosecution and the issue of not conducting a wrong act. Supreme Court has later dismissed as the prosecutor has no authority of instituting criminal prosecution. Then, the negative outcome falls on the defendant as the defendant has been put in jail during the judgment. The defendant loses freedom with no sound explanation or although the defendant has been temporarily released, but the release of the defendant is on bail. The defendant must go to court; therefore, the defendant loses freedom of traveling, the right stipulated in the constitution, etc. Furthermore, it is in contrast with cause and effect principle (Nature of Thing) that before court processed with any cases, court must first consider whether court has authority of accepting the case for judgment or not because court cannot try a case in which prosecution has not been instituted or no trial without charge (*nemo iudex sine actore*). Consequently, court must examine its power before whether court has been granted authority or not. According to the rule of law, government agency must verify its authority before conducting any acts as law is the condition of government agency's act. In addition, proceedings of the case before examination in prerequisites for prosecution are the process of mistrial as it lacks foundation of trial procures. Additionally, it is the process of trial that is not necessary.

According to my analysis, apart from not having idea of the examination of court in prerequisites for prosecution, the criminal procedure code of Thailand has to clearly stipulated the examination of court in prerequisites for prosecution as that of the foreign country. The criminal procedure code has merely stipulated rights of instituting criminal prosecution (Section 39), conditions of instituting criminal prosecution (Section 120, 121, 126, 147, and 157), verification of general plaint (Section 161) and judgment or court (Section 185).

Objectives of the thesis are to study:

1. Conclusion of principle in the examination of court in prerequisites for prosecution and outcome of the examination of court in prerequisites for prosecution which is not in line with the principle mentioned to see how it affects the defendant's rights and freedom protection principle.

2. Duty of court in the examination of court in prerequisites for prosecution in both accepting the charge and trial by comparing with that of the foreign court, in order to apply the examination of court in prerequisites for prosecution of the foreign court to the amendment of the examination of court in prerequisites for prosecution of Thailand can be stipulated more clearly.