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| Thesis | The Criminalisation of Bribery of Foreign Public Officials |
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ABSTRACT

This thesis has an objective of analyzing the legal problem of criminalising the bribery of foreign public officials. The study will include concepts and theory of the criminalisation of the bribery of foreign public officials according to the Thai and foreign laws. In this study, the emphasis will be put on the importance of the analysis on the scope of the criminal liability in relation to the bribery of foreign public officials in accordance with the 1997 Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the 2003 United Nations Convention against Corruption (UNCAC) and the 2000 United Nations Convention against Transnational Organized Crimes (UNTOC), as well as foreign laws including the United States of America, the United Kingdom, the Kingdom of Sweden, and the Kingdom of Denmark. These legislations will be compared with the relevant sections of the Thai Penal Code. The analysis will be separated into different categories; the scope of the definition of 'Public Officials' according to the Thai Penal Code, the scope of liability, the punishment, as well as the limitation on defining the criminal statute of limitations. This is so that differences can be illustrated as guidance on the appropriate and effective amendment of relevant provisions in the Thai Penal Code.

According to the study, it is found that the Thai Penal Code has not yet criminalized the bribery of foreign public officials, resulting in the thrive of international corruption or the so-called transnational organized crimes. It is accepted that, according to Thai laws, there is no specific definition of the word 'Foreign Public Officials', therefore creating loopholes which render the act of bribery of foreign public officials not punishable under Thai laws. With regard to the issue of the bribery of foreign public officials, foreign laws stipulate that the act

constitutes a criminal offence, except for Thailand where neither a criminal liability of such act nor its definition is stipulated under Thai laws. Once the amendment to make the bribery of foreign public officials an offence is enacted, the provisions relating to the attempt, accomplice, and supporter may then be applied with this offence. As to the issue of the scope of a liability for this offence within the Kingdom, when Foreign Public Officials commit a crime extraterritorially, the territorial jurisdiction principle may not be applied. This is because, in some cases, the result of which the crime is committed does not occur in the Kingdom of Thailand. The nationality principle cannot be applied either as foreign public officials does not possess the Thai nationality. Consequently, the offender cannot be brought to justice in Thailand. Regarding the issue of punishment, in practice, the amount of sentence is generally considered according to the sentence level guideline, under which the punishment is not proportionate to the seriousness of the offence. Thus, the punishment prescribed under foreign laws should be amended to be in accordance with Thai laws. The last issue concerns the prescription of the statute of limitation, which can be divided into two scenarios; one where the alleged offender or the defendant escapes custody, and another where the person convicted under the court's final judgment escapes custody.

Accordingly, this thesis proposes to amend certain provisions in the Penal Code, by giving an unambiguous definition of Foreign Public Officials. As such, the offence of bribery shall include the bribery of Foreign Public Officials. Therefore, the provisions relating to the attempt, accomplice, and supporter may then be applied with this offence. As to the issue of the offence of bribery of foreign public officials, it is proposed that such act, albeit committed extraterritorially, should be made punishable under Thai laws as the offence relates to the integrity of the Kingdom of Thailand. Regarding the punishment, the imprisonment sentence prescribed for the offence of bribery of Foreign Public Officials shall be increased; the fine shall similarly be increased as well, by comparing with the laws prescribing the highest fine in Thailand. Last issue concerns the statute of limitation. When the alleged offender, the defendant, or the person convicted under the final judgment escapes custody, it is recommended that the limitation period stops running while the fugitive is in the process of being apprehended the crime will not be committed repeatedly. All in all, the propositions made in this thesis make the law more concrete, practical, and thus can be enforced appropriately and effectively.