

Abstract

The complicated consideration procedures that obstruct access to justice, many countries have therefore tried to determine several measures to make easier and quicker procedures to promote the efficiency and guarantee the justice. In Thailand, one way is to improve the small claims process according to the Civil Procedure Code Amendment Act (No.17), B.E. 2542 (amendment of small case procedure, authority and duty of the court and related case execution) with objective to promote amicable and non-formal, reconciliation, short and save. Such amendment has changed consideration pattern which impacted the role of judges in small claims, as follows: -

(1) Prescription the easy method of action in small claim, provide opportunity to the litigants to take legal action by themselves with assistance of the court of court officer.

(2) Prescription of conciliation in small claim or before consideration of the court.

(3) Prescription of roles for the court to investigate the fact.

From the study, it was found that there were many problems and obstructions in the past ten years after amendment such method of action in small claim.

Action of small claim in verbal, the law prescribes judges more authority to assist the public in legal action based on the reason to promote and encourage the litigants to take legal action by themselves without lawyer. In practice, however, verbal small claim is hardly found because of its complicated processes. Verbal claim in Thailand is now using printed form (Mor.1) is mostly similar to the ordinary civil case and it is difficult for the public who does not have knowledge about law to understand. It is therefore required to hire the lawyer which is not corresponded to the principle of easy small claims.

Conciliation roles that emphasized the role of judge to rapidly and fairly finalize the case. One problem and obstruction generally occurred is the lawyers of the litigants do not understand the meaning of conciliation and try to protect their clients by mean of defense which is not benefit to the conciliation.

The role to find out the fact of judge is greatly important and related to the content of the case and has problem in practice because it was just widely stipulated in Article 193 (fourth). In addition, there is problem in interpretation that at what extent of its scope and how. Consideration in comparison with administrative case based on investigation system that emphasized on the easy, quickness and save, there is provision of law and regulation of the Judiciary General Meeting in the Supreme Administrative Court regarding Administrative Case Procedures, B.E. 2542 (Section 2, Division 2: Seeking of Fact) that empowers the judge to use several method to seek for the fact. Therefore, the court's roles to efficiently seek for the fact in small claims is relied on the knowledge and experience of each judge which limits the duty to seek for the fact. As result, burden to provide the fact is loaded on the litigants like ordinary civil case which is not correspond to the intention of small claims that emphasized on the roles of the judges and the litigants have duty only to assist the court. In addition, the role in investigation of the court without guidelines nor processes to support taking evidence in the court has wasted great time and causing the investigating roles of perfect or expected fact is not efficiently achieved. If it is compared with other type of case under the investigation method, it is turned out there is fact compilation processes to help consideration in the court, such as, administrative case which prescribed "Judge to be the case owner" to verify and propose comment toward the fact and legal issue or the bankruptcy case that prescribed the trustee to have roles to seek for the fact or pursuant to the Consumer Consideration Procedure Act which prescribes "Case Officer" to assist the court, such as, in conciliation, verification and compilation of relevant evidences.

Therefore, the author do hereby suggest the amendment of law or issuance of regulations to promote method to consider the small claims, verbal action on small claim, improvement of verbal complaint record by introducing guidelines from Singapore as our model because the form for small claim is easy and required only necessary information separately by nature of claim which is different by each item. In conciliation stage, the litigants should represent themselves without lawyer which shall

correspond to the important principle of the small claim. In consideration process, it is recommended to provide assistant to verify and propose comment toward the fact before judgment to enable the court to understand the fact and clearly consider the issue which is benefit to the inquiry or taking evidence. In this regard, the method according to the Consumer Consideration Procedure Act should be applied and establish as small claims and non-complicated claims to provide appropriate judge for consideration this special case to promote more efficient to the investigation processes.