

Conclusion

Chapter 1 Introduction and basic problems

In good criminal justice system, it is not only the efficiency in prevent and control the criminal and correct the convicted to return back to society as quality person, but it needs the measure to protect the rights and liberty of person who involve in the due process of every stages.

The efficiency or the success of justice process depends on co-operation of the main principle in protecting the basic right of the people in Constitution which involve in the justice process along with the practices in the criminal procedure law and in the real law enforcement and criminal prosecution. By then, it concerns with the appropriated balance between the crime control and due process. The justice process now is at not pre-trial, trial stage, it is still problems such as lack of efficiency, mistakes, delayed and abused the people's rights etc.

The criminal procedure law now have no balance mechanism and check and balance between the justice organizations. If the investigation officers can start the case alone and can prosecution by himself until the investigation is finished or the prosecutor can cancel the case, all of these show the lack of mechanism the balance and checking system.

The justice process of Thailand now is lacking of the relationship between the agencies. It is not even called the process. This is very important problems, because it is not only opening the abused of power by the state, it is effecting the faith of people in justice process as well.

Although the Thai criminal procedure law is in the category of civil law system, which by the principle the procedure at the investigation stage and at the lawsuit is the same procedure. By that, the stage of finding the truth is done by the administration staff before the judge stage (the pre-trial stage). But the structure of Thai law is divided the investigation and the lawsuit separately. It designated the investigation officers have full authorities in control both the procedure and the investigation. It is done without the check

and balance from other authorities in the criminal justice process. It effects the rights, the liberty of every person in the criminal prosecution.

At the trial stage, the Thai judges have still the basic concept of passive role not the active role in criminal prosecution. It effects the trial about achieve the real truth and justice. It also effects the efficiency in checking the truth because the prosecution is only the formal procedure not looking at the truth.

Chapter 2 The efficiency and the criminal justice system

By the model of criminal justice system now, it is mixed model. It is not common law system like USA, England or the civil law system like Germany, France, both systems try to find the way to co-operating between two concepts to make a balances or checking in trial procedure. By then, it is both for the efficiency in prevention and crime control and protecting the rights and the liberty of people.

The problems in the criminal justice system, the part of criminal process, the writer will study by using the concept of Prof. Herbert Packer in the conflict of crime control and due process for the fundament of this study.

To compare the efficiency of both concepts, it finds as the following;

1. Crime control model, it looks at the efficiency in prosecuting at the system of the police, prosecutor and the court. It starts with the police duties to arrest, proof of guilt and crime stooping by the reducing of crime rate. The prosecution must speeding and adding working hours.

The supporting factors are the screening process at the police stage and prosecutor must have efficiency, it must separate the innocent from the accused before it became the defendants.

2. Due process control, it looks at the efficiency in finding the credibility of the truth finding. It emphasizes at the credibility of organizations in justice process and it can considering with the speed of executing the cases at each stages. It must mix between the credibility and the efficiency together by no separating. The prosecution has the

credibility because it has efficiency at least to protect the innocent as punishing the convicted.

Chapter 3 The criminal prosecution system and the role of justice process in aboard

This chapter will study the criminal prosecution and the role of justice process both civil law system which is in France and Germany and the common law system which in England and USA to compare Thai's system.

3.1 The civil law system

3.1.1 France

The criminal prosecution system in France is done by the state as 2 stages;

(1) The Pre-Trial. It is the stage that searching for the facts before the trial. The police, the prosecutor and the inquiring judge is respond to searching, gathering the evidences and facts in the case.

(2) The Trial. This stage the court will consider the person who is responsible for the decision of the case which is investigated by the authorities as above.

3.1.2 Germany

The criminal prosecution system in Germany is the same as in France. It uses code law and it separates the prosecution at the investigation from the trial. As the criminal procedure code of Germany, it divides into 3 stages;

(1) The primary criminal prosecution (Vorverfahren) is the process which looking for the facts about the offense for searching the convicted person. It is the stage before filing the criminal charges and the prosecutor will respond at this stage. It is to confirm the accused charges and it has to consider the facts which is decided by the officers. If the facts point that the accused commit the offense, it will go on trial by the court and that is the trial stage.

(2) The middle criminal prosecution (Xischenverfahren) when the prosecutor finish the investigation and order to prosecute the case, before the last stage for the verdict, it is the middle criminal prosecution. The objective is to control the discretion of

prosecutor about the prosecution. The court is in charge for this duties, might order to have ground or with no ground. It is up to the evidences presented in the case.

(3) The main criminal prosecution this criminal prosecution at this stage is the process done by the court, it is the decision and judgment. In each steps, the criminal procedure code of Germany designates the organization which has the role in the case differently by the main tasks of the organization. It is to searching for the truth to achieve the target of criminal prosecution which is to decide the accused case.

3.2 The common law system

3.2.1 England

The criminal prosecution of England is according with the accused system by the police who is in charge with investigation and CPS who prosecute the case. The judge has no authorities in the beginning of gathering the evidences to find the truth. It is trial by battle in the legal matter for proof the truth between the Plaintiff and the defendant before the court. The court is neutral role and passive act in finding the truth.

The criminal prosecution in felony charge that high sentences, It is prosecution by the lawsuit called Indictment and it is done at the Crown Court by the jury's system. The plaintiff must start the case at Magistrate Court for the primary hearing, if it has the ground for the case, it will send to trial at the Crown Court.

3.2.2 USA

The criminal prosecution system of USA is done by the state(Public Prosecution). It is the law which designates that only the prosecutor who is in charge for prosecute the case at the court. The prosecutor will prosecute under the name of the people and the prosecutor will have responsibilities in every stage of investigation for the prosecution. And in criminal prosecution, the prosecutor can advice the juror and grand juror in criminal cases. It is different from England, even the CPS have power to prosecute the case but it grants the rights to the injured person according to the popular prosecution model.

In conclusion, with the exception in England, the prosecutor has no power to investigate the criminal case by their own, it is different from USA which is the same commend law system and the civil law such as France and Germany.

Chapter 4 The role of organizations in criminal justice of Thailand

The criminal justice of Thailand now, as at the pre-trial, trial is still a lot of problems such as the lack of efficiency, the mistake, the delayed and the abused of basic right of the people is the assembly criminal justice process. It is the justice process by only the litigation but no criminal justice administration. It caused the problems to the process, lack of the checking at the officer the efficiency. It effects the reducing the case to the court such as the discretion to cancel the case, the criminal justice as associated is not efficient enough that made a lot of problem flowing is the overcrowd inmates in the prison.

The criminal prosecution at the officer stage and the court of Thailand is not related within the general system as the criminal prosecution at the officer stage, it separated absolutely at the investigation and trial stage. It effects the co-operated in finding the truth between the police and the prosecutor and lack of the balance of power at this stage. In general system, the criminal prosecution at the officer stage is the process which the prosecutor is the person who is in charge of control the investigation. Even Thailand will form the board committee as in the special law to investigate as the inquiring of the facts but it still not related as it should be in the general system.

To let the prosecutor to have the role in investigation as in the special investigation law BE 2547 as it wants the criminal prosecution as it should be, the prosecutor will be participate in the investigation and checking the evidences especially in the important case for the efficiency of the investigation and benefit to file the lawsuit at the trial stage because the prosecutor is the person who presents the evidences to the court, he must know how the investigation evidences important it should be.

For prosecution at the court stage, the role of the court in general criminal prosecution is neutral and passive act. Which compare with the role of the court in the criminal prosecution of the politician case is active role in finding the truth as the role of the court in civil law system and the Thai court should have this role as general system.

Chapter 5 Analysis the problems and solve the problem of the criminal prosecution in Thailand

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At the trial stage, the Thai judges have still the basic concept of passive role not the active role in criminal prosecution. It effects the trial about achieve the real truth and justice. It also effects the efficiency in checking the truth because the prosecution is only the formal procedure not looking at the truth.

By then, the efficiency or success of justice process up to the co –operate the basic protection of basic people right in constitution. By the model of criminal justice system now, both systems try to find the way to co-operating between two concepts to make a balances or checking in trial procedure. By then, it is both for the efficiency in crime control and due process which effects at the pre-trial must be efficiency in screening the cases and to have the court alone to judge the case is not enough.

Chapter 6 Conclusion and suggestion

According to Thai criminal procedure law now, it has no mechanism and balance of power between the organizations within the justice process. To let the prosecutor starts the case alone and prosecute the case until complete the investigation or cancel the case, all of these show the lack of mechanism and balance of power.

Thai criminal procedure law now is lacking of relationship between the organizations till it cannot called the process. This is very important loophole because it lets the abused of power and make the efficiency of justice process in control crime reducing. It is also effected the credibility of the people to the justice process.

The good criminal prosecution is not only the efficiency in prevent crime control and correct the convicted person back to normal in the society, it must have the measure to protect the rights and liberty of the person which involve in every stages.

By then, the efficiency or success of justice process up to the co –operate the basic protection of basic people right in constitution. By the model of criminal justice system now, both systems try to find the way to co-operating between two concepts to make a balances or checking in trail procedure. By then, it is both for the efficiency in crime control and due process.

The law and practices in the criminal procedure law of Thailand is not the same. It makes many organizations in criminal prosecution misunderstand in their role and tasks. The sources of the criminal procedure law of Thailand is from western countries, therefore the principles of the law should not different from them.

The practices is different from the law because Thai law scholar who graduated from England (who taught in the criminal procedure law and evidence law) understood that Thai criminal law is the same as in England which is not corrected. Even, both countries have the criminal prosecution by people by popular prosecution which each parties must have duties to find the truth. But when it is misunderstanding, it makes the role of police, prosecutor and the court to be passive role without active act to finding the truth and effecting the rights, the liberty of the person who is in criminal prosecution system and mistrust from the people.

Therefore, Thailand should reform the prosecution at the police stage as the general system that said “The criminal prosecution at police stage is the same process” which is the undivided power by designating the power of the investigation under the prosecution authority as the general prosecutor system.

By the conclusion, if compare between general criminal prosecution and politician prosecution, that can take the formal procedure of politician prosecution which is the same prosecution as in the continental countries, as it is the prosecution system as the two following;

- (1) It is the criminal prosecution system by the state.
- (2) The court has the role in exam the witness stand with the examination system.

If it uses with the general criminal prosecution, it will develop the criminal prosecution criminal prosecution in general better efficiency. It will make the trial faster because it will be additional witness exam only the dispute issues or not accept between the parties only. Moreover, it will upgrade the protection of the right of defendant in criminal case in general.

Therefore, Thailand should develop the criminal prosecution system by the structure of civil law system. By comparing and changing the attitude and the practice is being more general and change the role, the tasks of organizations in the justices process. This can be done by not passive role but active act in searching for the truth in criminal case for prosecution with fast and fair. In protection the rights, liberty of people which will create the efficiency in protecting and preventing the crime in the future as the same time creates the credibility in the justice process.