

Abstract

The study on “legal problems on conflict of interest of the legislative branch” is occurred because the constitution in the modern democratic States has to structure the constitution to be in accordance with the principle of separation of powers. Therefore, the State’s organization does not have decisive power which is an important foundation of the principle of legal state (Rechtsstaat). Moreover, the principle of separation of powers asks for the separation of power and of person exercising such power. This is according to the incompatible principle which prohibits a person from simultaneously having positions in organizations exercising sovereignty because it may cause conflict of interest from the use of power among organizations. This is considered as the conflict between private interest and public interest. As a result, there is a situation which is difficult to make a decision since it has to choose between private interest and public interest. Once, such person thinks about his/her private interest more than the public interest, the conflict between the private interest and the use of power in the position is occurred in the way that the acquisition of private interest is from the lost of public interest. This is also opposed to the trust of people.

From the study, it finds that foreign countries pay high attention to the prevention from conflict of interest of the legislative branch. Even though each country specifies measures in the Constitution, legislations and various regulations, as well as in the customs, preventive measure on the conflict of interest is varied according to the context and appropriateness of each country. The sameness is that there are systematic laws on conflict of interest including effective process to enforce such laws; consequently, it leads to actual result in practice.

With regard to Thailand, although the past and present Constitutions of the Kingdom of Thailand prescribe that the members of the Parliament, the legislative branch, namely the members of the House of Representatives and senators are representatives of the Thai people and free from any mandate, commitment or control, and shall honestly perform the duties for the common interests of the Thai people

without conflict of interest. This intends to prevent damage to State or prevent the member of the Parliament from seeking to unlawful benefit during the performance of member of the Parliament's duty including his/her spouse and children and any other person other than spouse and children who acts as an agent or partner of, or who is entrusted to act. Moreover it aims to avert the member of the Parliament from interfering or intervening in the performance of a government agency. However, the arisen problems are from the enforcement of the Constitution, legislations and various regulations, as well as particularly from the interpretation of the Constitution and legislations on issues regarding an act which is conflict of interest of the members of the Parliament. These problems are regarding, namely, holding any position or having any duty; receiving any concession or becoming a party of contract, a partner or shareholder; receiving any money or benefit; possessing or holding shares in mass communication business and using status or position. All of these problems affect the status of the members of the House of Representatives and senators.

However, the important principle of the Constitution, legislations and various regulations regarding to the prevention from dispute between private interest and public interest is to reduce the extent of influence or motive from the subordinate interest so as not to affect the discretion to consider any matter related to primary interest which the legislative has to concern due to being in a position assigned by people. Hence, the preventive mechanism for problems from an act with conflict of interest is not a mainly criticized issue. Since the Thai legal system has the Constitution, legislations and various regulations regarding to the prevention from conflict between private interest and public interest, the important point is how such legal measures will be successful. This is depended on the enforcement of the Constitution, legislations and various regulations as well as the systematic link among laws.