

Abstract

Corporate criminal liability has not been correctly solved by juristic method in Thai legal process. Particularly, criminal liability incurs from negligence which includes manslaughter. Manslaughter is one of the offences that judges try to apply with the corporate criminal liability to be appropriated with the social context. It is the fact that corporate operation incurs more criminal liability than before. However, judges have solved the problem by extending the interpretation of criminal liability. While Thai legislation has not pass the law concerning corporate criminal liability which causes several academic problems, for examples the Supreme Court decision is not sufficiently justified by the law because Thailand is civil law country. The Supreme Court decision lacks off clarity and it causes the problems relating to the improper punishment.

From the study, English law enacts the proper principle relates to corporate manslaughter which uses the Management Failure Model. The law considers overall perspective of senior management. In case of gross negligent management, if company's conduct falls far below the standard which could be expected of company working in a similar field and the gross negligence cause death to others, the corporate will have criminal liability pursuant to the Corporate Manslaughter and Corporate Homicide Act 2007 which solve the problem by aforesaid principle. Moreover, there are advance developments of other principles such as Aggregation Doctrine and Corporate Mens Rea Doctrine. The principles and doctrines are to adapt the law to fit present social context.

Management Failure is applied for solving the former doctrine which is called Identification Doctrine. The principle mainly considers corporate senior manager's liability or directing mind and will. The corporate is deemed to be guilty when it is proved that the senior manager is guilty. The management failure interprets the meaning of director broader than the former doctrine. The identification doctrine only considers that the representative action is the corporate action. Furthermore, this theory considers the director in overall perspective and it provides that the judge doesn't have to consider

whether an act of natural person is deemed to be a crime. This theory only considers whether an action is management failure. If it is management failure, corporate will have criminal liability. This way of consideration can cover the present s corporate structure which is very complex. For example, in case, the director empowers an agent who can not deemed to be director by the law to act on his behalf. From the study, this theory is suitable for Thai law to adopt it but there is also impropriety which should not be applied. However, this theory depends on the principle of negligence in each country to interpret the word “negligence”.

Although aforementioned consideration and the principle is the principle in common law countries, it can be adapted to Thai legal system. However, it has to go through the process in civil law system. The law will be introduced to the national assembly by the legislative for the debate and the legislation shall pass the law. From the study, the researcher founds that the amendment of problem concerning criminal liability should be systematically revised. It is to provide the element of the crime in the part of offender and suitable punishment for corporate. The amendment of the criminal code should be the solution. The general principle concerning the corporate criminal liability should pass the law about management failure as an element of a crime in part of mens rea and in the part of negligence. The corporate negligence should include the senior management which falls far below the standard and it could be expected of company working in a similar field. By this principle, judges do not have to consider only the criminal liability of representative anymore. Therefore, the principle will give broader interpretation of the corporate criminal liability and by passing the law, the law will be more proper by juristic method.