

Abstract

The objective of this research is to study the ideas and principles used to determine the proper law and the period of prescription in Environmental Case, including problems and obstacles regarding the law of prescription in Environmental Case. The comparable study of Thai and Foreign law of prescription will be provided in this research for better analysis to find an appropriate way to determine the period of prescription of claim for civil compensation in environmental case in Thailand

According to the research, the law of prescription applied to the environmental case nowadays is not suitable with the characteristic of environmental case. In order to determine the period of prescription in environmental case, the provision of the period of prescription in Civil Code will be applied. This is because of the lack of any specific provision as to the period of prescription in the National Encouragement and Preservation of the Quality of an Environment Act B.E. 2535 – a model law of the law of environmental dispute in Thailand. Because the damage received by the injured person in environmental case is unique and different from the damages received by the injured person in tort claim, the application of the law of prescription in the Civil Code to environmental case is somewhat inappropriate. In tort action, the effect of the wrongful act will be apparently seen suddenly after such an act occurs; however, in environmental claim, the effect of the wrongdoing will be both apparent and latent. With regards to the latent effect, the effect of the wrongful act will take long time, which could be years, to appear to the injured person. As a result, since the law of the prescription in the Civil Code does not use the perception of the effect of the wrongful act as a measure to begin to run the period of the prescription, in case of a latent effect, the injured person is not able to know that he/she is suffering from the wrongful act; thus he/she cannot know that the period of the prescription starts to run and eventually if the effect occurs after the period of the prescription expire, he/she will lose the chance to bring a case to the court. That brings injustice to the injured person in environmental case.

To solve the problem, I would like to propose the solution which is that we should establish a specific law regarding the prescription of a claim for civil compensation in environmental case due to the uniqueness of the characteristic of the effect of wrongful act in environmental claim. In this research, I would like to suggest that, as one condition for the period of prescription in environmental suit to start to run, it should begin to run only when the injured person knows the effect of the environmental wrongdoing.