

Problems Of Law And Prosecution Toward Transnational Economic Criminal Organization In Thailand

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Abstract

The research aimed to study problem in laws and prosecution toward transnational economic criminal organization in Thailand, as well as provide solution. This was a qualitative research that collected data using in-depth interview of 35 key informants selected through purposive sampling and a questionnaire was used to gather information. The sample group was police officials. The research found that problems in prosecution toward transnational economic crime in Thailand caused by its law, legal enforcement officials and globalization. Therefore, law needs to reform in order to improve prevention and suppression as well as performance of legal enforcement officials in prosecution of transnational economic crime.

Keywords: Law, Transnational Economic Criminal Organization, Prosecution, Legal enforcement officials, Globalization

1. Introduction

In a globalized world, there are rapid developments in all aspects whether it is economy, society, technology, transportation, and communication. In another dimension, while the world is steadily developing, such technological advancement is misused to harm society by injustice or illegal acts which are also developed from a person to a group of persons or organization. In the local dimension, this act respectively expands from the local level to national, regional, and global level. Such an act is called “transnational organized crime”. The severity of transnational crimes cause enormous damages to mankind and become severe and increase the frequency of crimes (United Nations Office Drugs and Crime, 2019), especially transnational economic criminal organization (Swangmongkol, 2017).

Thailand currently has a problem with transnational organized crime that greatly affects national peace and security. However, it appears that the current law cannot be effectively enforced to prosecute an offense of participating in transnational organized crime. Additionally, since Thailand has signed the United Nations Convention against organized crime in 2000, it is necessary to enact the Prevention and Suppression of Participation in Transnational Organized Crime Act 2013 to cover criminal offenses in the manner of significant transnational offenses or acts of an organized criminal group, or complicated criminal offenses that possibly have serious impacts on peace and good moral of people, national security, international relations, and national economic systems (Phoprom & Chutinan, 2016). However, it is found that the prevention of this crime is

Problems Of Law And Prosecution Toward Transnational Economic Criminal Organization In Thailand

difficult and ineffective (Phoprom & Chutinan, 2016). Therefore, this research aimed to study the problem in enforcing of the Prevention and Suppression of Participation in Transnational Economic criminal Organization Act. 2013 and the prosecution of transnational economic criminal organization in Thailand. This will lead to the development and improvement law to be more effective.

2. Literature review

The Definition of Transnational Economic Crime Organization

The Royal Institution Dictionary year 2011 defined “crime” as criminal offense and Black Law Dictionary defined “crime” as any demeanor that the law imposes penalty or any demeanor that violates criminal law. Lawyers see crime as crimes that forbidden by criminal law and have penalty imposed whether it’s the actions or abstaining of action that have been prescribed as wrongful and have penalty explicitly imposed. As for the meaning of crime by criminologist, they look at the severity of the action and how it is highly dangerous to the society (Tassanachaikul, 2015), which is consistent with Hartjen (1978) who saw crime as action or behavior of the violator or breaker of the enacted law and Sutherland (1986) saw crime as any action that violate provisions of the law but if the action only violates the morality or condemn by the society at any extent, it’s still not deemed as crime.

The Prevention and Suppression of Transnational Crime Organization Participation Act 2013

The Prevention and Suppression of Transnational Crime Organization Participation Act 2013 can be enforced to prevent and suppress transnational economic crime in Thailand since it is a serious offense which is a criminal offense with maximum imprisonment of four years prescribed by law. The essence of an organized criminal group is as follows:

The Prevention and Suppression of Transnational Crime Organization Act 2013 prescribes that transnational organized crime means a group of three or more persons collectively committing an act with the aim of committing a serious offense in order to directly or indirectly obtain financially, property or other material benefits and committing a crime with the following characteristics: (1) offense committed in more than one state (2) an offense committed in one state but it is prepared, planned, ordered, supported, or controlled in another state (3) an offense committed in one state but involved with an organized criminal group that commits criminal act more than one state (4) an offense committed in one state, but its significant consequence occurs in another state (Sumanasethakul, 2019).

Furthermore, the Prevention and Suppression of Transnational Crime Organization Act 2013, Section 5 prescribes that any person who commits the following acts shall be guilty of an offense of transnational crime organization participation: (1) being a member or network of transnational organized crime (2) two or more people conspire to commit serious crime regarding transnational organized crime (3) Directly or indirectly engage in any acts of activities or operation of transnational organized crime by being aware of purposes and operation or intention of committing such serious crime of transnational organized crime (4) manage, order, assist, encourage, facilitate or provide consultation in committing a serious crime of transnational organized crime by being aware of purposes and operation or intention of committing such a serious crime of transnational organized crime Moreover, other persons involved with the aforementioned offenses may be guilty under the Prevention and Suppression of Transnational Crime Organization Participation Act 2013. Also, any person who is present during committing a crime, or participates in a meeting, but does not object to such an act, or a chief, manager and a person holding a position in that transnational organized crime, or such an offense committed by a person holding a political position or being an officer shall be guilty with any person who commits a crime (Sumanasethakul, 2019).

Relevant Researches

The previous researches indicate that the prevention, suppression, and prosecution of transnational crime-related offenses are quite unsuccessful. This is partly due to the law that is vague and delayed to the current situation (Teppunkoonngam, 2020; Buabudhara, 2019; Boonyarattanasoontorn, 2018; Phoprom & Chutinan, 2016; Srihawong, n.d.). Consequently, the internal law should be improved to be more specific (Tassanachaikul, 2015; Hauck & Peterke, 2010) and should determine scopes and standards for officers in performing duties for effective enforcement (Teppunkoonngam, 2020). In foreign countries, especially in Europe, legal measures are improved to be up-to-date, and operational framework is clearly determined (Europe Commission, 2021) resulting in effective prevention, suppression, and prosecution of transnational crimes (Joutsen, n.d.). Likewise, in Australia, the nation plan is clearly determined and the law is improved to effectively counter transnational crimes (Australian Government, n.d.).

Moreover, previous studies found that tourism policy in Thailand was related to ineffective prevention and prosecution transnational organized crime (U-tayo, 2020; Kanchanakit, 2016). The policy promoting tourism in Thailand provided both advantage and disadvantage. Transnational organized crime group used loophole of tourism policy traveling Thailand to commit transnational organized crime (U-tayo, 2020; Kanchanakit, 2016). In addition, globalization is another factor that facilitates criminals to easily commit transnational economic crimes. Modern technology becomes a tool used by criminals to commit transnational crimes (U-tayo, 2020; Panjamanond, 2019; Kanchanakit, 2016).

3. Research Methodology

This research is a qualitative. The quantitative approach was being done simultaneously with the objective of studying the issues on the enforcement of the Prevention and Suppression of Criminal Organization Participation Act, 2013 and transnational economic criminal organization which the researcher studied from the content of text books, journals, academic articles, concepts, theories and various researches involved to use as guidelines for the study. For the qualitative research, the researcher used the in-depth interview as a tool to collect information with 35 key informants. The samples were officials in Thai justice system, that comprised of police officers, public prosecutors and judges. The key informants have experience in prosecution of economic crime offense, criminal organization and transnational crime and all relevant issues.

The in-depth interview was taken approximately 60 minutes. Before interview, the researcher informed to the samples that audio recording might be conducted. In case of non-permission of audio recording from the key informants, the researcher took note from in-depth interview. When gathering data was completed, the researcher inspected validation and categorized data in order to analysis. The result would be present to description content.

4. research results

Problem in Prosecution of Transnational Economic Criminal Organization in Thailand

Vague of Legal Provision in Compiling Evidence

The law is claimed that clear and modernized as a tool to prosecute transnational economic criminal organization. However, when considering collecting evidence to prosecution, the Act is not set clearly. The obvious examples are wiretapping under Section 17 and stocking under Section 21. According to Section 17, the officials can do wiretapping when the officials have a reasonable ground to believe that an offence of participating in transnational organized crime has been committed or will be committed or 2) the officials have a reasonable ground to believe that information about the offence of participating in transnational organized crime will be obtained if that information is accessed. However, the Section 17 does not set standard process or procedure to collect evidence as well as scope and power of officials to collect evidence. This is the same as Section 21 of the Act. Section 21 allow trailing to officials when the officials suspect having committed an offence or being about to commit an offence of participating in transnational organized crime to investigate, arrest, search for and compile evidence. However, scope, power, official procedure of trailing to officials is not set. Consequently, this ambiguous can leads to unlawfully collect evidence and non-transparency.

“It does not have formal procedure for trailing. If 10 officials operate trailing to suspect, some officials might do unlawfully trailing because the Act does not set power and process”.

Problem From Policy of Tourism and Globalization

In addition to unclear law as aforesaid, the key informants said that Thailand is a center of tourism and important hub for transportation in ASEAN region. This makes a larger number of travelers entering and departing of Thailand. Consequently, Thailand is a target of criminals to commit transnational economic organized crime, that impact to economy, social and national security. Therefore, the policy of promoting tourism is another factor that make suppression and prevention as well as prosecution of transnational economic criminal organization to be difficult and ineffective. The policy of promoting tourism favor criminals to access in Thailand easily.

“Transnational organized criminals came to Thailand as tourists. Sometime, they came to plan and committing crime”.

In addition, globalization is a factor to obstruct suppression and prosecution with cases of transnational economic criminal organization. The key informants said that advance and modern technology is used as a tool to commit transnational organized crime by criminals.

Problems Of Law And Prosecution Toward Transnational Economic Criminal Organization In Thailand

“Organized crime builds a network and commit crime via technology and telecommunication such as scams and cybercrime. And it is very difficult to arrest criminals because offender and victim have not seen each other due commit crime through technology such as internet”.

Problem from Law Enforcement Officer

It is not only the problem from law, but also law enforcement officials like police. The police still do not have enough knowledge and the understanding of this law to use as a tool to successfully suppressed transnational economic criminal organization because the police have used very little of this law in practicality. Most power is at the prosecutor which sometimes causes the lack of flexibility in the operation. It is necessary to use this law as tool for prosecution of transnational criminal organization because it's a special law, different from criminal law in general and therefore, should use this law as tool to prosecute the mentioned offense.

“Generally, police officials have little knowledge the nature of transnational organized crime due to complexity of transnational organized crime. Also, in practice, police officials were seldom conducting case of transnational organized crime. Consequently, it is then ineffective. Suppression and prosecution of transnational organized crime need expert in international law, foreign languages, international relation, and advance technology, etc.”.

The figure 1 summarizes problem of prosecution of transnational economic criminal organization in Thailand



5. Discussion and Conclusion

The research found that provisions of the Prevention and Suppression of Transnational Crime Organization Participation Act 2013 is ambiguous, especially compiling evidence. This leads to ineffective prosecution of transnational economic criminal organization in Thailand (Teppunkoonngam, 2020; Buabudhara, 2019; Boonyarattanasoontorn, 2018; Phoprom & Chutinan, 2016; Srihawong, n.d.). Also, vague of provision towards collecting evidence related to unlawfully prosecution and non-transparency. Such unlawfully prosecution and non-transparency is inconsistency with rule of law, which any action infringement on people's right must be given power by law. Thus, if official do any action violate people's law without power, this is unlawful action. Therefore, due to effectiveness, lawful action and transparency in prosecution of transnational organized crime in Thailand, provision the Prevention and Suppression of Transnational Crime Organization Participation Act 2013 shall be reformed to be clear, standard and modern, preferably compiling evidence. Scope, power and procedure of collecting evidence must be set to officials to collect evidence. The obvious example in effective prosecution of transnational economic criminal organization can be seen in Europe region and Australia. Both Europe and Australia reformed law, legal measure and action plan to combat transnational economic criminal organization. Laws, legal measures and action plans have been clearly regulated, as a result, implementation is uncomplicated that leads to effective prevention and persecution of transnational economic criminal organization (Europe Commision, 2021; Matti Joutsen, n.d.; Australian Government, n. d.).

Moreover, police officers are as legal enforcement officials but police officers still lack of knowledge and understanding to combat transnational organized criminals. Transnational economic criminal organization is complicated case, therefore, investigation, inquiry and prosecution requires professional skill and comprehensive understanding. If legal enforcement officers lack of understanding and experience, it would be difficult to success in prevention and prosecution of transnational economic criminal organization. Furthermore, it found that tourism policy favor criminal to commit organized crime in Thailand. The policy makes loophole to foreigners for entering and departing easily. This can be seen that inappropriate in policy making can be another factor to favor criminal to commit transnational economic criminal organization as well.

In addition, globalization is another factor to obstruct effective prosecution of transnational economic criminal organization. Advance and modern technology become tools to commit transnational economic organized crime. This makes difficult for officials to trace criminals to prosecution.

6. Conclusion and suggestion

The objectives of the research were to study problem in law and prosecution of the transnational economic criminal organization in Thailand and provide solution. This qualitative research was carried out through in-depth interview with 35 key informants, that were selected by purposive sampling. The research found that problems were from law itself, legal enforcement, globalization and policy of tourism.

It suggests that provisions toward investigation and collecting evidences under the Prevention and Suppression of Transnational Crime Organization Participation Act 2013 shall be reformed. Power and scope of investigation and collecting evidences by legal enforcement officials shall be set clearly and standard rules of investigation and collecting evidences must be established to legal enforcement officials to comply as well. Moreover, the Royal Thai Police has solved the problem by establishing training program to improve knowledge and practicing skill toward suppression and prevention of transnational economic crime. It is not only improvement of knowledge and practicing skill, but also training of use modern technology to trace criminals shall be provided to legal enforcement officials.

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Problems Of Law And Prosecution Toward Transnational Economic Criminal Organization In Thailand

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