

Thailand's Legal Measures for Terrorism Prevention: Criminalisation of Terrorism and Challenges in Enforcement

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Research Article

Thailand's Legal Measures for Terrorism Prevention: Criminalisation of Terrorism and Challenges in Enforcement

Ruetaitip Chansrakao¹

¹ Ph.D.Candidate, Mahidol University, Faculty of Social Sciences and Humanities, Program in Criminology, Justice and Social Administration, e-mail address : ruetaitip.cha@student.mahidol.ac.th

Abstract

This study sought to investigate two major research questions: (1) how Thailand criminalise terrorism offences and (2) what challenges arose in the prevention and countering of terrorism offences in Thailand. This qualitative study included a review of the literature as well as in-depth interviews with two groups of key informants: 1) Counter-terrorism police officers and military intelligence officers; and 2) experts in security, legal, and criminology. This study discovered that terrorism offences in Thailand were criminalised because of the country's international obligations as a member of the United Nations. Terrorism offences in the penal code have included terrorist acts, threatening and preparing for terror acts, a support of terror acts, threatening and preparing for terror acts, and membership in a United Nations-Designated Terrorist Organization. The difficulties in enforcing the criminal law on terrorism stemmed from the investigation and prosecution procedures, as well as the ambiguity regarding the substance of the penal code offences. The study's findings also revealed that there were flaws in the evidence collected during the investigation, which hampered the prosecution of the accused

Keywords: *criminal law, terrorism, legal measure, Thailand*

Introduction

Legal response is one of the approaches to terrorism that affects law enforcement to eliminate terrorism. This policy begins with the design of legislation for criminal justice and the judicial mechanism for prosecuting and punishing terrorists. The legal approach is effective in undermining the terrorist network and bringing cases to trial because terrorism is a crime in all jurisdictions. Consequently, law enforcement is the leading vehicle for the response to terrorism (Martin, 2006).

Domestic counterterrorism policy initiatives are one of the policy measures being implemented to address major terrorism issues. Terrorism-related judicial provisions are regarded as a difficult step towards combating terrorism by criminalising terrorism offences under the Criminal Code. The Thai government has made an international commitment to implement the UN resolutions, as a member of the United Nations. The United Nations has passed numerous anti-terrorism resolutions, among which is Resolution 1373, which requires member countries to make terrorism a criminal offense, with appropriate penalties.

Traditional principles of criminal jurisprudence can be regarded as the constituents of legislative elements (Bozbayindir, 2018), with a focus on protecting the fundamentals of social good and preventing unlawful activities. The responsibility of the state is to provide the most effective means of protecting the public from serious criminalisation activities (Diez Ripolles, 2007). Criminal law should be used only as a last resort. The threat of punishment should ensure that the gravity of the penalty corresponds to the gravity of the offence. Criminalisation must be broad and act-specific. . It necessitates an act (or, in rare cases, an omission), which means that mere thoughts should not be punishable (Keiler & Roef, 2016). As a result, the phenomena captured by preventive justice are not entirely novel. In the aftermath of 9/11, preventive efforts have expanded globally to become an integral part of the system. In this regard, criminal law is regarded as a risk-management tool. During this era, risk prevention, security, harm reduction, loss reduction, and fear reduction have become the overarching goals of preventive justice, which contrast sharply with the traditional goals of prosecution, punishment, and criminal justice (Garland, 2001).

Criminal law, in conjunction with neoliberal policies in the so-called risk society, is viewed as a response to real or perceived risks that must be avoided. According to Garland (2001), the state's activities focus on preventing the convergence of factors leading to criminal events, rather than treating criminal dispositions or punishing guilty individuals. The primary goal of punishment for preventive offences can be regarded as incapacitation. Indeed, by imprisoning someone for an act that he has not yet committed, preventive rationale aims to prevent harmful conduct well before the ultimate harm occurs. Thus, such a punishment primarily aims at a negative variant of deterrence of the individual perpetrator. Douglas (2014) argued that the rationale for the criminalisation of terrorism emerged from the fact that substantive offences were not enough to apprehend and prosecute terrorists.

There are claims that criminal law is becoming or has already become one of the tools of a newly- emerging security law or preventive justice because of such expansions. The legislation designed to address the phenomenon of terrorism contains the most recent and innovative forms of preventive criminalisation. A slew of new precursor terrorist offences punishes behaviour that occurs well before any act of terrorism (Roach, 2014). The new anti-terrorism laws do include preparatory, possession, and pre-inchoate offences. The use of this type of criminalisation has advantages for state agents because criminalising a seemingly innocuous behaviour allows for early intervention through detention or arrest. Further, in this regard, imprisonment serves as negative special prevention by immobilising an allegedly would-be perpetrator (Zedner, 2015).

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Since the enactment of Section 30 of the Penal Code for the Kingdom of Siam R.S. 127 (1908)², terror acts in Thailand have been criminal offences. During the implementation of this Penal Code, Thailand's Supreme Court heard four cases involving acts of terror³. Thailand's Criminal Code was established in 1956. There was no specific offence of terrorisation after 1956. Terrorists were charged with a variety of criminal offences, including public peace violations, public danger, assaults on life and body, and property crimes.

In 2004, Thailand amended the criminal code on terrorisation by enacting the Emergency Decree of Amendment of the 2003 Criminal Code for adding terrorisation offences in Section 7 of the Criminal Code, citing the likelihood of terrorist threats occurring in Thailand, which affect domestic security, as well as implementation of United Nations Security Council resolutions. In this regard, the then Thai cabinet tasked the Council of State with determining whether the existing laws were adequate. The then Thai law, according to the Council of State, did not categorise terrorism as a criminal offense. Consequently, the Cabinet entrusted the task of amending the law to the Drafting Committee (Constitutional Court of Thailand, 2004).

Security laws in Thailand fall into four categories, viz., Criminal Code offences, the Martial Law Act, the State of Emergency Decree 2005, the Security Act 2008, etc. (Muntarbhom, 2010). Terrorism offences were listed as a legal tool to combat terrorism in Thailand after 2004 and include (1) an act of terror, (2) a threat to terrorise, (3) preparation or conspiracy to terrorise, (4) support to terrorisation, and (5) membership in designated terrorist organisations. Following the amendment of these provisions, many suspects were charged with terrorism-related offences. There have been 35 cases in the Criminal Court Decision Database till now, the majority concerning terror attacks in Southern Border Provinces. This study finds that only ten cases of terrorism offences were filed with the Supreme Court.

Since the inclusion of terrorism offences in Thailand's criminal code, criminal cases for terrorisation offences have been prosecuted, but many difficulties and challenges have arisen in the enforcement. As a result, the researcher sought to investigate the criminalisation of terrorisation offences and the countering of terrorism offences in Thailand as a means of preventing terrorism, as well as the difficulties associated with the enforcement of anti-terrorism laws in Thailand.

Methodology

The purpose of this research was to investigate the criminalisation of terrorism offences in Thailand and to examine the tackling of terrorism-related offences through the analysis of challenges in terrorism offences. The study was planned in five stages: literature review and preliminary interviews, conceptual framework, ethics approval, data collection, and findings.

² In the case of any person who expresses malice to others or is reasonably considered by the court to enact terror against another person by harming or it is evident to the Court that he/she is homeless and without occupation, the Court has the right to call upon such a person to execute a bond with security or a promise to keep the peace.

³ Supreme Court of Thailand Decision NO.557/2474, No.769/2477, No.1556/2479 and No.95/2487

- (1) Initial stage: The researchers reviewed related literature and conducted preliminary interviews with experts.
- (2) Conceptual framework was created based on a review of the literature and preliminary interviews.
- (3) Research ethics approval was sought from the Institutional Review Board (IRB) of Social Sciences at Mahidol University and obtained the same (MUSIRB: 2016/540 (B2)).
- (4) Data collection: For this study, structured interviews were conducted with 22 key informants, using a purposeful sampling technique employing selective methods to gather a group of key informants who were appropriate to the research objectives. Such key informants were divided into two groups: (1) law enforcement officers from the Southern Border Police Operations Center and the Anti-Terrorism Supervision Division, and (2) terrorism experts from the fields of criminal law, criminology, and security studies. The researchers also conducted a literature review on the concept of terrorism prevention, legal measures to counter terrorism, criminal law and criminal procedure, and court documents and decisions.
- (5) Findings: The researcher analysed the data through the content analysis method. The findings were reported to the public and targeted groups.

Findings And Discussion

The researchers will present the results of this study in two sections – the criminalisation of terrorism offences in Thailand and the challenges in the enforcement of measures against terrorism offences.

The Criminalisation of Terrorism Offences in Thailand

In this section, the author will present the results of the study in three related parts – the development of criminalisation of terrorism offences in Thailand, constitutional review of the drafted law, and the substance of terrorism offences.

The Development of Criminalisation of Terrorism Offences in Thailand

To combat terrorism, the United Nations Security Council (UNSC) has imposed so-called "targeted sanctions" on individuals and entities that support terrorism by including them in a terrorist list, freezing their assets, and prohibiting them from traveling. Under Title VII of the UN Charter⁴, UNSC resolutions take precedence over other international treaties and bind all UN member states and international organizations to implement the resolutions within their respective jurisdictions (United Nations, 1945).

Terrorist attacks are becoming increasingly violent and are not limited to the sovereignty of any particular state but have an impact on international peace and security. Consequently, the

⁴ UN Charter Chapter VII, Art. 48, para.1

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Security Council, empowered by Article 24 of the UN Charter⁵, passed Resolution 731⁶ (1992) as a commitment to the abolition of international terrorism, which was deemed a threat to the peace and security of nations.

Thailand has complied with Resolution 1373 by enacting the Terrorism Criminal Law, Sections 135/1 – 135/4. This is because the UN Charter is a special multilateral treaty of a constitutional nature (Doyle, 2010), and the UN Member States are required to implement the above resolutions by enacting them as state laws or regulation. Both the Security Council resolutions are essentially mandatory and member and non-member states can be compelled to comply without any compromise. Member states must first be negotiated with and must consent to the resolution. Thus, the Security Council has used its powers under Section 7 to issue legally binding resolutions to enable member states to adopt effective anti-terrorism measures by creating anti-terrorism frameworks or rules for adopting internal terrorism laws, as reflected in Resolution 1373.

The Cabinet tasked the Office of the Council of the State (OCS) with reviewing the current anti-terrorism legislation. The OCS advised the Cabinet that there was no specific anti-terrorism legislation. The OCS was hence asked to draft a law on terrorism offences. Representatives from the Ministries of Justice, Foreign Affairs, the National Security Council, the Royal Thai Police, the Anti-Money Laundering Office, the Attorney General's Office, and the Cabinet Secretariat were invited to discuss the substance of the draft Act. On August 5, 2546, the OCS issued a report on the draft Act. The Cabinet passed a resolution to make terrorism a crime by issuing a Decree (Constitutional Court Ruling NO.29-30/2547, 2004)

The Emergency Decree Amending the Penal Code B.E.2546 (2003) was justified by (1) the terrorism threat in Indonesia, which had the potential to spread in Thailand shortly, posing a serious security threat, and (2) the obligation to implement the United Nations Security Council Resolution on counter-terrorism, which required member states to criminalise terrorism (Chansrakaeo, 2020).

Constitutional Review

Members of the National Assembly's Houses submitted their opinions to Thailand's Constitutional Court for review, claiming that the Emergency Decree Amending the Penal Code B.E.2546(2003) was not issued to maintain national and public safety as required by Section 218 paragraph one of the 1997 Constitution. The members, submitted the following five considerations to the Constitutional Court:

(1) The principal rationale for the Council of Ministers proposing the Emergency Decree Amending the Penal Code B.E.2546 (2003) was a situation which made such a law necessary and urgent.

⁵ UN Charter Chapter V, Art. 24, para.1

⁶ Security Council resolution 731

(2) The definition of offences in the Emergency Decree Amending the Penal Code B.E.2546 (2003) was too general and lacked clarity.

(3) Legal measures imposing the death penalty and restricting individuals' rights and liberties must be enacted and approved only by the people's representatives (Constitutional Court Ruling NO.29-30/2547, 2004).

On the issue of the Emergency Decree, the Constitutional Court determined that it was issued to maintain national and public safety under Section 218, paragraph one of the 1997 Constitution. The Decree contained measures to prevent and suppress terrorist acts, according to Constitutional Court Ruling NO.29-30 in 2003. The Decree defined terrorism as any violent acts that “caused harm to the lives, bodies, and properties of the people with the special intention of compelling a government or creating fear of the people.” Additionally, anti-terrorism measures were implemented, designating preparation for terrorism, conspiracy, incitement, and support as offences.

It was not desirable to wait for the offence to occur and the harm to be done. It was therefore necessary to employ pre-emptive legal measures to stop acts with leading to terrorism. If terrorist acts were allowed to occur, harm would be done to the lives, person and properties of the people, which directly impact national security and public safety and require a lengthy period for rehabilitation to restore normalcy. In such a case, the country’s economic stability would also be affected. Thus, it was necessary to use legal measures in an expedient manner to respond to the possibility of such situations. (Constitutional Court Ruling). NO.29-30/2547, 2004, p.5)

Under the Penal Code of the Kingdom of Thailand, committing an offence of terrorisation consisted of the following: (1) committing a violent act causing danger to life or body or any’s person’s freedom, (2) committing an act causing serious damage to transport and communication system or structure base of public interest and (3) committing an act causing damage to any state property or any person’s property or creating an environment to cause vital economic damages. The specific intention of those acts should be to threaten the Thai or foreign government or international organisation to act or not act in a specific fashion which causes serious injury or people to be terrified. Any person guilty of this offence shall be punished with the death penalty, imprisonment for life or imprisonment from three to twenty years, and a fine from sixty thousand Baht to one million Baht. Any demonstration, protest, or such movements will not constitute terrorisation.⁷

⁷ Penal Code of Thailand Title I/I S.135/1

Whoever, performing the Criminal Offence, as follows: Commit an act of violence or exercise any act to cause a danger to life or a bodily harm or any person's freedom harm seriously; Commit any act to cause serious injury to the transportation-system, communication system or structure base of public interest; Commit any act to cause injury to any State property or any person's property or cause an environment to cause likely cause an important economic injury;

If such act is made with the aim of threatening or forcing the Thai Government, Foreign Government or International Organisation make or not to make any act to cause serious injury or for making a disorder by causing the people to

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Section 135/2 made threatening terrorism and preparing for terrorism an offense⁸. The supporter of a terrorist act under Section 135/1 or Section 135/2 is liable as the principal.⁹ The final section of this terrorisation legislation includes as a terrorist one who is a member in a United Designated Terrorist Organization, which the Thai government acknowledges by making an announcement.¹⁰

Challenges in the Enforcement

Based on the information obtained from interviews with security personnel, it was found that

“Before August 11, 2003, the Thai Security Agency on Counterterrorism often had the same idea about terrorism, which is to say that Thailand is not a target of international terrorism. Thailand is a free city. But after the Thai and US counter-terrorism units collaborated to investigate and arrested Mr. Hambali, belonging to one of the several terrorist groups, the views on terrorism in Thailand have changed completely.”

According to key informants, Thailand has become a haven for terrorists planning or continuing their journey to other countries in the region, prompting security agencies to closely monitor the movement of global and regional terrorist groups that have entered the country. With the establishment of counterterrorism agencies and increased cooperation in the form of education, training, seminars, , and news exchanges, it was found that the agencies' resources and capacities were insufficient, and that terrorist groups have more sophisticated techniques to remain hidden from the investigation (Personal interview with Bangkok security officers, 22 October 2017).

The lack of a specific anti-terrorism law, according to policy-level key informants, is one of the most significant barriers. According to key informants, existing counter-terrorism laws should be addressed to respond to changing circumstances and new types of terrorism contexts that emerge over time. For legislative provisions on the substance of the criminal code, more consideration should be given to terrorist groups' methods and ideologies. In the Southern

⁸ Penal Code of Thailand Title I/I S.135/2 Whoever:

1. Threatens to make a terrorization under circumstances prompting a belief that such person will carry out the threat; or
2. Collect forces or arms, procure or gather property, give or receive a training in terrorisation, prepare any other act or conspire with others to terrorise or commit any offence in a part of plan to terrorise or abet people in terrorisation or ones know the terrorists and commit any act to be covered;
Such person shall be imprisoned from two years to ten years and fined from four ten thousand Bahts to two hundred thousand Baht

⁹ Penal Code of Thailand Title I/I S.135/3 of Thai Penal Code states: “Whoever to be supporter in committing offence under Section 135/1 or Section 135/2 shall be liable to the same punishment as principal in such offence.”

¹⁰ Penal Code of Thailand Title I/I S.135/4 of Thai Penal Code states “Whoever to be the member of a body of persons who there is resolution of or notification subject to Security Council of the United Nations Organization designating as a body of persons to have committed an act as terrorization, and Thai Government has notified to acknowledge notification or resolution as aforesaid, such person shall be imprisoned not more than seven years and fined not more than hundred thousand and four ten thousands Baht”.

Border provinces, the criminal code on terrorisation offences was used to prosecute both political and terror acts. This complicates the interpretation and enforcement of the law.

Thai security agencies continue to lack integration of relevant law enforcement. Counter-terrorism agencies such as the Royal Thai Police, the Anti-Money Laundering Office, the Special Investigation Department, and the Attorney General's Office should conduct a review of existing law enforcement practices by forming a task force to integrate enforcement. Due to the lack of integration of counter-terrorism and law enforcement, there is considerable delay in execution, as also frequent conflicts between departments, resulting in inefficient operations..

1) Terrorism Cases

During 2017–2019, security cases increased in the Southern Border Provinces, from 115 in 2017 to 146 in 2018 168 cases in 2019. However, in 2020, number of security cases fell to 19.

Table 1 *Number of Security Cases in Southern Border Provinces during 2017–2020*

Year	Results			Total	Cases under Trial	Total Cases
	Disposed Cases	Dismissed Cases	Cases with Punishment			
2017	0	26	37	63	52	115
2018	3	25	47	75	71	146
2019	1	39	59	99	69	168
2020	0	51	34	85	44	129

Source: Office of Budget and Planning, Office of Criminal Court Region 9 (2021)

Many terror-related cases were brought before criminal courts and the Supreme Court. The researcher found 35 criminal cases relating to terrorisation offences in the Criminal Court Database, as shown in Figure 1. There were 36 cases of terrorisation offences recorded in the Court of Justice database. The majority of the cases (21 cases) related in Pattani and Narathiwat Provinces (9 cases.) As shown in Figure 1, there were four terrorism cases in 2017, twenty in 2018, eleven in 2019, and one in 2020.

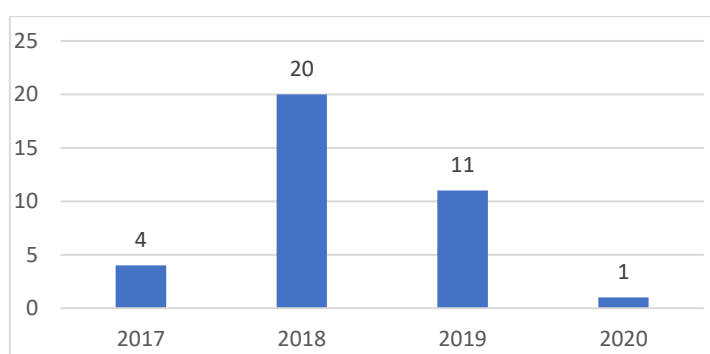


Figure 1 Number of Terrorisation Cases from 2017 – 2020 Source: Court of Justice Database, 2020.

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Only two of these cases were brought to court for corruption and misconduct. The defendants in these two cases were charged with official misconduct and terrorisation, as described in the case motion: "the defendants committed an act to cause serious injury to any State's or any person's property, an act to cause injury to any State's or any person's property, or an envelopment to cause likely causation." (Decision Number 64/2562, Thailand's Region 6 Court for Corruption and Misconduct Cases, 2019).

(2) Challenges in the Enforcement of Terrorism Offences

Concerning the problems of security cases and terrorist offences in the Southern Border provinces since 2004, the year that terrorism offences under the Criminal Code were implemented, it was discovered that the important issue is efficiency because the pre-litigation process has applied special laws under the Martial Law Act of 1914 and exercised power under the Royal Decree of Public Administration. The police, military, and administrative departments have powers under the Royal Decree of Public Administration in an Emergency Situation 2005, whereas police officers, inquiry officers, and public prosecutors have powers under the Criminal Procedure Code.

The inquiry official will first review security-related cases within the Southern Borders Provinces. The inquiry official will then begin the investigation with the 'Sub-district Operation Committee,' which consists of three administrative representatives, military special forces, and provincial police station officials. As shown in the Table 2, the criteria for security case consideration were issued by the Internal Security Operation Command Forward and the Command Center Royal Thai Police Forward Post (Angkhanawin, 2018).

Table 2 *Criteria for Security cases Review*

Committing (an) act in the following offences in the Penal Code	Applicable Laws
1.1 Offences relating to the security of the Kingdom ¹¹	Section 113 114, 116,117, 118
1.2 Offences against the External Security of the Kingdom ¹²	Section 119, Section 120
1.3 Offences in Respect of Terrorisation ¹³	Section 135/1 – 135/3
1.4 Offences Relating to Public Peace ¹⁴	Section 209, Section 210
1.5 Offences Relating to Causing Public Danger ¹⁵	Section 217, Section 221, Section 229

¹¹ Penal Code of Thailand Title I Chapter 1

¹² Penal Code of Thailand Title I Chapter 3

¹³ Penal Code of Thailand Title I/I

¹⁴ Penal Code of Thailand Title V

¹⁵ Penal Code of Thailand Title VI

Source: Angkhanawin (2018)

(3) Problems of arrest and interrogation

According to the principles of criminal justice, arrest is an important criminal law measure to bring the offender to justice, while also affecting the people's rights and freedoms. In terms of criminal law, this must be done only within the legal framework by an authorised official to obtain information in the terrorist case area. Arresting a suspect is the first step in obtaining evidence through interrogation. However, at this point, it would be an arrest under the Martial Law Act and the Emergency Decree on Emergency Services in an Emergency Situation within the southern border area. If there is evidence that the suspect was involved in the commission of a crime, the investigator will gather the necessary evidence. Before using the principle of arrest under the Criminal Procedure Code, the court must approve the grouping of suspects. It should be noted that at this point, arrest measures can be used against one another without a central authority seriously scrutinising the use of power.

Section 11 of the Emergency Decree on Public Administration in Emergencies Situation (2005) empowers the Prime Minister to invest competent officials with the power to arrest and detain by petitioning the court, and when the court grants permission, the power to arrest and detain for no more than 7 days, and if necessary, to extend the detention period by 7 days each time, but no more than 30 days after the expiration date. In practice, if a confession is obtained during the detention, a written record of inquiry will be made. The pipeline has been accused of violating human rights, through torture, intimidation, fear of information, or punitive claims, which the National Human Rights Commission investigated from 2015 to 2017. This demonstrates, first and foremost, that physical assault occurred during interrogation at the time of arrest, after arrest, or while in government custody (Kobsirikarn, 2017).

Confessions or denunciations resulting from violations of rights and liberties cause difficulties in hearing evidence in the case because Article 227 paragraph 2¹⁶ states that if there is reasonable suspicion, the defendant shall be given the benefit of the doubt, and failure to notify the rights prevents the evidence from being used in the trial; if used, the court will dismiss the case. Because the authorities are unable to obtain testimony in the form of documentary evidence from terrorist groups, these confessions or statements are used as evidence.

The researchers discovered, through interviews with key informants, that in the investigation of security-related cases, the supervisor at the local police station takes over and supervises the investigation file, with the order that the investigating officer in the incident area is held accountable. Currently, a group of investigation officers has been appointed and directed to investigate a terrorism-related case. The investigation was carried out by the investigation team to summarise the case for the prosecutor. The prosecutor then files a complaint in the court.

Currently, special security law enforcement has developed interrogation control. The suspect's relatives are allowed to visit from the first day, with the headman ordered to come to bed and pay a daily allowance of \$10. However, the process of arresting suspects in terrorism cases

¹⁶ Criminal Procedure Code Section 227 Paragraph 2

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continues to be the result of authorities exercising absolute power, with no connection between special legal powers and criminal procedural law. There are still issues with the process of gathering evidence on this subject. According to research findings from key informant interviews, the problem stems from officials who overstep or misuse their powers. One of the key informants said “ *It's a matter of conscience; we need to develop here to persuade people because of the impact of law enforcement, but we're moving in the right direction.*”

The problem of search stems from the military personnel's administrative powers under the Martial Law Act and officers' search powers under the Emergency Decree. The use of the power to search in a private place under these two special laws makes the search illegal *ab initio*, before entering the normal criminal justice process.

(4) On Witness

In this regard, the study's findings indicate that witnesses in terrorism-related cases may refuse to cooperate due to a lack of trust in the judicial process in convicting the perpetrator. Furthermore, government officials are concerned about their safety in case they testify against the perpetrator. One reason is that, even though the Witness Protection in Criminal Cases Act has been in effect since 2003, there is no established pattern of witness protection. Hence, the criminal justice system is required to instil trust in people to cooperate with the government.

A witness may request state protection under Sections 6 and 7 of the Witness Protection in Criminal Cases Act 2003. One of the issues with witness protection is that many people are unaware of their legal rights. Another issue is the interpretation of this Act (Lortrakul, 2010)

The problem with hearing evidence is that most security cases lack testimony or do not have enough witnesses to provide useful evidence; hence, investigators must rely on the resulting documents.

The questioning of a suspect, which is only hearsay testimony according to the canons of evidence in a criminal case, is insufficient to support the defendant's punishment. If there is no other evidence, the defendant must listen to the hearsay with other evidence. Hearsay evidence alone cannot be used to convict the defendant. According to the statistics of the court's hearing of evidence concerning the documents of the substance's questioning, the substance appeared to be little, and most of the charges were dismissed.

In 2018, the Narathiwat Criminal Provincial Court issued Court Decision No.4457/2561 outlining its approach to security-related cases, stating the following, *inter alia*:

“Evidence to be used to prove in a security case in which the offences of the offenders must be rigorous. The movement of communication between each other is kept secret to prevent information from leaking or irritating to the authorities. Therefore, it is difficult to find a direct witness to prove the wrongful acts. Unless it relies on the confession of the offender or the confession of the offender together with other evidence.” (Narathiwat Criminal Provincial Court No.510/2562, 2019)

(5) Forensic Evidence

The investigation determines the conditions for success in enforcing criminal law on the offence of terrorisation. The investigation of terrorist acts depends on evidence. Forensic evidence, according to the key informants, is critical in terrorism-related cases. During the interview, a key informant expressed his view on the necessity of forensic evidence in terrorism-related cases thus:

We must have forensic evidence because sometimes the witness can change the words ...perhaps the timing of the memory is not clear. The fear here is to be a witness. How can the witness be protected forever? Even the cameras are burned again and again. The most important thing is DNA. These explosions are proved by science.

Efforts are made to use forensics evidence in terrorism cases. Still, there are numerous issues with using forensic evidence. From this study based on in-depth interviews with experienced key informants, it was found that the main issues regarding the problems in forensic evidence were the ambiguous legal provisions, issues with crime scenes, and the effectiveness of forensic examinations. On the issue of ambiguous legal provisions, the provisions of the Criminal Procedure Code Section 131/1 demonstrate the law's ambiguity. This provision has given the inquiry official broad powers to collect evidence at his/her sole discretion. Although police case management regulations have established guidelines for collecting material witnesses, crime scene inspection, scene mapping, and photographing the accident, such regulations are only guidelines and manuals in the workplace. There is no specific legal criterion or condition. Further the inquiry officer has limited knowledge and understanding of evidence gathering at the scene, and some material evidence is overlooked. The officers also disregard the significance of expert witnesses or scientific testimony in determining the truth in a case. Due to limitations in legal expertise and lack of experience in court proceedings, the inquiry official's lack of discretion may result in damages or missing evidence that is crucial to the trial.

According to the findings of this study on crime scene problems, there were found to be several obstacles in the procedures relating to the collection of forensic evidence at the crime scene, and possession of forensic evidence. First, there is no strict supervision of the crime scene, allowing both concerned and unrelated individuals to enter. Second, Crime scene investigators lack expertise in crime scene analysis and evidence collection. The accident site examination is not detailed enough due to improper use of the method of collecting and preserving evidence, resulting in incomplete evidence. The objects are tainted. Incomplete evidence details cause damage to the evidence and have an impact on the verification and interpretation of the forensic examination results. Third, there is a lack of coordination and collaboration among operational officers on the scene, and the crime scene is sometimes inspected without the presence of relevant experts. Last, there are no efficient procedures in place for gathering evidence in life-related cases. The doctor is free to collect evidence at his or her discretion.

Regarding the effectiveness of forensic examinations, the regulations for conducting certain types of forensics and for witness possession while in the agency's laboratory are not yet

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complete. This reduces the reliability of the verification and may prevent some evidence from being verified. Because there is no centralised agency in charge of quality and verification standards, each agency's approach and verification methods differ. Many Thai forensic science bodies are currently seeking international quality certification to ensure the dependability of their own agency's verification results. Last, each type of forensic evidence examination requires different equipment. The tool is not being maintained by the standard set (Rabi Bhadanasak Research and Institute, 2016)

Challenges in the Substance of the Law

Following the implementation of the criminal law on terrorism, many problems have arisen, regardless of the issue raised by the content of the criminal law. According to one key informant, this legal measure

“Can be seen to be their weaknesses in two issues: the first is to arrest or punish the offender on terrorism under Section 135/1 unless the offender has the intent to commit a criminal offense. The actor must have a special intention, which is an internal component in actions intended to threaten or force the Thai government or government and foreign organisations, or to create agitation by instilling fear in the people”.

The second issue is determining how to quantify the harm. In this regard, another important informant provided an example of a problem of criminal law on terrorism offences in section 135/1. *“Do any acts that cause serious damage to the public transport system? What is the public transport system? It cannot be written widely. But then the law specified the severe punishment of death.”*

The terrorism offense under the Penal Code is an unclear law and there is currently no clear definition of terrorism. In addition, there have been many types of criminal offences under Section 131 / 1- 131/3 of terrorisation offences, ranging from the use of violence against life, body, and property to causing property damage. There are many types of accusations, such as terrorism, which can range from hijacking to plane construction, resulting in people being injured or killed, or property destruction causing economic harm without anyone being injured. The degree of terrorism varies from mild to severe, and the penalty for committing an offence ranges from imprisonment for up to three years to the death penalty in a single section, demonstrating a lack of clarity in establishing the extent of terrorist offences.

Another part of the offence is the special intent or motive, which must demonstrate that the act, causing serious damage or turbulence by instilling fear in a group of people, was done with the intent of threatening or forcing the Thai government, a foreign government, or an international organisation to act or not act in a particular fashion. There is no determination as to which activities are threatening, enforcing, or causing issues for the government. Panic in the people will cause interpretation issues. Such ambiguous laws are difficult to enforce and hurt the public, as they are frequently used to discriminate against government officials, such as at political gatherings held by the Democratic Alliance Against National Dictatorship and the People's Alliance for Democracy in 2009 and 2010. Threatening or forcing the Thai government, or generating instability by instilling fear in the public, are all considered terrorist

acts. Rallies and protests, on the other hand, are an important form of expressing popular opinion towards governments in free democracies. Therefore, freedom of protest and demonstration is the freedom that extends to freedom of expression of citizens' thoughts; but restricting freedom of protest for any cause other than valid reasons is not correct. As a result of the constitution, the law may result in abuse of power, political bullying, or violations of people's political rights.

At the same time, a terrorist attack is not a one-time occurrence. According to Section 135/1 of the Criminal Code, a terrorist offence is associated with other criminal offences. There is a threat to life and or substantial harm to the body or freedom of any person in the event of Section 135/1, which is a criminal act committed under Section 288 of the Penal Code¹⁷, bodily assault, an offense against others, causing death to others according to Section 290 of the Penal Code¹⁸. As Maggs (2010) points out, most acts of terrorism also violate regular criminal laws of universal application; therefore, the question of the suspect's relevance as a terrorist is crucial in deciding whether to charge him or her. As a result, Thailand's terrorist offences are punishable by death. A participant of this study found that there are difficulties in enforcing this criminal law.

"135th section... It is not used to describe the same crime. In Bangkok, what you are doing is a terrorist act. It is an insurgency in the three provinces. A terrorist is someone who detonates a bomb on a train and then shoots government personnel. It has all the ingredients... Because of a shaky witness, the rationale for the special case was dropped. However, if there is a justification, the government will utilize special legislation to relieve the burden... Terrorism, on the other hand, is more than that. There are frequently more than three offences in the mix."

CONCLUSION

Thailand is one of the countries where criminal law is used to prevent terrorism. The criminalisation of terrorism offences is the result of Thailand's obligation on account of the United Nations resolutions, which require member states to treat terror acts as criminal offences. After the enforcement of the amended penal code on terrorisation, the law enforcements have to deal with the rising challenges in the enforcement and the substance of the offences. Many efforts are now under way to solve those challenges. Still, it is not only about legal measures to prevent terrorism. Supplementary strategies should also be considered, like developing preventive strategies for reducing radical ideas, using education as the main mechanism to prevent terrorism, employing intelligence guidelines for police operations, and developing management to strengthen the coordination mechanism to assist in detecting and preventing terrorism acts.

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