COURT OF JUSTICE PROCEEDING IN JUVENILE DELINQUENCY CASE: WHERE THAILAND GOES

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Abstract - Thailand has since 1951 enacted laws concerning juveniles committing delinquency. It has been half of the decade in which the special justice system "Juvenile Justice" has been implemented in any related governmental sector in the country. Until now, the third-generation juvenile justice law "Juvenile and Family Court and Procedure Act B.E. 2553 (2010)" has been enforceable. The law has been developed and invented new legal measures to rehabilitate the child or the juvenile delinquent. Moreover, the law is demonstrating the accordance with the Convention on the Rights of the Child, and The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) which in the meantime, it is showing how Thailand has been developing. Juvenile and Family Court and Procedure Act B.E. 2553 (2010), however, in some sections, still obstruct the juvenile justice system. Section 96 is one of the significant barriers. The section states that the Court of Justice which generally is having the authority for a civil or criminal case may have the jurisdiction on a juvenile delinquency case. This would be worse when the section further states that if the Court of Justice chooses to transfer to the Juvenile and Family Court, all proceeding exercised by the Court of Justice, will be valid, although the proceeding has been done a same as the adult proceeding. This means that the trial for the child or the juvenile delinquent will be the same trial of the adult. Hence, the rights of the child or the juvenile delinquent will not obviously be protected accordingly to the convention. Finally, the study has found that Juvenile and Family Court and Procedure Act B.E. 2553 (2010) Section 96 should be amended stating that the possibility of using legal measures as an adult should not occur.

Index Terms - Juvenile Justice, Delinquency, Court Proceeding, Thailand.

I. INTRODUCTION

Juvenile justice has been invented in Thailand since 1951, this approach has widely protected the rights of the delinquent throughout the country. Juvenile and Family Court is one of the organs performing the significant role in protecting and rehabilitating the accused seriously. According to juvenile justice laws, many legal measures have been given as the means to the Juvenile and Family Court. This is to rehabilitate the ones who are less mature or have less experience in life. The rehabilitation process ends when the repaired delinquent is released into a society. Thai current law ruling the process of juvenile justice, Juvenile and Family Court and Procedure Act B.E. 2553 (2010), has been developed by experiences using the previous juvenile justice laws. However, under the law, Thailand has obstructed by section 96 stating that "If a child or a juvenile has jointly committed a criminal offense with a person who is not juvenile, a separate charge shall be filed against the juvenile with the Juvenile and Family Court If the public prosecutor brings a charge against a child or a juvenile together with any person who is not a juvenile to the Court of Justice having jurisdiction to try ordinary case and it appears to the Court of Justice afterward that an accused is the child or the juvenile, such Court has the power to transfer such case to be tried in the Juvenile and Family Court. However if the Court of Justice does not deem appropriate to transfer the case, the Court of Justice shall have the power to apply the measures for the child or the juvenile as prescribed under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) to the child or the juvenile. In this case, all proceedings carried out during an inquiry and adjudication of the Court of Justice having jurisdiction over ordinary criminal case shall not be rendered invalid."

Such section above causes at least 2 barriers affecting the rights of the delinquent. Firstly, the Court of Justice may have the jurisdiction on a juvenile delinquency case which normally the jurisdiction of the case should belong to the Juvenile and Family Court. In this case, the Court of Justice may have the discretion to transfer the case to the Juvenile and Family Court. However, if there is no transfer, the Court of Justice will have the discretion to use special legal measures for the delinquent. On the other hand, if the transfer takes place, all proceeding done whether in the investigation or in the trial, will not be invalid. This results that the rights of the child or juvenile delinquent will not be protected. This is the uncertain situation for the delinquents, and it seems Thailand is still in an awkward moment though the juvenile justice system is still running.

II. RESEARCH OBJECTIVES

This research aims to study and analyze the problems concerning Juvenile and Family Court and Procedure Act B.E. 2553(2010) Section 96 and to make a suggestion for the amendment of the law.

III. HYPOTHESIS

The rights of the child or the juvenile delinquent should not be the same as an adult in the criminal

justice system. It should be protected by the law. Moreover, the Court of Justice should not have the discretion to transfer the case. It should be mandatory to use special legal measures for the delinquents.

IV. RESEARCH METHODOLOGY

This is qualitative research, focusing on both in-depth interviews and documents, such as books, academic articles, theses, conference reports, and laws relating to the juvenile justice and its measures for the delinquents. The content was analyzed in each issue, then summarized under the scope accordingly to the research objectives.

V. RESULT AND DISCUSSION

After the study, it is found that Juvenile and Family Court and Procedure Act B.E. 2553 (2010) Section 96 gives a discretion and a power to transfer the case which a child or a juvenile together commits a criminal offense with an adult. This law has obviously demonstrated that there will be no longer guarantee to the accused for the rights, such as the best interest of child which Convention on the Rights of the Childregulates Thailand to protect [1], or the purpose of rehabilitation referring to treatment programsin juvenile justice [2]. This is because it depends on the discretion of judges in the Court of Justice in such case. This should not be the correct way for Thailand where juvenile justice has been invented since B.E. 2494 (1951). Theoretically, when a person under the age prescribed by the law, mostly below 18, commit a criminal offense, there should be in a different trial to the adult's one [3].

Surprisingly, it happens in where juvenile justice law has been enacted since B.E. 2494 (1951) [4] and until now it remains in a blur even Thailand has ratified the Convention on the Rights of the Child in 1992 [5]. The proceedings, such as the inquiry, the prosecution, or the trial, in juvenile justice, the legal concept is to rehabilitate the young delinquent, save their rights and their future, rather than punishment as the adult [6]. Hence, the law which give a chance to the judge to use their discretion to transfer the case to the Juvenile and Family Court, while the accused is the child or the juvenile, contradicts to the legal concept of juvenile justice which needs to protect the best interest of the child, rehabilitation to the delinquent, and to keep peace in a society in the meantime.

Even though, the law states that if the Court of Justice decides not to transfer the case to the Juvenile and Family Court, the Court of Justice remains the power to use the measures for the child or the juvenile as prescribed under Juvenile and Family Court and Procedure Act B.E. 2553 (2010) to the child or the juvenile, in fact, the Court of Justice may not use it accordingly. This seems worse when the law states further that all proceedings carried out during an inquiry and adjudication of the Court of Justice having jurisdiction over ordinary criminal case shall not be rendered invalid. This is the significant exception to implement the rights of the accused under juvenile justice fully and effectively, it, in another aspect, shows that any juvenile delinquency case done in the Court of Justice will be certainly valid under the law. This discloses the capacity in protecting the best interest of child in Thailand.

In practice, this section, retrieved by the interviews, makes a problem to the accused who is a juvenile after he and his friends committed a criminal offense. The information was revealed that they all looked older than his age. He was later arrested and filed to a Provincial Court which is a type of the Court of Justice. The court proceeding began without awareness of the age of the delinquent. Before the judgment was read the fact about the age of the defendant arose, but that time there was no transfer so that the judgment remained in the power of the Provincial Court. Concerning the case, the special legal measures for a child and juvenile delinquent were not used in the case and all proceeding was valid. The purpose of the prosecution was not for rehabilitation, but for punishment as same as the adult, and this led to the following problems, such as the cost for prison, a label of the prisoner [8].

Interestingly, the law gives the power of discretion to the court which has the jurisdiction over the case, is quite sharp because the discretion of human can vary and be different. Furthermore, there is no rule, regulation, or even guideline for the judges who are sitting for the case trial.

After all critical considerations, the author suggests that this section should be repealed. Moreover, the role of the court in such case should be under the concept of the best interest of child which the child or the juvenile delinquent's right will be protected. The suggestion goes further that it should be compulsory to the court which accepts the filed case to transfer the case to the juvenile and family court whose the jurisdiction has taken in such case. This can be a guarantee to the accused child or the accused juvenile which the court proceeding will be accorded the legal concept, the international law, and the domestic laws.

In contrast, if there is no amendment to the law, this barrier is destroying the concept of juvenile justice, rehabilitation, best interest of child as well as this will also ruin the involved laws, including Juvenile and Family Court and Procedure Act B.E. 2553 (2010). This is somehow showing the failure of juvenile justice in the reality in Thailand.

CONCLUSION

The study has revealed that the Section 96, Juvenile and Family Court and Procedure Act B.E. 2553 (2010)

has gained at least two barrier in juvenile justice in Thailand. First, the uncertainty to use the discretion. Second, the unprotection of the rights of the accused child or the accused juvenile which has been done by the Court of Justice. Hence, such a law should be reviewed and amended afterward.

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