DEFAMATION LITIGATION TO STOP PARTICIPATION IN PUBLIC ISSUES, A CASE STUDY: THAI LAW COMPARED TO CALIFORNIA LAW

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Abstract - The research on defamation litigation to stop a participation in public issues has the objective to find ways to sue for defamation in order to stop participation in public issues by comparing with California case, United States, and it is to revise the legal structure to prevent defamation litigation to stop participation in public issues by using qualitative research methods and data analysis by using content analysis. The results of the study can be classified as follows: (1) When analyzing the guidelines for prosecution to stop a participation in public affairs in California State, it was found that California has a law to stop prosecution in order to stop participation in public affairs, and it does not prohibit the plaintiff to file a lawsuit to stop participation in public affairs. However, the law has set special standards to maintain public interest by opening a channel to ask the defendant to request the termination of the case quickly, and it is determined that it is the burden of the plaintiff to pay expenses and lawyer fees to the defendant, (2) In Thailand, there is no law requiring special standards to restrain the prosecution in order to stop participation in public issues. The researcher has seen that, in the use of freedom of expression, the Constitution of the Kingdom of Thailand provides protection, so people are able to express their opinions to protect the public interest if it is within the limits. On the other hand, the current laws may not be sufficient or may not cover protection in expressing opinions on public issues as it should be, if it is an honest opinion to protect the public interest, or matters about having a stake from a public action as it is deemed appropriate.

Keyword - Defamation Cases, Public Figures, Public Issues

I. INTRODUCTION

The Constitution of the Kingdom of Thailand, 2017 has provisions in Section 50 (2) that Thai people have a duty to protect the interests of the country, and in Section 34 that the right to freedom of people's opinions would demonstrate the spirit of the Constitution that aims to protect all people who have expressed their opinions or disclose any information to protect the interests of the nation. At present, communication technology is convenient and quick to receive information and disclose information. When people criticized that the actions of the government and the private sector affect them through comments or criticizing, it is their way to have the right to freedom to protect their own interests and the nation as a whole. This is considered to be a technology that can promote the right to freedom of people in this case as well. However, the right to freedom of people in such cases have problems without providing sufficient protection because there is a lawsuit on defamation towards people who exercise their rights of freedom to express their views on the actions of the government and the private sector even it is related to the public issues that people can participate in, regardless of whether they are being affected or as those who protect overall interests. According to the statistics collected from the Lawyer Center on Human Rights from 2014 until May 4, 2018, there were as many as 151 cases and still growing steadily. Only in 2018, 115 people from 02 cases were prosecuted (Department of Rights and Liberties Protection, Ministry of Justice, 2018). It is the use of judicial power of the court to intimidate to stop providing the comments or criticisms that will cause damage to the reputation of the business, the government project, or those conducted by private sectors.

The defamation law is a law aimed at protecting the personal rights of any person while expressing the views of the public in good faith, if possible, in order to protect their own interests and benefit the public; therefore, it has more legal value which makes such honest opinions to be protected by law. That means, such acts are not guilty. However, for the law regarding defamation in Thailand, the prove that any opinions are honest and beneficial to the public or not must have both time and financial factors, but when it is compared to California, United States, which has given great importance to freedom of opinion, it will be found that if a person expresses in good faith related to public interest, a person will receive substantial protection under the judicial process. This state is the first state that provides legally protection law to people from having a litigation to stop participation in public issues (Bona Law PC, N.d.).

When it turns out like this, Thailand must realize that the justice system consistent with the intention of Constitution of the Kingdom of Thailand, 2017 or not, and the public, private sector, and government projects can be criticized or not. We should study and find ways to prevent prosecution for bullying in order not to have it occurred to people who have the right of freedom and act in good faith. This is to protect the trust in the justice system of the people to allow people to have the courage to exercise their rights and freedom, and it is to protect the interests of the country in accordance with the spirit of the

Constitution. Hence, the expected benefits of this research are to know the idea of enacting a law to restrain the prosecution to stop participation in public issues in California, United States to analyze the ways on defamation litigation in order to stop participation in public issues in Thailand, and to provide guidelines to protect people who comment on public issues from prosecution to stop participation in public issues that lead to improvement or amendment of the law in matters relating to defamation lawsuits to end participation in public issues, and to develop the law in a better way in accordance with the spirit of the constitution and meets international level as well as being in line with those of foreign countries.

II. OBJECTIVE OF THE RESEARCH

1. To find ways to prosecute the defamation case in order to stop participation in public issues, comparing with California, United States.
2. To amend the legal structure to prevent defamation lawsuits to stop participation in public issues.

III. LITERATURE REVIEW

Public issues are issues that are beneficial to the country or the interests of people in society as a whole, such as matters relating to the implementation of activities that affect quality, environment, health, quality of life or any interests related to themselves or the local community, Social economic development planning, Government administration, work monitoring, behavior observation of people who are in political positions, etc. In California, the United States, has provided the meaning that public issues are matters relating to the operations of government agencies, the behavior of government officials in politics, criticism of government work, and civil servants. Public affairs and issues that the society is interested in and widely debated due to the impact on the public, etc. (Pisit Wongthienthana, 2009). If such matters have been criticized, it shall be protected by law, and there should be no guilty on defamation.

For defamation offenses in criminal way via news or message, if it has been done intentionally, whether that is true or false, then there is a criminal offense. For a civil defamation, it must be a matter of fact and must be a confirmation of the fact that the third person, which means the victim, and it is no matter the accuser or a person who releases the news is intended to mean the victim or not, it is not the key importance because it does not take the intention of the offender into account. If it is compared to California, United States, the defamation offense must have an intention to disseminate false statements in the manner to disadvantage or cause severe damages, and it is the act without caution. The Court of Justice is pushing for a revision of the Criminal Procedure Code in Section 161/1 by added "In the event that the general person is a plaintiff, before preliminary examination, if it is appeared to the court or if there is evidence that the court said that the plaintiff exercises the right of lawsuits in bad faith or by distorting the facts, bullying, or taking advantage of the defendant or by looking for other outcomes beyond the benefits, the court may not issue such orders, and it is prohibited the plaintiff from filing the case again" (Department of Rights and Liberties Protection Ministry of Justice, 2018). In California, a law has been enacted to encounter lawsuits to stop participation in public issues in the Civil Procedure, Section 425.16. If the respondent is due to use freedom of speech, they should submit a special request in order to settle the case within 60 days. If the court considers that the plaintiff's complaint relates to the use of freedom of speech under the Constitution and there is no possibility of winning the case, the order to dismiss the plaintiffs and ordered to pay costs and lawyer fee to the defendants (Morris & stone, N.d.) to prevent a lawsuit to terminate their participation in public issues.

IV. RESEARCH METHODOLOGY

1. For research methodology, it uses qualitative research by studying documents from books, legal texts, and academic articles, academic information, and details from the internet and related researches to match the objectives of the research.
2. In the research process, the researcher defines the issue of the right to freedom of opinion and the enforcement of defamation laws to be applied in the case of defamation lawsuits to stop participation in public issues.
3. For the document research, it is the study of qualitative research document.
4. For the data collection, the data is collected from various documents such as books, legal texts, academic articles, academic information, and details from the internet, laws, relevant documents and researches.

V. RESULTS OF THE RESEARCH

The Constitution of the Kingdom of Thailand, Section 50, Section 50 (2) stipulated that people protect the country, the dignity, national interests, and public domain, as well as cooperate in the prevention and mitigation, and Section 34 stipulated that individuals shall have Freedom of opinion, speech, writing, typing, advertising, and communication. By other means, such restriction shall not be conducted, except by virtue of the law enacted specifically to maintain the security of the state in order to protect the rights or liberties of others in order to maintain public order or good morals, or to protect the health of the people. It would be presented that the

Constitution of the Kingdom of Thailand has been approved and protected with Freedom of expression in order to protect the interests to be lawful, but it must be within the limits set by the law. If such comments are not for the public interest, but it is just to express opinions with the aim at making others lose their reputation, being insulted, or hateful, the expressing of opinions in this case would be considered an offense, and it is not protected.

The defamation offense of Thailand can be prosecuted in both criminal cases so that the offender can be punished and civil to claim damages. It is said to be a civil case related to criminal cases by defamation offenses under Section 326 of the Criminal Code, stated that "whoever puts the other person's attention to the third person in a manner that would cause others to lose their reputation, be despised, or hated, such person conducted the offense on defamation, and he shall be punished with imprisonment for not exceeding one year or a fine for not exceeding twenty thousand baht or both." The slander is to say or unlock the news without limitation. It maybe the slander by using words or verbal expression, letters, images, or symbols towards the third parties in the case that others shall lose their reputation, be despised, or hated by considering the perception of emotions and understanding of the general public as a criterion. If it has been done intentionally, whether it is true or false, then there is a criminal offense. For civil on defamation in accordance with Section 423, it is stated "whoever speaks or releases the news that violates the truth and it causes damages in reputation, the honor of another person, can be damaged their careers or their prosperity by other means, that person has to pay for compensation for any damages even a person who makes a communication of the untruth details, and it is unknown to him, it does not thereby provide himself liability to make compensation, if he or the receiver of the communication has a rightful interest in it." It must be the untruth story, and it must confirm the facts that the third person understands that it means the victim by which the person said or the news is intended to mean the victim it not a key importance because it does not take the intention of the offender into account; whereas, California, United States stated that the defamation offenses under Section 44, 45a, 46 are important as it is Intended to publish false statements in a manner that would be detrimental or cause serious damage and be done without caution (Digital Media Law, 2014).

However, the defamation offense always has an exception to the offense by considering the cause of the offense in the trial because freedom of expression is a human right that must be protected according to international principles. In Thailand, the Civil and Commercial Code has provided the reason for the exception of offenses that if it is a message between friends but not to announce to the general public or do not know that the message he sent is not true or he has an interest in the news, he should not liable for compensation. And according to the Criminal Code, the reason for the exception of offenses due to the act in good faith is done without being malicious or does not wish to affect anyone, and it is to protect themselves or protect their interests in accordance with the law, including the interests that have a relationship with him, or it is to provide comment with fairness which the nature of the people would do this, but it must be a true comment, with a claim to be used to support the fact of criticism with fairness and not criticizing personal matters or related to personal rights. It must be criticized in matters relating to the public or public benefits that everyone in the society is able to comment on or criticize. If it has been done within the scope specified by law, especially in expressing opinions concerning matters of government or government and the performance of government officials, including various affairs related to the country, various public affairs, public administration that the government has done, it shall be protected. This is as same as those in California where people can criticize if it is directly related to public interest or discussing about public affairs that are socially interested and widely debated due to public impact because it affects the overall well-being of the people. If within the scope of matters relating to public persons, it is a person with a reputation in society or have made other contributions to the public, including those who have revealed themselves to the public to be known and willing to receive criticism from the people in the business that have already performed. California mentioned only public figures that the public figures are the persons who have important authority or related to various public affairs. Hence, it should be considered that opinions or comments about these people are related to the public interest, and it can be commented or provided opinions without any faults.

In respect of the justice system, for the civil and criminal defamation lawsuits mentioned above, the injured person will allow the government officials to take action or suing the case directly to the court, but if the people are suing, the law requires the court to investigate the matter first under the Criminal Procedure Code, Section 162 (1), to investigate whether the facts meets the offence action without having any obvious suspicion. Then, the court shall accept the lawsuit. For the case whether the details is true or not, it is a matter of proof in the judicial process that the court must listen to the evidence of the parties as those who claim need to prove, so the evidence is important in supporting his claim in proving the truth (Jiraporn Achariyaprasit and Paiboon Chuwatanakit, 2017). In the prosecution's investigation, the plaintiff must file a copy of the complaint and inform the accused and inform the appointment date, but the accuser can choose whether to come to court or not because the law stipulates that he is not considered as a defendant, but the accuser

has the right to appoint a lawyer to dispute the plaintiff's witness, and the court will hear the case only after seeing that the case has value and will send a copy of the indictment and summons to the defendant (Chaturong Permrungreung, 2017).

In a case study, a mining company filed a lawsuit against a female student in a village near a mining company mine. In this case, the said female student commented, "Six villages in Khao Luang Subdistrict, Wang Saphung District are areas affected by the gold mining industry, and in Lam Nam Hui, River, it has contaminated substances that cannot be used for drinking and cannot be eaten, " and this case has been sued as the civil case for infringement against 6 villagers who sign up for a claim to close the mine and restore the local environment according to the public road in the village, which wrote "This village does not want the mine," and it is claimed for a total of 50 million baht and requesting to cancel the business license of Thai PBS television station for 5 years. The mining company stated that it is "destroying the reputation and credibility of the products of th company in the operation of open gold and copper mines in Loei province "(Fortify Right, 2016).The Court of First Instance had examined and found that the case was groundless and the judge dismissed the case. Subsequently, the plaintiff appealed the judgment to the Court of Appeals, and the court accepted the appeal of the plaintiff for the offense under Section 326 and Section 328 of the Criminal Code, and the plaintiff's lawsuit ws accepted in the civil case for consideration as well. The Court of Appeal commented that the facts according to the prosecution's claim was that "Six villages in Khao Luang Subdistrict, Wang Saphung District, were affected by the gold mining industry. The Lam Nam Huai Riverhas contaminants that cannot be used for drinking and eaten." It has characteristics in confirming the facts that make the general public watching on television understands that the plaintiff's gold mine causing the plaintiff to suffer from damages, so the case is guilty according to the Criminal Code. As for the case is being done in good faith in criticism or not, it is needed to go for a hearing in the next stage (Prachatai, 2018). This case presented that even the court has not given importance to the right to freedom of expression of people in protecting the interests of the country as it should, both of those rights and freedoms have been ratified in the Constitution.

VI. RESEARCH DISCUSSION

From the study, it was found that people have the right to freedom of providing opinions if it is within the limits set by law without affecting the rights and liberties of others until it causing the loss of reputation of people, honors, damages their careers, or prosperity as well as being insulted or hated; otherwise, it may be subject to defamation. Honest opinions or feedback with fairness to the public can surely be criticized if it is not a personal matter. But, now people who comment on the actions of the government and the private sector have been sued for defamation without receiving protection from the court as it should be, especially from the case of studies in the aforementioned details, it can be seen that the deployment and interpretation of the law is not considered from the context of the event, and it is not based on the intent and truth of the event and according to the spirit of the constitution on freedom of expression that people can participate as there is a stake and it is to protect the public interest. In the preliminary examination stage, it is considered only that the case is complete with legal fault components without considering the freedom of expression in good faith, feedback with fairness, or to protect the interests according to the fairness in this stage to scrutinize the case. In the preliminary examination stage, when it can be proven on Good faith and feedback, the court had to dismiss the case. Therefore, this is a channel for suing for intimidation or bullying to destroy the motivation to investigate public issues and the civil prosecution by using a high amount of compensation together with the justice system that is not fully protected according to the spirit of the Constitution, and this is considered as a reflection of social problems.

For this reason, Thailand should improve the law relating to defamation by studying the case of California, United States, which has a special standard of laws to prevent prosecution to stop participation in public issues and it did not prohibit the plaintiff to file a lawsuit to stop participation in public affairs, but it opened a channel for the defendant to request to terminate the case quickly and determine the burden of the plaintiff to pay the expenses and lawyer fee to the defendant. If the court considers that the plaintiff's claim is possible to win the case, the court will continue to proceed with the case, whereby the parties have the right to appeal the court order which specifically requests to terminate the case. For Thailand, the state should determine which projects affect most people or the public. Moreover, the state must show facts or give the private sector to show facts to the public first so that most people consider that those projects affect someone, and it should provide time to object or make a public hearing every time. In the prosecution, whether civil or criminal, the state or the court should also consider whether or not the opinion is done in good faith in preliminary. If it is seen to be a good faith, the state or court should seek legal assistance to help the offender. For providing opinions, if it has been done in good faith without knowing the correct facts, but it caused damages to outsiders, the state should enter into mediation and preliminary corrections first, not for the victim to proceed to court because the use of judicial power will cause people to not dare to provide comments again. In addition to

the state coming to the conclusion, if the comment is correct, but the opinion does not match, the court should also have provisions to resolve the law relating to civil and criminal liability. In the civil case, the damages must not be fixed to the injured person, and in the criminal case, the offender must not provide bail. Thus, the court also must institute the proceedings completely within the schedule without causing damage to the project owner. The court must consider whether the projects of the state or private sector caused damages to people or not. If the damages are not much, then it must be proceeded. The court's decision will take a long time on the problems, so the law should be enacted and have a single court to consider the case until it is finalized.

SUGGESTIONS

To further the study of this research, it should be studied on "public benefits" on its meaning and scope, both benefits that the state will receive and the number of people who receive benefits. In addition, it can be studied on the damages from defamation that which types should to be claimed as damages from defamation as well as determining the proper compensation for damages in each case.

Legal suggestions

1. The Section 423 in the Civil and Commercial Code should be added that "whoever makes a statement in public matters in good faith does not have to pay compensation."
2. Issues in preliminary examination, “good faith criticism towards public figures and public issues" should be added to screen the cases.
3. The law shall prescribe the judicial power of the Court of Appeal to have discretion in the case that the Court of First Instance dismisses the case when the preliminary examination is filed, and it is considered as a good criticism for public figures and public issues.

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