THE PARDON IN CRIMINAL CASES: STANDARDS FOR CLARITY AND FAIRNESS

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Abstract - This study examines the Thai legal system concerning the pardon of criminal offenders, their reintegration into society, and the social impact of such pardons. The objective is to identify the issues surrounding the pardon process and propose improvements for the legal framework governing pardons. The study reveals that a pardon refers to the reduction or commutation of a criminal sentence rather than an expungement of the offense committed. Individuals granted a pardon remain legally recognized as having committed a crime and been convicted. A pardon may be unconditional or conditional but does not nullify the original judicial decision, even if the pardoned individual is released. The Thai concept of pardon is deeply rooted in historical and cultural traditions, stemming from the legal principle that "the King is the source of justice," making the monarch the final recourse for seeking justice for offenders. The royal pardon tradition has been passed down from ancient times to the present and represents the King's absolute authority to grant clemency on significant national occasions. This authority is unrestricted by conditional limitations. However, following the transition to a constitutional monarchy, the power to grant pardons must be derived from the 2017 Constitution of the Kingdom of Thailand, specifically under Section 179 in conjunction with Section 175 and Section 261 bis of the Criminal Procedure Code, which define the authority and procedures for granting pardons. The act of granting pardons may undermine the integrity of the law if criminal offenders are released without a genuine acknowledgment of their wrongdoing. This leniency could lead to a perception that law enforcement is not stringent, eroding public confidence in the legal system. Additionally, pardons may overlook the rights of victims and their families, sometimes causing social criticism. The study suggests that the pardon process should be transparent and well-defined. Clear criteria should be established for eligibility, including the duration of the sentence served, behavior in prison, and the nature of the crime. Special consideration should be given to serious offenders to prevent them from receiving pardons under the same standard criteria as other inmates. Addressing these inconsistencies will ensure that the pardon process is fair and does not undermine public trust in the justice system.

Keywords - Royal Pardon, Pardon System in Thailand

I. INTRODUCTION

Under the criminal justice system, when an offense occurs and legal proceedings conclude, offenders who have undergone the judicial process and received a final sentence whether imprisonment, fines, or asset confiscation are deemed to have received their due punishment. This upholds the principles of justice and legal integrity. However, Thai law also recognizes the concept of pardon, which serves as a mechanism to mitigate or reduce sentences for convicted individuals. On significant occasions related to the Thai monarchy, a royal decree granting pardons is enacted, leading to sentence reductions or the release of inmates. This practice benefits prisoners and individuals detained in lieu of fines. Despite being released, pardoned individuals remain legally recognized as former offenders. An analysis of the Thai pardon system indicates that the criteria for granting pardons are inconsistent in practice, leading to debates over fairness and potential discrimination. Such discrepancies raise concerns about whether the pardon system treats all offenders equitably.

II. RESEARCH OBJECTIVES

To analyze the current Thai pardon system and its effectiveness.

To compare Thailand's pardon system with those of the U.S., U.K., and Japan.

To identify key challenges and areas for improvement in the Thai pardon process.

To propose policy recommendations that balance justice, rehabilitation, and public safety.

III. RESEARCH METHODOLOGY

This research employs a qualitative approach, utilizing:

Legal Analysis:
Reviewing Thai laws and international pardon frameworks.

Comparative Study:
Evaluating the differences and similarities among Thailand, the U.S., U.K., and Japan.

Expert Views:
Gathering from legal and justice paper documents

Case Studies:
Examining past instances of pardons to assess their impact on society and the justice system

IV. RESULTS

4.1. Historical Background and Origins of the Pardon System in Thailand

The tradition of granting pardons in Thailand has been practiced since ancient times and remains a significant aspect of Thai legal culture. Rooted in Buddhist ideals, Thai kings were expected to uphold the Ten Kingly Virtues (Dasavidha-Rajadhamma), including generosity. The act of granting pardons was considered an expression of this virtue and dates back to the Sukhothai period. During that era, the paternalistic governance model allowed for leniency, such as commuting death sentences to lesser punishments.

During the Ayutthaya period, the monarchy shifted to a more hierarchical structure influenced by Brahmanic and Theravāda Buddhist principles. The king was perceived as a divine ruler with supreme authority. Although royal pardons continued, they were granted as an act of grace rather than an obligation. Notably, pardons were sometimes extended to military leaders who failed to reach the battlefield on time.

In the Rattanakosin period, the concept of Dharma Raja (righteous king) became more prominent, reinforcing the notion that the monarch should exercise mercy. For example, King Rama III emphasized religious teachings to reform prisoners, granting clemency to those who demonstrated moral improvement. Some of these rehabilitated individuals were even appointed as officials in the royal court.

Despite the transition to a constitutional monarchy in 1932, the tradition of royal pardons persisted. The King's authority to grant pardons was retained, albeit within the constitutional framework. Under the democratic system, pardons remain a royal prerogative, enshrined in the Constitution of the Kingdom of Thailand.

4.2. Pardons in the Constitutional Monarchy: The Royal Prerogative within the Thai Constitution

The constitutional authority to grant pardons was first codified in Thailand's 1932 Constitution. Article 55 stated that "The King shall have the power to grant pardons." This provision has remained a constant feature in subsequent constitutions, including the current 2017 Constitution, which affirms in Section 179 that "The King has the power to grant pardons," subject to procedures outlined in the Criminal Procedure Code.

Pardons may result in the release, sentence reduction, or commutation of penalties, depending on the monarch's discretion. However, the King exercises this power only upon formal submission of a petition, which must be endorsed by the Minister of Justice. While the legal framework preserves the King's authority, it also ensures that the pardon process follows legal guidelines rather than being arbitrarily applied.

4.3. Criteria and Conditions for Pardon under Thai Law

Criteria for Receiving a Pardon

Individuals eligible for a pardon must demonstrate good behavior during their sentence, including discipline, diligence, educational or work-related progress, or exceptional service to the state. These criteria are outlined in the Correctional Act B.E. 2560 (2017), Section 52.

Types of Pardon under the Criminal Procedure Code

A royal pardon in Thailand is granted in two forms:

1) Traditional Royal Pardon: This is granted to applicants regardless of their criminal sentence and does not require a final conviction.
2) Royal Pardon for Convicted Offenders: This is granted to individuals whose sentences have been finalized. It is further categorized into:

- **General Royal Pardon:** This applies to all eligible convicts based on government-determined criteria. The Cabinet drafts the royal decree and sets conditions for eligibility, such as being an excellent inmate, terminally ill, elderly, or having served a significant portion of their sentence.
- **Individual Royal Pardon:** This is granted on a case-by-case basis and can result in a full pardon, commutation of the sentence, or a reduced sentence, subject to the King's discretion.

Conditions for a General Royal Pardon

Once a royal pardon decree is issued, the Department of Corrections selects eligible inmates based on criteria set in the decree. According to Sections 259 and 260 of the Criminal Procedure Code, the Ministry of Justice and the Department of Corrections ensure compliance with the decree. The government drafts the decree, submits it to the King through the Cabinet Secretary-General, and upon royal approval, it is announced in the Royal Gazette.

Eligibility for a Royal Pardon

Some key conditions for a royal pardon include:

1.Inmates with good behavior who have served a required portion of their sentence.
2.Elderly, disabled, or terminally ill inmates.
3.Those convicted of minor offenses, such as non-violent property crimes.
4.Exceptions: Major drug offenders, murderers, and crimes against national security are generally excluded.

Process for Requesting an Individual Pardon
Individuals eligible to submit a petition for an individual royal pardon include convicts sentenced to death, imprisonment, detention, fines, or asset forfeiture after their cases have been finalized. Family members, such as parents or spouses, may also submit petitions through prisons, the Ministry of Justice, the Royal Secretariat, the Ministry of Foreign Affairs, or embassies.TheDepartment of Corrections investigates and submits recommendations to the Minister of Justice, who presents them to the King. The final decision rests with the King.

For general convicts, a petition can be filed immediately after the final verdict.
Death row inmates must file within 60 days of the final verdict.

V. DISCUSSION

5.1.Effects of a Royal Pardon
A royal pardon can result in:
1. Complete exoneration, prohibiting further enforcement of the sentence.
2. 2.Commutation of the death penalty to imprisonment.
3. 3.Refund of fines in cases of pardon related to financial penalties.
4. 4.If the pardon is partial, the remaining sentence continues.

5.2 Social Controversy Regarding Pardons
The case of "Somkid Phumphuang" raised significant concerns about the Thai pardon system. Somkid, a convicted serial killer sentenced to life imprisonment, was released early through a general pardon but reoffended. This case highlighted issues regarding the appropriateness of blanket pardons and the need for stricter criteria to prevent recidivism.

Another controversial case is the pardon granted to "Thaksin Shinawatra," a former prime minister convicted of political corruption charges. Critics argue that such high-profile pardons create inequality within the justice system, favoring influential figures while leaving ordinary prisoners with stricter conditions.

5.3 Issues with the Pardon System
Some of the primary concerns include:
1. Discretionary Decision-Making: The criteria for granting pardons often lack transparency and clear guidelines, leading to perceived inequalities.
2. Public Safety Risks: Granting pardons to dangerous criminals without thorough risk assessment can endanger society.
3. Legal and Social Inequality: The system appears to benefit high-profile individuals more than regular prisoners.

5.4. Comparative Analysis of Pardon Systems
From the Concept of Pardon in Thailand, granted by the King, stem from historical and cultural traditions. The principle aligns with the ancient English legal doctrine that "The King is the source of justice," reflecting the King's role as a just ruler ensuring fairness.

Pardons aim to rehabilitate prisoners, encourage good behavior, reduce recidivism, and alleviate the prison system's burden while upholding humanitarian values. However, balancing justice, public safety, and fairness remains a key challenge within the Thai legal system.

Comparing Thailand's pardon system with other countries provides insight into best practices and potential areas for reform:

United States: The presidential pardon system is highly discretionary, with some political influence, but it includes detailed review processes. Unlike Thailand, it does not offer broad general pardons to large groups of inmates.

United Kingdom: Pardons are rarely granted and primarily used for wrongful convictions. The process is transparent and undergoes judicial and parliamentary scrutiny.

Scandinavian Countries: Focuses more on rehabilitation, with pardons serving as a tool for reintegration rather than mere sentence reduction.

Japan: The Japanese pardon system is highly structured and includes both individual and mass pardons. The Emperor grants pardons based on recommendations from the Ministry of Justice. Pardons in Japan often coincide with significant national events, such as imperial successions. There are different categories of pardons, including amnesty, commutation, and restoration of rights. Japan's system emphasizes rehabilitation and reintegration, ensuring that pardons are granted based on a well-defined legal framework.

5.5 Social and Legal Impacts of Pardons
The pardon system significantly influences public trust in the legal system. While it provides a mechanism for rehabilitation and alleviates overcrowding in prisons, it may also create concerns regarding fairness and security.

Recidivism and Public Safety: Studies indicate that improperly vetted pardons can lead to repeat offenses, as seen in certain high-profile Thai cases.

Public Perception: A system that lacks transparency may erode confidence in justice, particularly when

high-profile figures receive leniency while ordinary inmates face strict conditions.

Judicial Integrity: A well-structured pardon process reinforces the rule of law, ensuring that pardons are granted based on fairness rather than political or personal influence.

VI. CONCLUSION

The study of the pardon system in Thailand reveals its deep historical roots and its evolving role within the framework of a constitutional monarchy. While royal pardons serve as a mechanism for rehabilitation and sentence reduction, the lack of clear criteria and transparency in the process raises concerns about fairness and public trust. The comparison with other international pardon systems highlights the need for structured legal guidelines, independent oversight, and risk assessment mechanisms to ensure a just and equitable process.

To enhance the effectiveness and integrity of the Thai pardon system, it is crucial to establish clear eligibility criteria, incorporate risk assessment measures, and create an independent review board to oversee the process. Addressing these aspects will help balance the principles of justice, rehabilitation, and public safety, ultimately strengthening the credibility of the legal system and fostering greater public confidence in the rule of law.

RECOMMENDATIONS

The recommendations for Reform

To enhance the effectiveness and fairness of the Thai pardon system, several reforms can be considered:

Enhancing Transparency: Establishing a clearer set of guidelines for granting pardons and ensuring public access to criteria and procedures.

Risk Assessment Procedures: Implementing rigorous risk evaluations for pardoned individuals to prevent reoffending and maintain public safety.

Independent Review Board: Creating an independent body to review pardon applications to minimize political influence and ensure fairness.

Differentiated Pardon Mechanisms: Tailoring the pardon process based on the type of crime, prisoner rehabilitation progress, and the impact on society.

By addressing these aspects, Thailand's pardon system can better serve justice while maintaining social stability and trust in the rule of law.

REFERENCES

[1] Bushnell, J. (2021). "The Royal Prerogative of Mercy: A Comparative Legal Analysis". Oxford University Press.

[2] Chamnarn Rattanakitti. (2018). "The pardon in the Thai constitution: Rights of prisoners or violation of public rights?" Thammasat Law Journal, 47(2), 112-130.

[3] Chulalongkorn University Faculty of Law. (2019). "Research report on "Reforming the Pardon Process in Thailand". Bangkok: Chulalongkorn University Press.

[4] Department of Corrections. (2017). Correctional Act B.E. 2560 (2017). Retrieved from https://www.correct.go.th

[5] Fletcher, G. P. (2018). "Rethinking Criminal Law and the Role of Clemency". Cambridge University Press.

[6] Hood, R., & Hoyle, C. (2015). "The Death Penalty: A Worldwide Perspective" (5th ed.). Oxford University Press.

[7] Kobil, D. T. (1991). "The quality of mercy strained: Wresting the pardoning power from the king". Texas Law Review, 69(3), 569-641.

[8] Ministry of Justice. (2017). "Report on crime situation and justice system in Thailand". Bangkok: Ministry of Justice.

[9] National Legislative Assembly. (2017). Criminal Procedure Code, Sections 259-261. Retrieved from https://www.krisdika.go.th

[10] Roberts, J. (2017). "The politics of presidential pardons in the United States". Harvard Law Review, 130(5), 1458-1490.

[11] Royal Thai Government Gazette. (2017). Constitution of the Kingdom of Thailand, Sections 175, 179, and 261. Retrieved from https://www.parliament.go.th

[12] Sarat, A. (2020). "Mercy on Trial: What It Means to Stop an Execution". Princeton University Press.

[13] Sommai Nitisat. (2020). "Social impacts of the pardon system in Thailand: A case study of Somkid Phumphuang". Thai Criminology Journal, 5(1), 87-102.

[14] Thai PBS News. (2023). "Controversies over pardons in high-profile cases: The case of Thaksin Shinawatra". Retrieved from https://www.thaipbs.or.th

[15] Thammasat University Center for Legal and Public Policy Studies. (2022). "The pardon process in the Thai constitution and reform recommendations". Bangkok: Thammasat University Press.

[16] Thanawat Wongsuwan. (2021). "The role of the monarchy in granting pardons under the Thai legal system". Thai Law Journal, 18(1), 45-67.

[17] Walker, T. (2019). "Comparing amnesty and pardons: Scandinavian practices in criminal law". Nordic Legal Studies, 23(3), 178-201.

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