MANDATORY MEASURES FOR JUVENILE OFFENDERS UNDER THAI LAW

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Abstract - This article has an objective to examine the mandatory measures for juvenile offenders under Thai law. The study finds that Thailand's approach aligns with international principles, emphasizing the integrated rehabilitation and correction of children and juveniles who commit criminal offenses. Under Thai law, children under the age of 12 are not subject to criminal penalties. For those aged between 12 and 15, courts may impose appropriate measures, such as admonishment, behavioral conditions, or referral to rehabilitation programs, without criminal punishment. For offenders aged from more than fifteen but below eighteen, the court has discretionary power to determine whether criminal penalties are appropriate. Whereas under the laws of England and Wales, juvenile offenders aged between ten to seventeen may face criminal penalties at the discretion of youth courts or be sent to specialized juvenile centers, emphasizing a balance between rehabilitation and punishment. Hence, to enhance the effectiveness of measures for juvenile offenders in Thailand, including deterrence and the prevention of recidivism, it is recommended that Thai juvenile and family courts be empowered to impose criminal penalties on juvenile offenders aged fourteen but below fifteen who commit serious crimes or offenses that pose a threat to national security.

Keywords - juveniles, offenses, rehabilitation, serious crimes

I. INTRODUCTION

Crime is a severe threat that has long been part of society. It can cause damage to life, property, and social peace and is an act intended to violate criminal law or a deliberate omission to perform acts required by criminal law without a justified excuse. Persons committing such acts are referred to as "criminals." When children or Juvenile commit acts that violate the law, considered criminal offenses such as theft, assault, murder, or other legally punishable offenses, they are referred to as "juvenile criminals."

According to the guidelines of the Committee on the Rights of the Child under the United Nations, it is recommended that no country should set the minimum age for criminal responsibility below 12 years. Moreover, countries are encouraged to raise this minimum age appropriately based on their social context. Thailand follows this international approach by stipulating that children under 12 years old should not receive criminal penalties, as specified in Section 73 of the Thai Criminal Code. Instead, they enter into the child protection process under the Child Protection Act B.E. 2553 (A.D. 2010). For children aged 12 to 15, the court has the authority to apply appropriate measures, such as admonishments, setting conditions, or rehabilitation programs to ensure proper development according to Section 74. For Juveniles aged 15 to 18, the court may reduce penalties or apply non-criminal measures focused on rehabilitation and preventing recidivism according to Section 75. This is because children in this age range are considered not to have sufficient maturity for decision-making. Additionally, for children aged 12-15, the law allows for measures other than punishment, such as education, rehabilitation, or supervision under suitable conditions. Children aged 15-18 must enter the juvenile and family court system, which emphasizes child rights protection and the use of punishment measures that consider the child's development. When considering crime statistics for children between B.E. 2564-2566 (A.D. 2021-2023), it can be observed that the current measures, such as the Criminal Code Section 74 and the Juvenile and Family Court and Procedures Act B.E. 2553 (A.D. 2010), aim to balance the protection of children's and Juvenile's rights with a focus on rehabilitation and development. They provide opportunities for these children to adapt into valuable members of society while ensuring that the laws maintain authority and are respected. This balance aims to protect children's rights and ensure the law is enforced appropriately for children and Juvenile.

Therefore, it seems appropriate to study whether the current measures for juvenile criminals are suitable or require adjustments to align with the changing social context.

II. LITERATURE REVIEW

A. Definition of "Children and Juvenile"

"Children and Juvenile" are defined in The Juvenile and Family Court and Juvenile and Family Procedure Act B.E. 2553 (A.D. 2010) under Section 4. "Child" means a person over the age specified in Section 73 of the Criminal Code but not exceeding 15 years of age. "Juvenile" means a person over 15 years of age but not yet reaching 18 years of age.

According to the definition of “child,” it is evident that a child not exceeding 12 years of age is not considered a “child” under the definition in Section 4 of this Act. Therefore, when committing an offense, they are not required to appear before the Juvenile and Family Court, nor are the procedures of this Act applied. This Act aligns with the Criminal Code, particularly Section 73, which separates children in this age range to be cared for under legal protection, emphasizing child protection for those not yet fully prepared to take responsibility for their actions. The focus is on applying criminal liability measures primarily to children and juveniles who meet the minimum criteria under Sections 74 and 75 of the Criminal Code.

B .Legal Measures for Offenders Who Are Children and Juvenile under Thai Law

Section 74 of the Criminal Code stipulates that a child under 15 years of age who commits a criminal offense shall not be subject to criminal penalties. Instead, measures for control and behavioral correction are applied without focusing on adult-style punishment. These measures include: (1) The court may order the child to be returned to the care of their parents or guardians if it deems that the child can live under their supervision. The court may impose conditions requiring the parents or guardians to be responsible for the child’s care and training, which may include monitoring the child’s behavior for a certain period. (2) Transferring the child to a welfare shelter or observation center if the parents or guardians are unable to provide care or if family circumstances are not conducive to rehabilitation. (3) Sending the child to a shelter for proper care and education in a suitable environment or ordering training or treatment if the child has behavioral issues. It is evident that Section 74 does not constitute "punishment" under the criminal definition but serves as a protective and rehabilitative measure appropriate to the child’s condition, aiming to create opportunities for the child to adapt and develop into a good member of society.

C. Legal Measures for Children and Juvenile Offenders under ASEAN Laws

Singapore: Minimum age of criminal responsibility is 10 years. Children under 16 are tried in Juvenile Court, focusing more on rehabilitation and development than punishment, such as counseling and rehabilitation programs designed to reintegrate the child as a good citizen.

Philippines: Minimum age of criminal responsibility is 15 years (but children aged 12-15 can face trial for serious offenses), with established Youth Rehabilitation Centers for behavioral adjustment.

Malaysia: Minimum age of criminal responsibility is 10 years. The Juvenile Court handles cases for youth up to 18 years old and emphasizes rehabilitation, such as counseling and training, to reduce recidivism by addressing behavioral issues.

Indonesia: Minimum age of criminal responsibility is 12 years. While rehabilitative measures are available, children committing serious crimes, such as murder or rape, may be tried as adults (with possible sentence reductions), aiming for both punishment and rehabilitation.

Vietnam: Minimum age of criminal responsibility is 14 years for serious crimes and 16 years for general offenses. Children committing serious offenses face trial, but there is an emphasis on rehabilitation for less serious crimes, focusing on deterrence and responsibility.

Myanmar: Minimum age of criminal responsibility is 7 years (one of the lowest in ASEAN). Although there are sentence reductions for offending children, there are punishments for serious offenses, aiming to restrain behavior harmful to society. By evaluating the minimum age criteria for criminal responsibility among ASEAN countries, handling juvenile offenders depends on the policies and culture of each country. They can be divided into two major groups: those emphasizing rehabilitation for reintegration into society, and those focusing on both rehabilitation and punishment.

D. Proportionality Between the Focus on Rehabilitation in Law and the Enforcement of Appropriate Liability

According to measures for juvenile offenses in countries where the emphasis is on rehabilitation and reintegration into society, like Thailand, statistics on repeat offenses by children and juveniles show that in the follow-up year after completing various measures during the fiscal years B.E. 2564-2566 (A.D. 2021-2023), the average recidivism rate was 10% of the total number of children and juveniles. This equates to an average of 6,536 children and juveniles per year being tracked for repeat offenses, or a high number of 653.6 individuals. Among the group who reoffended, serious offenses related to life and body ranked second, only after drug-related offenses. This indicates that the enforced measures, such as Section 74, do not instill respect or fear of penalties among children and juveniles aged over 12 but under 15, as demonstrated by a case study involving a juvenile court ruling in which a schoolchild in Mathayom 2 (8th grade) stabbed a peer. The court ordered detention in a juvenile observation center after a Khlong Tan police request, suspecting premeditated murder. Facts revealed the accused saw the victim entering a restroom and waited with a knife. After the victim exited towards the school's flag ceremony area, the accused stabbed him. The victim fled to a

school sports area, pursued by the knife-wielding accused, before other students managed to disarm the attacker. The victim was hospitalized but later died. The authorities charged the accused with premeditated murder and carrying a knife in public without valid reason. There is deemed to be sufficient reason; thus, an order has been issued to detain the accused in the Bangkok Juvenile Observation and Protection Center. Considering the circumstances, it is evident that the actions were committed by a child of only 14 years of age. Although it is a serious crime, such as premeditated murder, which carries a legal penalty as severe as the death penalty, the Juvenile and Family Court has only ordered the detainment of the child offender in the Juvenile Observation and Protection Center because the death penalty is prohibited for individuals under 18 years old, and the individual in question is not over 15 years of age, the court must adhere to juvenile procedures. This means applying one of the three measures under Section 74 of the Penal Code. This illustrates that the measures imposed on children and juveniles lack proportional enforcement to instill respect and fear of legal consequences and to impart appropriate penalties for serious offenses they commit. The law prioritizes development and rehabilitation excessively.

E. Foreign Law

Criminal liability of children in England and Wales is governed by the Children and Young Persons Act 1933. Under the section for Juvenile Offenders, Section 50 establishes a minimum age. It is concluded that children under 10 years of age are prohibited from being convicted of any offense. According to Section 53 (1), individuals under the age of 18 cannot be sentenced to death or receive a death penalty record. Instead of the death penalty, the court will order such individuals to be detained at Her Majesty's pleasure, and if found guilty, they must be detained in a place and under conditions set by the Minister (2). If a child or young person is convicted of attempted murder or inflicting bodily harm with the intent to cause severe harm, and the court finds no other suitable legal measures, the court will impose an appropriate punishment or may order the offender to be detained for a period as determined by the court. During this time, the youth must be detained under conditions set by the Minister. The minimum age for criminal responsibility is 10 years, meaning children under 10 cannot be arrested or charged with a crime. There may be alternative measures for children under 10 who break the law. Children between the ages of 10 and 17 can be arrested and prosecuted in court if they commit a criminal offense, but they will be treated differently than adults. For instance, they are tried in juvenile courts, receive different sentences from adults, and are sent to special youth detention centers instead of adult prisons. Once a juvenile reaches the age of 18, they are treated as adults under the law. If sentenced to imprisonment, they are sent to facilities for inmates aged 18 to 25, rather than full adult prisons.

It is evident that even though both England and Wales, like Thailand, have set a minimum age for criminal responsibility, the minimum age differs, and a minimum threshold for punishment is established. English and Welsh law allows the court discretion to prosecute and determine penalties for children aged 10-17. Moreover, under Section 53, if an offender commits a serious crime, such as intentional murder or intent to cause severe harm, under the authority of the juvenile court, the penalty, though different from that for adults, highlights the importance placed on punishment alongside the rehabilitation of child and youth offenders. The court can exercise its power to rule appropriately based on the severity of each individual case. In the notable English case "Judgments - Reg. v. Secretary of State for the Home Department, Ex parte V. and Reg. v. Secretary of State for the Home Department, Ex parte T."

This was a judicial review request concerning Robert Thompson (T.) and Jon Venables (V.), who were convicted of murdering James Bulger in 1993 when they were 10 and a half years old, under Section 53 (1) of the Children and Young Persons Act 1933. The court ordered them to be detained during Her Majesty's pleasure, meaning they had to be detained until deemed appropriate for release. After sentencing, the court set their detention at 8 years. Later, the Lord Chief Justice recommended increasing the term to 10 years. However, then, at that time, Minister of the Interior, Michael Howard, under Section 35 of the Criminal Justice Act 1991, increased the minimum term to 15 years. It can be observed that the case bears similarities to a case in Thailand. Although the offenders were only 10 and a half years old, they were old enough under English and Welsh law to be penalized, illustrating the court's power to determine appropriate penalties for child and youth offenders. This contrasts with the example case in Thailand, where the law provides for only three levels of consideration for offenses by children and youths, resulting in penalties that may lack proportionality concerning the responsibilities of young offenders.

III. ANALYSIS

From the literature review on juvenile crime, it was found that Thailand has codified criminal liability in the Penal Code, setting the minimum age for criminal responsibility at 12 years. According to Section 74 of the Juvenile Penal Code, a child under the age of 15 who commits a criminal offense is not subject to criminal punishment. Instead, measures are focused on control, rehabilitation, and behavioral correction, rather than adult-style punishment. The measures

serving as alternatives to criminal punishment include orders for the child to return to parental custody, be sent to a welfare facility, or a juvenile detention center. At the same time, in England and Wales, the Children and Young Persons Act 1933 establishes a similar minimum age for liability, but in cases where juveniles commit serious crimes, English and Welsh law distinctly outline separate liabilities. Further, the court is given appropriate discretion in sentencing, which differs from the approach in Thailand.

IV.SYNTHESIS

From the study of the literature on legal measures applied to juvenile offenders in Thailand and other countries such as England and Wales, four main issues can be analyzed: (1) the minimum age of criminal responsibility, (2) approaches to prosecuting children and young people, (3) punishment and rehabilitation measures, and (4) the effectiveness of current measures in preventing recidivism. These four main issues can be analyzed together as follows: Regarding the minimum age of criminal responsibility when comparing Thailand and other countries, the Thai Penal Code stipulates in Section 73 that children under the age of 12 will not be subject to criminal punishment. Section 74 further states that children aged 12–15 will not be subject to punishment but must enter rehabilitation measures, also referred to as measures for children. Meanwhile, England and Wales set the minimum age of criminal responsibility at 10 years, which is lower than in Thailand. When compared to ASEAN countries in both the rehabilitation and punishment groups, the minimum age of criminal responsibility in Thailand is close to international standards and aligns with the recommendations of the United Nations Committee on the Rights of the Child, which states that the minimum age should not be lower than 12 years. However, the differences in the minimum age among countries reflect diverse social and legal contexts. Regarding the approach to prosecuting children and young people in Thailand and England and Wales, Thai law requires children aged 12–15 to enter the child protection process instead of criminal prosecution. For children aged 15–18, cases are handled by the juvenile and family court, where the court has the authority to apply appropriate measures to reduce penalties or rehabilitate the child instead of imposing punishment. In contrast, the law in England and Wales states that children under 10 years old are not criminally liable, while children aged 10–17 can be prosecuted in the juvenile court. In cases of serious offenses such as murder, the court has the discretion to impose penalties appropriate to the severity of the case. English law provides flexibility for the court to use discretion in sentencing juveniles while maintaining clear control measures for serious cases. Thai law prioritizes rehabilitation over punishment, which may lead to debates about the “proportionality of punishment to the seriousness of the case.” In Thailand, under Sections 74 and 75 of the Thai Criminal Code, the court can impose rehabilitative measures instead of punishment for juveniles, such as returning them to the care of their parents, sending them to a juvenile detention or rehabilitation center, or requiring them to participate in a training and treatment program. Although this approach is internationally recognized as an appropriate method for correcting juvenile behavior rather than punishing minors as adults, there are limitations in Thailand’s rehabilitative measures. These include the lack of appropriate proportionality for serious cases such as premeditated murder, the absence of mechanisms for courts to exercise discretion in imposing stricter punishments where necessary, and the lack of effective post-rehabilitation measures—particularly for children aged 14–15. This age group is considered to have an emotional state, feelings, and thoughts that are increasingly comparable to adults due to the rapidly changing social and environmental context. Additionally, children aged 14–15 account for a significant portion of serious crimes, second only to offenders aged over 15 but not over 18. An example is the case of a Grade 8 student who stabbed a friend to death, demonstrating that rehabilitation measures alone may not be sufficient to instill fear or deter future crimes. In cases of high severity, when the offender is only 14 years old, they may have the capacity to think, feel, and make decisions to commit a serious crime—differing from the approach in England, where, despite rehabilitation measures, courts still have the power to impose harsher penalties. A notable example is the case of James Bulger, in which the 10-year-old offender was sentenced to imprisonment until his release could be reconsidered.

V. CONCLUSION AND FUTURE WORK

The author suggests that Thailand should revise its laws to grant juvenile and family courts the discretion to impose criminal penalties on children aged 14 to 15 in serious cases or those impacting social security.

ACKNOWLEDGE

The author sincerely thanks Suan Sunandha Rajabhat University for its kindness and support for this paper.

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