A COMPARATIVE STUDY OF STATUTES OF LIMITATIONS ON SEXUAL OFFENSES AGAINST MINORS UNDER THAI AND GERMAN CRIMINAL LAW

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Abstract - Under Thai law, the statute of limitations for sexual offenses against minors begins from the time the offense is committed. This often results in cases where, by the time the minor reaches the age of majority, they can no longer file charges because the statute of limitations has already expired. In contrast, German law calculates the statute of limitations differently; it begins only when the min reaches the age of majority, ensuring greater protection of their right to seek legal justice. Hence, this article has an objective to highlight the challenges posed by the Thai approach to calculating the statute of limitations for sexual offenses against minors. It also seeks to explore the legal frameworks and enforcement practices of German law concerning the same issue, to propose reforms to Thai law to better protect the rights of minor victims in pursuing legal action. The research adopts a document-based methodology, examining Thai criminal law provisions on the statute of limitations for sexual offenses against minors and comparing them with the corresponding legal frameworks in German criminal law. Sources include legal texts, regulations, academic books, research articles, theses, independent studies, and relevant websites. The findings reveal that German criminal law provides that, in cases of sexual offenses against minors with ages below 14, the statute of limitations is suspended and only starts running when the minor reaches the age of majority (18 years). This approach ensures that minors have greater psychological readiness and legal understanding to make informed decisions about pursuing legal action. Therefore, the article recommends that Thai law on the statute of limitations for sexual offenses against minors be revised to align with the German approach. This reform would enhance the protection of minors' rights to access the justice system and bring Thai law in line with international standards.

Keywords - Sexual Offenses, Statutes of Limitations, Minors

I. INTRODUCTION

Currently, Thailand continues to experience sexual offenses committed against minors. In many cases, perpetrators are not brought to justice because minors have not yet reached legal maturity and do not understand the harm inflicted upon them. As a result, the statute of limitations expires due to the absence of legal provisions to suspend or extend the limitation period for sexual offenses. Since the statute of limitations continues to run, some cases affect the rights of minors to access the justice system, particularly in situations where they lack a legal representative or when their legal representative is unable or neglects to fulfill their duty by not pursuing legal action on behalf of the minor. This leads to minors who have been raped or sexually assaulted being unable to seek justice, preventing the suppression or prosecution of offenders through the court system. In some cases, the statute of limitations for filing a lawsuit expires before the minor reaches legal adulthood and attains full legal capacity to litigate independently. Consequently, sexual offenses against minors remain hidden, with no police reports filed or legal proceedings initiated, allowing offenders to remain unpunished in society. This article highlights the legal loopholes concerning the statute of limitations for sexual offenses committed against minors by conducting a comparative study with the laws of Germany, which include provisions for suspending and extending the statute of limitations until the minor reaches legal adulthood. The study aims to elucidate the legal concepts and theories related to the statute of limitations for sexual offenses against minors in Thailand and to analyze and compare the relevant laws in Thailand and Germany. Additionally, the study seeks to propose amendments and improvements to Thai law to ensure the protection of minors through an extended statute of limitations for sexual offenses.

This study adopts a qualitative research approach, primarily relying on document-based analysis, including legal codes, textbooks, books, theses, and academic articles related to the statute of limitations for sexual offenses against minors, from both Thailand and Germany.

Legal analysis reveals that German law suspends the statute of limitations until the minor reaches 18 years of age or legal adulthood, after which there is a three-month period to file a lawsuit. The German legal framework offers greater protection for minors' rights to access the justice system compared to Thai law. Specifically, the statute of limitations is paused to allow the minor to reach adulthood and decide on legal action. This article recommends that Thai law be revised to align with German law as outlined above. However, extending the statute of limitations raises potential issues, particularly when cases remain unpursued for long periods, leading to the loss or deterioration of evidence, which could make witness

testimonies more difficult to obtain when the minor later seeks legal action. This issue remains a legal gap beyond the scope of this study, leaving room for future research to explore this matter further.

II. RESEARCH OBJECTIVES

1.1 To study the concepts and theories related to the statute of limitations for sexual offenses against minors.
1.2 To analyze and compare the laws of Germany and Thailand regarding the statute of limitations for sexual offenses against minors.
1.3 To propose recommendations for amending and improving Thai law to better protect minors and align with international standards.
Expected Benefits
1.1 To gain an understanding of the concepts and theories related to the statute of limitations for sexual offenses against minors.
1.2 To develop knowledge and comprehension of both German and Thai laws concerning the statute of limitations for sexual offenses against minors.
1.3 To obtain recommendations for amending Thai law to either extend or suspend the statute of limitations for sexual offenses against minors, ensuring greater protection of minors' rights to access the justice system while remaining in accordance with international legal principles.

III. RESEARCH METHODOLOGY

This study is a document-based analysis, gathering information from relevant sources, including legal codes, books, textbooks, research papers, theses, and academic articles related to the statute of limitations for sexual offenses against minors. The study involves a comparative analysis of the legal frameworks in Germany and Thailand, with the goal of deriving insights that can inform amendments and improvements to Thai law[2].

IV. LITERATURE REVIEW

The statute of limitations in Thailand is established to ensure that victims exercise their legal rights and file lawsuits within the timeframe prescribed by law. This limitation aims to facilitate the timely verification of offenses while evidence remains intact, ensuring that cases are proven and adjudicated effectively based on available evidence. Additionally, the purpose of having a statute of limitations is to ensure that offenders are held accountable for their actions, preventing delays in legal proceedings that could lead to the loss or deterioration of evidence. Without such a limitation, offenders would be in a perpetual state of risk regarding potential prosecution. Therefore, the statute of limitations mandates that victims pursue legal action within the designated period while the case remains valid under the law. If the limitation period expires, the offender is absolved of legal responsibility. For example, if an offender flees to another country, they may evade punishment until the case reaches its statute of limitations. However, if they return before the expiration of this period, they will still face prosecution. The statute of limitations varies depending on the nature of the crime, serving as a means for law enforcement to gather and verify evidence with minimal discrepancies.

Thus, the statute of limitations exists to maintain legal order and stability, preventing the reopening of long-past disputes once the period has expired. Once a case has exceeded its statute of limitations, it can no longer be pursued, which helps avoid complications that may arise if claims were allowed after significant time has passed. Those involved in cases subject to statutes of limitations must present their evidence within the designated timeframe. The statute of limitations also serves as a consequence for victims who neglect to pursue legal action within the prescribed period. If a case is not filed while the statute of limitations is still in effect, the right to prosecute is lost. Therefore, it serves as an incentive for offenders to face justice within the specified period and ensures fairness for both the victim and the accused, as both parties are aware of their legal rights and the timeframe for prosecution.

A critical issue concerning the statute of limitations arises in cases of sexual offenses against minors under Section 95 of Thailand’s Criminal Code. [3].According to this provision, if an offender is not prosecuted and brought before a court within the following timeframes, the case will expire: twenty years for crimes punishable by death, life imprisonment, or a twenty-year prison sentence; fifteen years for crimes punishable by imprisonment exceeding seven years but not exceeding twenty years; ten years for crimes punishable by imprisonment exceeding one year but not exceeding seven years; five years for crimes punishable by imprisonment exceeding one month but not exceeding one year; and one year for crimes punishable by imprisonment of up to one month or other penalties. The statute of limitations starts from the date the offense was committed. However, if the case is prosecuted and the offender is brought before the court but later escapes or is declared legally insane, leading the court to suspend proceedings beyond the designated timeframes, the case will still be considered expired.In Thailand, the statute of limitations for a crime begins when the offense is completed. For example, if an eight-year-old girl is sexually assaulted, the statute of limitations starts immediately upon the completion of the act, rather than when the minor reaches the age of majority. This approach has significant negative consequences, as it may prevent victims from seeking justice once they become legal adults. If a child must wait until they

turn twenty to pursue legal action, the statute of limitations for the offense may have already expired. Consequently, victims may be unable to prosecute offenders, allowing them to escape punishment.

The automatic commencement of the statute of limitations from the moment a crime is committed, without any provision for suspension, raises concerns regarding fairness. If law enforcement fails to apprehend an offender, the offender may never be prosecuted due to the expiration of the statute of limitations. Currently, Thai law does not allow for the suspension of the statute of limitations, though implementing such a provision would bring several benefits. Given the prevalence of sexual offenses against minors in Thailand, the lack of a suspension mechanism prevents victims from seeking justice once they reach adulthood. As a result, the expiration of the statute of limitations before the victim comes of age undermines the deterrent effect of the law, allowing offenders to evade punishment and perpetuating a cycle of sexual crimes.

In contrast, Germany's legal system allows for the suspension of the statute of limitations, which significantly benefits victims. In Germany, the statute of limitations for sexual offenses against minors is paused until the victim reaches the age of eighteen, at which point the limitation period resumes. According to Sections 78b and 78c of the German Criminal Code, the statute of limitations is suspended until the victim turns eighteen or as otherwise prescribed by law [4]. Upon reaching adulthood, the victim is granted an additional three months to initiate legal proceedings against the perpetrator of the sexual offense.

V. COMPARATIVE DISCUSSION AND ANALYSIS

In Thailand, the statute of limitations begins counting from the moment the offense is completed. The automatic commencement of the statute of limitations without any suspension or extension until the victim reaches the age of majority leads to severe disadvantages for minors who are victims in such cases. Many child victims are unaware that the statute of limitations starts running immediately upon the completion of the crime, even though they are still minors and cannot pursue legal action on their own. Additionally, victims may be in a state of shock, lack a clear understanding of the abuse they have suffered, and be unaware of their legal rights. They may also experience severe psychological distress, preventing them from reporting the crime or filing a lawsuit. The absence of a provision allowing for the suspension or extension of the statute of limitations may result in child victims of sexual offenses losing their right to prosecute the perpetrators [5]. This issue is especially critical for minors who do not have a legal guardian or whose guardian neglects to take legal action on their behalf. Allowing offenders to escape punishment can have long-term psychological effects on the victims and further enables perpetrators to commit similar crimes repeatedly. Since the statute of limitations begins counting from the time of the offense, many victims are unable to report the crime because they are still minors with limited capacity to take legal action. Moreover, offenders may deliberately evade prosecution by fleeing or otherwise avoiding the legal process, knowing that once the statute of limitations expires, they can no longer be held accountable. This long-standing issue has created an opportunity for criminals to escape justice, reducing the deterrent effect of the law. When offenders go unpunished, the consequences for victims can be severe, leading to conditions such as depression, self-harm, delayed development, cognitive or physical impairments, and difficulties in social integration. Therefore, it is crucial to introduce legal provisions that either extend the statute of limitations or allow for its suspension.

In Germany, the statute of limitations for sexual offenses against minors does not begin until the victim reaches the age of majority at 18 years old. This means that if an offense occurs while the victim is still a minor, the statute of limitations is paused until they turn 18, after which they have an additional three months to initiate legal proceedings against the perpetrator. The suspension of the statute of limitations in German law offers several advantages. Firstly, it provides minors with the opportunity to file a lawsuit on their own after reaching adulthood, ensuring that they are adequately prepared to seek justice and that their case is not dismissed due to the expiration of the statute of limitations. This approach enhances fairness by allowing victims to take legal action at a time when they are more capable of understanding and handling their case. Furthermore, as victims grow older, they may experience reduced feelings of shame or fear compared to when they were younger. Keeping such cases within the statute of limitations ensures that perpetrators can still be prosecuted, reinforcing the deterrent effect of the law. If the statute of limitations were not suspended, victims could be threatened or intimidated by the perpetrator or others, preventing them from filing a lawsuit. However, the suspension of the statute of limitations allows victims and their legal guardians to better prepare for legal action, equipping them with the necessary knowledge and legal resources to hold offenders accountable.

From the perspective of law enforcement, suspending or extending the statute of limitations, as seen in Germany, significantly improves the effectiveness of legal proceedings against perpetrators. Since the statute of limitations does not start running until the victim reaches adulthood, offenders cannot easily

evade punishment by simply waiting for the limitation period to expire. This approach makes it more difficult for criminals to escape justice, ensuring that legal actions against them remain possible even after an extended period. By adopting such measures, legal systems can better protect the rights of victims and reinforce the principle that justice should not be constrained by arbitrary time limits when it comes to serious crimes like sexual offenses against minors.

VI. CONCLUSION

Studies indicate that Thailand's Penal Code lacks provisions for suspending or extending the statute of limitations for sexual offenses committed against minors until the victim reaches the age of majority and can pursue legal action independently. In contrast, Germany halts the statute of limitations until the victim reaches adulthood. Once the minor reaches the legal age, they have three months to file charges.This system ensures that the victim has gained sufficient legal awareness, maturity, and the ability to distinguish right from wrong. They also have the opportunity to prepare legally to seek justice against the perpetrator. Allowing minors to wait until they reach adulthood provides them with the emotional readiness to engage with the legal system independently. If Thailand were to adopt a similar approach—resuming the statute of limitations only after the victim reaches adulthood, it could help reduce stress and prevent suicidal tendencies among minors. This would contribute to their overall mental well-being. In conclusion, suspending and then resuming the statute of limitations when the minor reaches adulthood would facilitate more effective access to justice. Amending the law would offer better protection to minors than the current system, which counts the statute of limitations from the moment the crime is committed without any pause or extension. Extending the statute of limitations also instills greater fear of the law, as perpetrators would face a higher likelihood of prosecution with fewer opportunities to evade justice. This would, in turn, contribute to reducing future crimes.

RECOMMENDATIONS

Based on this research, it is recommended that Thai law be revised to suspend the statute of limitations [6] for sexual offenses against minors until they reach adulthood and then restart the limitation period. This would ensure fairness in legal proceedings, taking inspiration from the German legal system. However, directly implementing German law in Thailand may not align with Thai social and legal contexts. A study of Thailand's Civil and Commercial Code, Section 193/20, reveals that the statute of limitations for claims involving minors or individuals declared incompetent by the court does not expire while they remain legally incapable. The limitation period is extended for one year after they attain full legal capacity or acquire a legal representative or guardian, depending on the case. If the limitation period for such claims is shorter than one year, the shorter period applies instead. Applying this civil law principle to criminal cases could enhance legal familiarity and ensure better protection for victims. This article thus recommends amending Thailand's Penal Code to extend the statute of limitations for one year after the minor reaches adulthood, drawing on the principles outlined in the Civil and Commercial Code.

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REFERENCES

[1] Thanaporn Ue-orrachorphong. (2020). The Extension of Statute of Limitations in Criminal Cases Where Minors Are Victims. Master's Thesis, Faculty of Law, Chulalongkorn University, p. 2. Retrieved on November 22, 2024, from https://digital.car.chula.ac.th/cgi/viewcontent.cgi?article=5350&context=chulaetd

[2] Surasak Meebua. Maternity Leave and Breaks During Work for Breastfeeding of Female Employees According to Thai Labor Protection Laws: A Comparative Study of International Labor Standards and Foreign Laws. 5th International Conference on Management, Innovation, Economics, and Social Sciences (ICMIESS 2024). February 19-20, 2024, in Da Nang City, Vietnam.

[3] Criminal Code, Section 9: Statute of Limitations. Sections 95-101. Retrieved on November 29, 2024, from https://www.drthawip.com/criminalcode/1-15

[4] Surathin Chai-thongkham. (2009). The Suspension of Statute of Limitations: A Study on Cases Where Offenders Flee. Master's Thesis, Faculty of Law, Graduate School, Dhurakij Pundit University, p. 38. Retrieved on December 25, 2024, from https://libdoc.dpu.ac.th/thesis/132144.pdf

[5] Jarunan Akarapisansakul & Atchariya Chutinant. (n.d.). Legal Issues Regarding Statute of Limitations in Criminal Offenses Against Minors in Sexual Crimes. Research Article, pp. 1-9. Retrieved on January 15, 2025, from https://search.app/LBrBKmuZPuvY5Wky7

[6] Legal Affairs Group, Secretariat Office. (n.d.). p. 1. Retrieved on January 30, 2025, from http://ofs101.ldd.go.th/LDDOFS/ofskm03/03/0303/2565/030325650003.pdf

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