

Legal Problems: The Safety Measures Enforcement under the Thai Criminal Code

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ABSTRACT

The purpose of this research is to study legal problems regarding the Safety Measures Enforcement under the Thai Criminal Code. These were mainly by documentary research. The Safety Measures Enforcement were enacted in the Thai Criminal Code, sections 39 - 50. Section 39, had enacted five safety measures such as 1) quarantine 2) prohibition of entry into designated areas 3) execute a bond with security 4) detain in a hospital 5) prohibit certain occupations. These Safety Measures Enforcement were intended to protect society which is based on the concept of Social Defenses Theory.

The research results found that the quarantine's definition had prescribed the criteria to accomplish the quarantine measures for habitual offenders or recidivism. Besides, this measure is intended to prevent the offenders from committing crimes again. Therefore, this measure had a problem to apply with the habitual offenders who were sentenced to prison by the court for the first time and the offenders who were currently under suspension. Moreover, these quarantine measures were required to be enforced with only eight types of offenses, which are included in the criminal code but not included in the offenses under the Narcotics Code. These also did not have legal provisions that stipulated procedures for inspecting and evaluating the quarantine measures enforcement before releasing the quarantined persons to return to life in society. For the executed bond with security measure, terms and conditions about this measure have been made too narrow. These do not cover other offenses under the other laws that are also important. As for detained in hospital measures, there were problems in the definition determining, the mental disorder of people meaning. Besides, these included the prosecutors using their discretion to order unprosecuted with mental disorders person, so these could not possibly apply the Safety Measures according to the Criminal Code. For this reason, if the case did not come through the court consideration, the court also could not order to use the Security Measures as well.

The researcher had recommendations to amend the Criminal Code in terms of defining definitions, terms, and conditions, expanding the criteria to cover the other types of offenders. For the moment, these included expanding the base of offenses which can use Safety Measures according to enforcement under the Thai Criminal Code. To keep society from being harmful as well as to be reduced crime.

Keywords: *Legal problems; The Safety Measures Enforcement*

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INTRODUCTION

Regarding to the Constitution of Thailand's Kingdom, B.E. 2017, Chapter 6, State Policy Guidelines, Section 77, provides for the imposition of criminal penalties. "The state...should be imposed criminal penalties only the Felony". There are not only penalties in the Criminal Code but there are also important measures regarding crime prevention in the future. These measures will protect society from criminal harm. These measures are enacted in Title 1, Chapter 3, Part 2, separated from Part 1 regarding punishment, to protect society. These are different from the focus on punishment which suppression of offenders. Therefore, the guidelines should solve, prevent, suppress, and control the crime problems are determine the measures that can be used to control society, such as punishment suppression measures and protection society measures. The basic concept is based on Social Defense Theory, which is the measures that the state uses to protect society from the danger of crime.

The Safety Measures are protective society measures that are according to Section 39 of the Criminal Code. There are five types of Safety Measures, including 1) quarantine 2) prohibit entry into designated areas 3) execute a bond with security 4) detained in a hospital, and 5) prohibition on certain occupations. The principal missions of Criminal law are social protection, suppression, and prevention of offense. Besides, the mission of protecting legal morality and the mission of protecting the quality of actions. (Kanit Na Nakhon, 2020, pp. 30-31) Therefore, the Safety Measures are also used to enforce individual offenders to protect those who are likely to commit offense or who are considered from a criminological perspective to be being a person with condition that like dangerous to society. Moreover, Safety Measures still prevent people who having the opportunity to commit crimes which corresponds to preventing offense in society. For these reasons, the state should effectively enforce existing measures and be effective in seriously protecting society. In some cases, the actions, or types of behavior of a person may still not be considered an offense against the law but these behaviors or characteristics may reach to causing danger to society. If those people are allowed to live in society or continue their behavior, this will lead to the commission of the offense. (Narong Jai-Han, 2000, p. 135) In this regard, the state aims to enforce the five types of Safety Measures to control the crime problems so that tend to decrease or not increase crimes. Moreover, the goal intends to cease various crimes. If all over comes true, this will be an evocative peaceful society, people living in safety in society as well as being able to use knowledge, abilities, and time to afford in fully. The stability of the country's economy will improve. It can be considered that Safety Measures have focused on the most important principle as well-being of people. (Sukhothai Thammathirat Open University, Department of Management Science, 2016, pp. 5-21) However, in the preliminary study of researcher found that the enforcement of Safety Measures was not raised into practice as much as that should have been. For this reason, the state focuses mainly on repressive measures. Moreover, the social conditions in the present era have been changing, these are very different from the former. Society is expanding rapidly, so various problems in society are increasing accordingly. Especially the problem of overflowing prisoners. Thus, the state's focus on solving crimes as focusing on suppression measures, namely punishment is not enough. Therefore, this is very necessary that preventive measures should be taken, including the measures for safety should be used force. To reduce the crime problem which is increasing day by day.

Although the Criminal Code regarding the measures for safety will be prescribed in Title 1, Chapter 3, Part 2 in Sections 39-50, the measures for safety have been raised into force a few that have not been brought forward to be used effectively in any way.

This research aims to study the legal problems regarding the Safety Measures Enforcement under the Thai Criminal Code. To serve guidelines for correction and development of the Safety Measures according to the Thai Criminal Code as to be further enforced.

OBJECTIVES

To study legal problems regarding the Safety Measures Enforcement under the Thai Criminal Code.

METHODOLOGY

This is Documentary Research by gathering information from academic documents, concepts, theories, laws, regulations, announcements, research, and academic articles related to the problems, legal measures, and guidelines for the Safety Measures Enforcement under the Thai Criminal Code.

RESULTS

The problems with the provisions of safety measures include

Quarantine measures

Section 40 has defined Quarantine as Quarantine is the control of a habitual offender within a specified area to prevent wrongdoing to improve behavior and vocational training. However, Section 40 to Section 43 stipulates the criteria for applying quarantine measures to offenders who are habitual offenders to prevent the offenders from committing another crime but still have problems in applying this measure as follows:

At first, the conditions under Section 41 cannot apply to detention measures for habitual offenders who have been sentenced to prison for the first time. This can be noticeable the implementing quarantine measures should consider the condition of the habitual offender or endangered person to society rather than taking into the conditions of being sentenced to imprisonment as specified in Section 41.

Second, quarantine measures under the Thai Criminal Code may not be able to apply to offenders who are currently on probation. Because the offender has received a suspended sentence but not considered that the offender has been released from punishment. The offender only be released before the end of the sentence according to the court judgment under the conditions of probation specified. Therefore, this is not by Section 41 and Section 42 which require to application of quarantine measures.

Third, Section 41 of the Criminal Code does not cover offenses requiring quarantine measures. Due to this, the provision of law has specified quarantine measures that will be applied to only eight types of offenses. These offenses are stipulated in the Criminal Code but do not include the offenses under the Narcotics Act. Therefore, quarantine measures cannot be applied to drug offenses. Even though, drug cases cause a lot of devastation to society. Furthermore, drug cases also had many offenders which had the most recidivism among all offenses that occurred.

Fourth, the problem no legal provision that stipulates inspection procedures regarding the evaluation of quarantine measures before releasing detainees back to the community.

At present, there is no provision in the inspection process before releasing habitual offenders to determine the inspection process regarding the evaluation of quarantine measures. To observe the effectiveness of enforcement, whether offenders can be corrected or rehabilitated, and to the extent before detainees will be released back into society. According to the Criminal Code, Section 42, paragraph two, stipulates that the provisions of Section 21 shall apply to the release of detained persons. Section 21 only defined that "When the quarantine period has expired, they shall be released on the day after the expiration date." There is no provision of the law regarding quarantine safety procedures stipulating inspection procedures regarding the evaluation of the effectiveness of quarantine measures before the detainees are released back into society. Besides, the released person beyond the recidivism condition still tendency to return to commit crimes again. These will not know the quarantine measures can rehabilitate the offenders before they are released.

According to the Criminal Code, Section 41, paragraph two, is a provision specifying criteria regarding those who will be detained. The court will determine the duration of detention for the offender, the offender will be released when this period. The judge has punished and detained the offender but unknown whether that person has been rehabilitated or not. At the same time, the judge cannot know whether the period will be sufficient and appropriate to change the behavior of each offender or not. If the judge determines too short a period, the offender may still be a habitual offender. On the contrary, if the detained person is not a habitual offender but is still detained, this will affect the rights and freedoms of that offender.

Fifth, the problem of not having a legal provision that requires to presence of the history and behavior of offenders and there is no legal provision requiring an organization to collect the behavior history of offenders. Section 138 of the Criminal Procedure Code gives the investigator the power to investigate or send an issue for investigation to know the history and behavior of the offender. However, the provision is not clear, the investigators rarely apply the quarantine measures to cover the truth about offenders' backgrounds. The investigative officer will investigate only

the allegations and collect evidence regarding the circumstances of the case without proposing a method for securing quarantine. In addition, there is no legal provision requiring to establishment of a specific organization or agency to collect the history and behavior of offenders. As a result, the process of filing to the court that requests to use quarantine measures for habitual offenders directly affects the implementation of quarantine safety measures.

Execute a bond with security

Sections 46 -47 stipulate the terms and conditions of executing a bond with security. In the case of ordering parole insurance, the rules for issuing the order are too narrow. As previously, the rule had specified only the cases in which the judge considered that person was likely harm to a person or another property in the future. Therefore, the judge will be ordered to execute a bond with security. Even if there will be additional amendments afterward, the Criminal Code Amendment Act (No. 21) B.E. 2550 added criteria in cases where the court considers that any person will commit an offense causing damage to the environment or natural resources regarding the existing provisions. But this still does not cover offenses under other acts that are also important, such as offenses under the Narcotics Act B.E. 2522. In addition, the investigating officer has limited time to investigate because the Criminal Code Act, B.E. 2499, Section 7 prescribes that "In the case of safety measures according to Section 46 under the Criminal Code, the provisions of the Criminal Procedure Code shall be enforced as if it were a criminal offense. However, investigative detention is prohibited for more than forty-eight hours after the arrested person has arrived at the office of the administrative official or police. However, this does not include the normal time to take the arrested person to court in the forty-eight-hour period." This is too short and not flexible to extend the period. Therefore, it is difficult for the investigating officer to investigate within that limited time effectively.

Detained in a hospital

In case of an order to send to be controlled in a hospital, Criminal Code Section 48 prescribes that "If the court finds that releasing mentally defective, who do not have to be punished or whose punishment has been reduced according to Section 65, will be unsafe for the people. The court will order to send to be detained the mentally defective person in a hospital and this order may be revoked by the court at any time." This obviously that the court can order to send any person to be controlled in a hospital under this section. This must be the case that the prosecutor has already filed charges against the person as a defendant in court. In addition to the court order, according to the Criminal Code, Section 48 and Section 49 according to the Mental Health Act B.E. 2551, Section 37 enacted that the court has an order to send a case patient to be detained or maintained in a hospital according to Section 48 and Section 49, paragraph two, of the Criminal Code or according to Section 246 (1) of the Criminal Procedure Code, the court shall send a copy of the order along with the case patient and treatment centers for control and treatment without the patient consent. Besides, this law stipulates the definition of "Treatment center" which means a mental health treatment center designated by the Minister." At present, the announcement of the Ministry of Public Health regarding the list of mental health treatment centers, B.E. 2551, specifies treatment centers under this Act. This was announced from February 25, B.E. 2552 onwards. However, the treatment centers that were announced are not located in every province. Therefore, there is a practical problem as to which agency will detain the person from the judge's order and send them to the treatment center. This is different from the imprisonment or detention of the Department of Corrections and the training Department of Observation and Protection of Children or Youth, which clearly defines the duties of the agency.

In this case, the prosecutor has absolute order not to prosecute the accused because the accused person has a mental illness, causing them not to know the responsibilities or be unable to control himself while committing the crime. Consequently, the prosecutor issues an order not to prosecute and then release offenders who have mental disorders, that may cause further harm. Therefore, the safety measures according to the Criminal Code should be enforced to prevent repeat offenses. While considering the laws currently in force, the prosecutor has an absolute order not to prosecute the accused who has a mental disorder. However, the safety measures according to the Criminal Code cannot be enforced. When the prosecutor orders not to prosecute the accused, the case is not filed for court consideration then, the court may not order to enforce the Security Measures either.

SUMMARY OF RESULTS

Regarding the Safety Measures are appear in Sections 39 to Section 50 under the Thai Criminal Code. Section 39 stipulates five types of safety measures: 1) quarantine 2) prohibition of entry into designated areas 3) execute a bond with security 4) detain in a hospital and 5) prohibition on certain occupations. These can be Safety Measures are one of the measures according to the Criminal Code that are separated from punishment. These Safety Measures have different objectives due to the purpose of punishment. As for Safety Measures, there are objectives to protect society. For principle, using Safety Measures along with enforcing punishment would be a good policy and could protect those who are likely to commit crimes or repeat offenses in the future. These are suitable for the current social situation that is likely more complicated. By the meaning, the Safety Measures refer to methods of keeping society safe from the actions of perpetrators in the future, these are legal measures, not criminal penalties which are the additional measures. The government applies these Safety Measures to specific individuals and aims to control dangerous conditions person which is the concept of detaining dangerous persons from the community for a while. To protect society and prevent problems that arise in society from repeat crimes. These are based on the concept of Social Defenses Theory. Legal problems regarding the failure to apply safety procedures provisions were found that the definition of quarantine stipulates the criteria for applying quarantine measures to offenders who are habitual offenders. These are intended to prevent offenders from committing crimes again. Therefore, there is a problem in applying it to habitual offenders who are sentenced to prison for the first time. The quarantine measures also apply to the offenders who are currently under suspension for only eight types of offenses, which are included in the criminal code but do not include the offenses under the Narcotics Act. There is also no legal provision that stipulates procedures for inspecting and evaluating quarantine measures before releasing quarantined persons back into the community. The Measure of execute a bond with security is stipulated the terms and conditions of parole insurance are too narrow. It does not cover offenses under other laws that are also important. As for the measures to detain in a hospital, there are still problems with the definition and meaning of a mentally disordered person. The problem of prosecutors using their discretion to order not to prosecute mentally disordered persons. This effect makes it impossible to apply Safety Measures according to the Criminal Code. Cause the case does not refer to court consideration therefore, the court may not order the use of security measures as well. To these results, the Criminal Code should be revised and amended regarding definitions, terms, and conditions, due to expanded criteria to cover other types of offenders. Including expanding the base of offenses that can be applied to the Safety Measures according to the Thai Criminal Code to solve social problems and to be free from crime.

SUGGESTIONS

The researcher has recommendations that should be reviewed in the Criminal Code including:

1. To define the Quarantine Measure, especially in the case that has been considered the offenders tend to commit serious crimes or cause serious damage. The court may apply the Quarantine Measure to the offender. This is not necessary to meet the conditions specified in the first paragraph of the Section.
2. To expand Section 41 of the Criminal Code so that can be enforced more than formerly. Previously, this Section could be enforced by only cases of appropriate conditions in Section 41 (1) - (8). If there appeared in the case of an offense under another Act such as the Narcotics Act, B.E. 2522 or the Act on Offenses from the Use of Checks, B.E. 2534, offenses under the Computer Crimes Act, B.E. 2550, Section 41, these cannot be enforced. Therefore, the coverage of Section 41 of the Criminal Code should be expanded to cover other laws as well.
3. To ensure the enforcement of Section 45 of the Criminal Code regarding the prohibition of entering into designated areas is strictly enforced as clear results. Probation measures should be introduced by using electronic tools, namely electronic wrists or ankles, to track the movements of convicted persons.

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