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FACTORS ASSOCIATED WITH DELINQUENCY: AN ANALYSIS OF WHAT CONTRIBUTES THE MOST IN DELINQUENT BEHAVIOR AT SCHOOL

DR. SARWAT SULTAN¹ AND FRASAT KANWAL

ABSTRACT

This study was designed to identify the most contributing risk factors associated with delinquent behavior among school children. 468 students aged 13-15 years completed measures of parental involvement, family conflict, involvement in school, classroom climate, victimization, and television violence. Regression analysis demonstrated that low parental involvement ($B = -.17, p > .05$), high family conflict ($B = .21, p > .01$), involvement in school ($B = -.26, p > .001$), classroom environment ($B = -.31, p > .001$), high victimization ($B = .28, p > .01$), and TV violence ($B = .20, p > .01$) were the significant predictors of delinquent behavior. However, the classroom environment was identified as the most leading predictor ($R^2 = .33, p > .01$) for delinquent behavior at school than the other factors. Considering the present findings, it appears essential that classroom environment should be examined extensively in respect of its effects to decrease delinquent behavior.

Keywords: delinquent behavior, parental involvement, family conflict, classroom climate, victimization

INTRODUCTION

Initial five years of child's life are the determinant of their behavior, attitude, personality traits, etc. when these characteristics are merged with child's environment then there is possibility that child may become delinquent due to exposure to certain risk and protective factors. However, it is also difficult to identify these risk factors. Though there is no magical way out to prevent or correct child delinquency, but to prevent delinquent child from becoming criminal it is essential to identify risk and protective factors associated with delinquency (Wasserman et al., 2003).

Délinquer is the Latin word from which delinquency is derived and it means "to omit". The term delinquency is not only related to illegal act; however, it includes all the problematic behavior of children that forces them to take pleasure or remove sources of irritation without controlling their natural impulses, ranging from disrespecting teacher, hostile behavior towards class fellows and peers, stealing, fighting, bullying or victimizing other and this attitude leads to criminal activities such as robbery, murder, being offensive, etc (Gottfredson, 2001). Gottfredson and Hirschi's (1990) stated that even though the behavior is according to the law but it ought to be considered as delinquency if disobedience, troublemaking, use of force or deception and causing harm to others or oneself, are involve in behavior.

Children considered their parents as their models. According to Simons, Whitbeck, Conger, and Conger (1991) for children the major source of admiration and reinforcement is their parents due to which they model them. Thus, if parents have a negative attitude then there is a possibility that their child copy their parents' negative behavior too and will also make generalization of this act to the rest of the people. Parents have greater impact on their child attitude. Through childrearing parents' behaviors are shaped and molded according to society norm and values. Certain parenting practices have a greater influence on child behavior such as parental support (Barnes et al., 2006). In parental support child is praised, encouraged and given affection; child is given value and love. Many researchers have suggested that parental

¹Dr. Sarwat Sultan, Chairperson, Department of Applied Psychology, Bahauddin Zakariya University Multan-Pakistan. E-mail: sarwatsultan@hotmail.com

support attach the juvenile to its institutions and also help to develop self control (Barnes et al., 2006). Thus, deviant behaviors will be hindered through self control.

Peer association is greatly affected by parenting quality. Parents are also capable to influence their child choice of peer relationship. Child association with a deviant peer is influenced through efficient monitoring and discipline (Simons et al., 1991). Parents can keep record of their child location through effective supervision and also limit their child that with whom and where he goes. Effective supervision and discipline also make parent child bonding stronger. A child values parent opinion regarding their friends who are closer to their parents. Forceful parenting weakens the parent child bond. Youth externalize higher level of problem when their bond with parents is weakened through parental conflict (Buehler, 2006). Parents' divorce may cause Child externalization of problem, e.g. child fights with peer might be a result of anger caused by divorce of parents. These externalizations of issues may lead a child on a deviant behavior.

Usually child delinquency is developmentally later influenced by peer as compare to family and individual influences. For example, even before joining school aggressive and disruptive attitude is shown in many children. However, association with deviant peers and peer rejection are the main sources of peer influence in delinquency. In social science socialization is the main concept and after family school is the most important socializing agent. Thus, delinquency on the individual, family, peer-group, school, community and society is associated with negative factors related to school.

On individual level, aggression, impulsivity, lack of self control and conduct problems are predicted by failure and successes in school. Low level of IQ in verbal test, weak performance in school and lack of emotional intelligence (Lynam, Moffitt and Stouthamer-Loeber, 1993; Schutte et al., 1998) may cause delinquency in school. Educational and behavioral issues in school can also be caused by perinatal complexities, physical distress to infants, small physical defects and brain injuries (Hawkins, Farrington and Catalano, 1998).

Violence in adolescence can be resulted from poor family organization practices such as lack of supervision and monitoring, unkind and incompatible punishment, unclear expectations of parents towards children, hostility in family and insulting or careless parenting (Hawkins, Farrington and Catalano, 1998). On peer level the major factors leading towards delinquency are peer rejection or interaction with delinquent peers, disobedience and positive attitude for violence, for example, learning violent norms and values, fighting for reputable status in school group (Hawkins, Farrington and Catalano, 1998).

On school level delinquency can be caused by extremely *departmentalized institutions where there is lack of purposeful interaction between student and teachers, teachers are only concerned with subject and lack of responsibility towards non-subjected elements* (Gottfredson, 2001). There are also other risk factors that contribute to delinquency huge school, having no discipline; rule and regulation are not followed consistently, illogical and unwanted disciplinary reinforcement of rules. In school where there is high level of completion, lack of rewards, unjust allocation of rewards, thus when student fail to achieve rewards then may experience aggression. Where educational syllabi and teaching are not associated with needs and wants of the students, and when they also think that they cannot have control over the thing which influence them; then higher level of violence is observed in students. (Gottfredson, 2001; Stewart, 2003).

Considering delinquency on community level, the factors and characteristics of community determine the school climate. Withdrawal from school, problematic behavior and increase in delinquency is affected by concentrating on educationally and socially deprived students (Maguin and Loeber, 1996). Delinquency is also increased when a school is in

disorganized community and there is lack of social values, bonds, normative atmosphere and teacher satisfaction (Gottfredson, 2001; Sampson, Raudenbush and Earls, 1997).

METHOD

Participants

This study was completed with a sample of 468 male school students aged 13-15 years old (mean = 14.09, SD =1.02) who were randomly recruited from six public elementary schools in Multan city.

Measures

All the study participants provided data on six measures (Dahlberg et al., 2005). Parental involvement was assessed using 18 items measuring three dimensions; *Parent Involvement with Child's Schoolwork* (PICS) (Items 1, 2, 3, 4, 5, 6 and 7), *Parent Involvement with Teacher/School* (PIT/S) (Items 8, 9, 10, 11, 12 and 13), and *Teacher Involvement with Parent* (TIP) (Items 14, 15, 16, 17 and 18) rated on 0-4 scale indicating 'Never' to 'Very often'. Prosocial involvement in school was measured with 9 items evaluate the perception of students about how many opportunities and rewards are accessible in their school. Items are rated on 1-4 options very true to very false. Higher scores indicate greater opportunities and/or rewards for prosocial involvement in school. Classroom Climate was assessed with 18 items rated on 1-4 'strongly disagree' to 'strongly agree'. Classroom climate quantified three subscales measuring student-student relationship (SSR), student-teacher relationship (STR), and awareness/reporting (A/R). Victimization and aggression factors were evaluated with 11 items rated on 0-6 items. These items assess the frequency of being victimized (6 items) or displaying self-reported aggressive behaviors (5-items). Family Conflict and Hostility was measured with 3 items rated on 1-4 'Often' to 'Never'. A higher score indicate higher degree of hostility and conflict within the family. TV Attitudes were assessed with 6 items rated on 1-5 indicating 'very harmful' to 'not at all harmful'. Higher scores explain the notion that violence presented on TV is realistic and harmless for children.

Procedure

After obtaining institutional permission, parents' consents, and respondents' willingness, the data were collected during the class time with the help of teachers. Students were provided comfortable testing environment and clear instructions about the response style on each questionnaire. Confidentiality of the responses was assured to both teachers and students. Results were analyzed on SPSS-21.

RESULTS

The hypothesized model was analyzed by computing zero-order correlation among independent and dependent variables (Table1); and a series of ordinary least squares (OLS) regression analysis to measure the expected prediction from independent factors for dependent variable of delinquent behavior.

TABLE 1: DESCRIPTIVE STATISTICS AND CORRELATIONS AMONG STUDY VARIABLES

	M	SD	1	2	3	4	5	6	7	8	9	10	11	12
Parental Involvement in School														
1 PICS	17.28	3.90	1											
2 PI T/S	14.56	2.41	.41**	1										
3 TIP	11.37	2.75	.25**	.28**	1									
Involvement in School														
4 Opportunities	12.26	2.71	.34**	.31**	.15*	1								
5 Rewards	9.36	2.12	.29**	.26**	.23**	.17*	1							
Classroom Climate														
6 SSR	18.14	3.01	.14*	.13*	.14*	.07	.17*	1						
7 STR	10.77	2.28	.15*	.17*	.18*	.21**	.25**	.18*	1					
8 A/R	17.68	3.14	.08	.13*	.17*	.31**	.22**	.16*	.13*	1				
Victimization														
9 Victimization	23.57	3.45	-.22**	-.19**	-.14*	-.08	-.06	-.24**	-.07	-.03	1			
10 Aggression	24.16	3.51	-.11*	-.06	-.09	-.05	-.07	-.37**	-.12*	-.06	.37**	1		
11 Family Conflict	07.31	1.56	.21**	-.09	-.03	-.04	-.04	-.12*	-.07	-.09	.31**	.36**	1	
12 TV Violence	22.15	2.67	-.12*	-.16*	-.14	-.17*	-.13*	-.29**	-.11*	-.19*	.34**	.41**	.37**	1
13 Delinquent Behavior	29.23	2.14	-.20**	-.19*	-.16*	-.22**	-.20**	-.27**	-.24**	-.21**	.43**	.38**	.32**	.39**

*p>.05, **p>.00

Analyses of correlation index (Table 1) depicted the means, SD, and inter-correlation coefficients among all variables of study. Descriptive analyses indicating the higher mean score on victimization, aggression, family conflict, and delinquent behavior. Analysis from zero-order correlations shows the significant positive association between victimization, family conflict, aggression, TV violence, and delinquency; while delinquent behavior is found significantly negatively connected with dimensions of parental involvement, school involvement and classroom environment.

TABLE 2: REGRESSION ANALYSIS FOR PREDICTION FROM SIX CATEGORIES OF FACTORS FOR DELINQUENT BEHAVIOR

Predictors	Predictors of Delinquent Behavior at School					
	1	2	3	4	5	6
Parental Involvement						
Parent Involvement with Child's School Work	-.29**	-.26**	-.23**	-.19*	-.18*	-.18
Parent Involvement with Teacher/ School	-.28**	-.25**	-.21**	-.13*	-.10*	-.09
Teacher Involvement with Parents	-.25**	-.22**	-.19*	-.11*	-.07	-.07
Total	-.27**	-.23**	-.21**	-.19*	-.17*	-.17*
Involvement in School						
Opportunities		-.25**	-.21**	-.19**	-.17*	-.16*
Reward		-.21**	-.17*	-.10*	-.08	-.07
Total		-.26**	-.22**	-.16*	-.11*	-.10*
Classroom Climate						
Student-Student Relationship			-.31**	-.25**	-.21**	-.20**

Student-Teacher Relationship						
Awareness/Reporting Total						
Victimization						
Victimization						
Aggression						
Total						
Family Conflict						
Television Violence						
Adjusted R ²						
Statistics						

* $p < 0.05$, ** $p < 0.01$

Ordinary least squares (OLS) regression analyses (Table 2) tested the prediction from six factors of delinquent behavior. To test the hypothesized model, six models of predictors were analyzed by entering one model in one time. Model 1 presented the prediction from first category of predictors; parental involvement. Model 1 indicated 17% of variance in delinquent behavior as whole. Second category of predictors of involvement in school was entered in Model 2. Model 2 explained 21% of change in delinquent behavior. Likewise Model 3, 4, and 5; classroom climate, victimization, family conflict, TV violence were added one by one in analysis and increase of .33, .27, .21, and .19 in R-square were found that explained the 33%, 27%, 21%, 19% of variance in delinquent behavior at school respectively.

DISCUSSION

Family and parenting both have been considered more significant in the child development. Previous studies have identified the various factors that contribute in delinquency. The present research also an extension towards exploring the factors that contribute most in the delinquent behavior at school. We included the six different factors in this study; parenting involvement, involvement in school, classroom climate, victimization, family conflict, and TV violence.

Findings from the regression analysis related to parental involvement which was entered first in the Model 1 suggested that inadequate parental involvement is a significant predictor of delinquent behavior at school. These findings are in line with the previous work of Hawkins et al. (1998) who identified the poor parenting practices as the most powerful indicator of child antisocial behavior. Particularly three parental behaviors are linked to early conduct problems that later results in delinquency: (1) poor parent-child relationship, (2) poor control, and (3) poor parental involvement (Wasserman et al., 1996). The findings of the present study affirmed the findings of the work by (Hirschi, 2002) who demonstrated that low control from parents and poor parental involvement increased the tendency of developing delinquent behavior in a child at school. Families wherein children engaged in conflicts of discipline develop conduct problems than those children who brought up in families where they do not become the part of conflicts and do not show anti-disciplinary actions on conflicts (Wasserman, Miller, Pinner, and Jaramillo, 1996). These findings also confirmed the present findings of Model 4.

According to Maguin and Loeber (1996), the inadequate bonding to school during childhood is a leading factor to delinquency. Present research also presents the consistent findings. Child's poor performance in learning at school is a risk factor of developing delinquency. A meta-analysis of more than 100 studies examining the association of poor involvement in school activities and poor academic performance with delinquency has been

found associated with prevalence, onset, frequency, and seriousness of delinquency (Maguin and Loeber, 1996). Children who have poor involvement in school and have weak bonding and low commitment to school show poor academic motivation and become delinquent later in their school (e.g., Hawkins et al., 1998; Le Blanc, Coté, and Loeber, 1991). Findings of present study also report the similar findings from Model 2 that are consistent with work of Le Blanc et al. (1991) who investigated that male students engaged in delinquency are poor committed to their school and have more tendency of “shorter plans” for their schooling.

Model 3 and 4 depicting the findings related to classroom environment and victimization also presents the significant role of poor student-student relationship, student-teacher relationship, and awareness in delinquent behavior. Study indicates that when students do not experience positive feelings toward their school they become deviant (Dornbusch et al., 2001). Teachers and parents with poor relationship with child/student cannot teach them pro-social values and students face problems in school learning. Their fellow group also show rejection towards them and do not engage in healthy relationship with students (Simons et al., 1991). Our findings also have suggested that poor involvement in school leads to delinquent behavior among school children.

Another important finding related to television violence from Model 6 demonstrate that viewing TV violence has impact on child conduct behavior. Some studies have also reported that antisocial behaviors likewise violence is learned after viewing violence on TV (Anderson, Gentile, and Buckley, 2007; Loeber et al., 1998). For instance, Huesmann and Miller (1994) provided that a child who is more exposed to TV violence at age 8 was found more involved in aggressive behaviors and was found to prefer the more violent programs on TV than the other children without spending much time on viewing TV violence.

Though all the factors have been found significant factors of delinquent behavior at school, the main objective of exploring the one most significant contributing factor amongst the all factors revealed that classroom environment plays important role in prevalence and frequency of delinquent behavior at school. The R^2 (.33**) and adjusted R^2 (.28) show a greater variance in delinquent behavior as compared to the other factors.

CONCLUSION

This study has added the significant findings to the literature available on factors of delinquency. Nevertheless, the significant part from the parental involvement, prosocial involvement in school, victimization, aggression, family conflict, and television violence have been affirmed by the findings of present study, but the most contributing factor of delinquency is classroom environment. A poor student-student relationship, inadequate student-teacher relationship, and less awareness/reporting lead to delinquent behavior at school.

IMPLEMENTATION

Some aspects of children’s behaviors, such as temperament are established during the first 5 years of life. This foundation, coupled with children’s exposure to certain risk and protective factors, influences the likelihood of children becoming delinquent at a young age. However, the identification of these multiple risk factors have proven to be a difficult task. Although no magic solutions exist for preventing or correcting child delinquency, identifying risk and protective factors remains essential to developing interventions to prevent child delinquency from escalating into chronic criminality.

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AL-QISAS: THE PRINCIPLE OF LIFE FOR LIFE AND LIMB FOR LIMB IN ISLAMIC LAWNADA BALTO¹**ABSTRACT**

This paper analyses retaliation law (*Qisas*) and examines its history, aims, definitions and conditions, including how the commencement of Islam affected communal laws of revenge in the Arabian Peninsula societies, converting them into illicit norms and practices, and what amendments were required to regulate the justice system in relation to homicide cases. A brief history of these unlawful practices clarifies why intermediation became mandatory, and provides insight into the social, moral, legal and political obligations imposed on Muslims. The paper examines certain conditions prescribed in the *Quran*, which ensure the smooth delivery of justice in *Qisas* cases, and the objectives that were sought through *Qisas* law. This paper also discusses the admissibility of pardon in *Qisas* cases, and other practices alien to the Western justice system. The aims of *Qisas* law are analysed, both as rules of law and as a sacred phenomenon designed to uphold the supremacy of God.

Key words: *Al-Qisas*, Revenge, Homicide, Intermediation, Pardon.

INTRODUCTION

In ancient Arab traditions, the involvement of the victim, his or her family, and the community in sentencing for crimes committed against them was minimal. The justice system was primarily comprised of decisions made by powerful tribe members, and included violent punishment inflicted on victims' families (Kariem, 1999, p. 32-38). The inception of Islam in the Arabian Peninsula resulted in a restoration of the justice system and a destabilisation of this well-established and unlawful practice. Divine intervention in the form of *Qisas* law transformed society by reorganising the criminal justice system, increasing the direct involvement of all stakeholders, and denouncing all other illegal practices and customs (Kalf, 2008, pp. 56-61).

Muslims believe that God revealed *Qisas* law through the Holy *Quran* and *Sunna*, and that it was imposed to replace man-made rules and regulations (Henaiss, 2005, pp. 12-20). Divine law restricted old practices and introduced new norms that demanded the fulfilment of certain conditions and the ultimate application of justice. *Qisas* rejected unlawful punishment, favoured forgiving the accused over punishing them, dictated the terms and appropriate execution of punishments, and enlightened society as to how restitution could be divided between both parties (Al-Ashquer, 2002, pp. 23-30). *Qisas* law characterised punishments for homicide cases as inhumane and primitive, and tended to humanise both the perpetrator and the victim of the crime (Al-Sakeir, 2015, pp. 34-37). It enriched the criminal justice system with a refined mode of punishment designed to provide both retribution and absolution, to the extent that it soon superseded pre-Islamic laws (Shafey, 2003, pp. 68-72). Placing homicide cases into the *Qisas* category restored justice for victims and their families, requiring victims to instigate both prosecution and punishment to return justice to the hands of victims and their families (Jafer, 2008, pp. 34-38).

¹ Teaching Assistant at King Abdulaziz University, Ph.D. candidate at Law School, University of Limerick, LL.M. (King Abdulaziz University, Saudi Arabia), Ireland. Email: Nada.balto@ul.ie . The author would like sincerely to thank Professor Shane Kilcommins and Doctor Kathryn O'Sullivan for their insightful comments on the topic of the paper.

This fresh emphasis on the participation of victims in the sentencing process required the fulfilment of certain conditions that were primarily designed to encourage reconciliation and forgiveness, and to avoid corporal punishment (Al-Najar, 2008, pp. 64-68). Victims were expected to forgive culprits without demanding prosecution, or to request financial compensation (*Diya*). These predetermined conditions were an effort by Islam to seek other punishments and discourage corporal ones (Mansour, 1996, pp. 23-27). However, *Qisas* did not prohibit jurists or victims from imposing bodily harm on criminals. On the contrary, the law of exactitude is central to *Qisas* cases: ‘a limb for a limb’ justice requires that the punishment inflicted on the victim must be imposed on the perpetrator (Fahmi, 1995, pp. 43-48). Islamic justice is characterised by an emphasis on redemption through the noble act of forgiveness rather than punishment, and the evaluation of all relevant circumstances before deciding upon punishment (Al-Elwani, 2001, pp. 58-63).

THE HISTORY OF *AL-QISAS* PUNISHMENTS

Revenge was the pre-Islamic punishment for homicide. Pre-Islamic Arabia was filled with tribal hostility and aggression. Friendly cooperation was rare and only existed among members of the same tribe, and hostility was a compelling motive for revenge (Ouda, 1998, pp. 28-36). As a result, both the offender and the offender’s tribe could be subject to revenge, especially in cases of homicide. In ancient Arabia, it didn’t matter if the crime was committed by one offender alone; his or her whole tribe could undergo a chain reaction of revenge. Trivial disputes could result in bloodshed, and it could take years to end such disputes (Kariem, 1999, pp. 56-61). Tribe members associated such matters with their prestige and honour and would go to any extent to regain their social status (Ez-Aldien, 1996, pp. 42-46). Ultimately, these practices created an extremely violent atmosphere in which revenge was common between tribes and no consideration was given to peace or forgiveness (Kariem, 1999, pp. 63-68). However, ancient Arabs did consider peaceful alternatives in some cases, including blood money (*Diya*). The status of the perpetrator and his or her tribe defined the amount to be paid.

The inception of Islam led to rapid social development and significant improvements regarding the legal position of individuals (Al-Elwani, 2001, pp. 24-27). Islam reorganised the Arab region to establish strong and stable roots for human interactions and relationships (Al-Malky, 2013, pp. 54-58). Islamic societies replaced the ancient tribal social order with the newly established Islamic legal system under the authority of God (Al-Alwiet, 2015, pp. 23-28). After Islam triumphed in Arabia, the area witnessed a drastic transition from the custom of revenge to *Qisas* law, under which injury could be inflicted on the perpetrator without reference to the tribal status of the murderer or victim (Kalf, 2008, pp. 91-97). Legal scholars, including Mohammed Fahmi, argue that *Sharia* law’s punishment for homicide (*Qisas*, or capital punishment) has a dual nature: as well as acting as a deterrent, it also benefits the victim in that punishment is imposed and compensation is provided (Shafey, 2003, pp. 64-69). This notion was also supported by ancient Arabs who believed that *Qisas* was an Islamic innovation which required the state to inflict punishment for homicide cases (Fahmi, 1995, pp. 58-64).

Islam gave decisive rights to all individuals, and crimes which nullified those rights resulted in retaliation (Al-Ashquer, 2002, pp. 45-48). Islam provided the option of either demanding punishment or pardoning culprits and claiming blood money. *Qisas* punishments are applied in cases of bodily harm or killing (Kalf, 2008, pp. 63-68). According to *Qisas* law, as defined by the *Quran* and *Sunna*, if someone killed another person, the victim’s family could demand that the culprit be killed, or forgive the culprit and settle for blood money (Abu-Rakiea, 2010, pp. 26-32). The victim’s family should decide the amount of blood money according to the nature of the crime (Jafer, 2008, pp. 56-64).

AIMS OF *AL-QISAS* PUNISHMENTS

Al-Qisas punishments are characterised by two common elements: imposing the same harm on defendants that they inflicted on victims, which discourages and limits crimes like homicide (Jaradat, 2012, pp. 87-94); and an emphasis on the process of establishing guilt, which protects the accused party and reduces the chance of unfair punishments (Fahmi, 1995, pp. 65-70). Islam established the practice of waiving punishment in the presence of uncertainty, and introduced the principle that the accused party should always enjoy the benefit of a doubt (Shafey, 2003, pp. 48-54). A strict procedure regarding the reporting of crime is stipulated, and punishments cannot be awarded unless reliable witnesses prove the crime in court (Hussny, 2006, pp. 32-38). *Al-Qisas* punishments are also designed to allow pardon, which is not considered in the modern legal systems. Pardon according to Islamic law may result in repentance (Fahmi, 1995, pp. 84-89).

Laws such as those regarding homicide drastically changed the concept of revenge that was common in the pre-Islamic era (Al-Katieb, 2009, pp. 34-39). Islam restricted the punishment to the accused person alone rather than including his or her family and tribe, and introduced the concepts of *Diya* and the victim's right to pardon. These revisions were enacted to uphold the supremacy of God, justice, and peace (Al-Sadlan, 1997, pp. 48-52).

Since Islam stipulates equality between all members of society, it tends to diminish differentiation between rich and poor by awarding equal punishments (Al-Elwani, 2001, pp. 38-42). The Islamic legal system does not include pecuniary punishments; for example, it lacks the imposition of penalties or monetary fines, with the exception of *Diya* (Al-Katieb, 2009, pp. 43-49). However, blood money in Islam is fixed and can only be imposed if the injured party wishes to accept it (Shafey, 2003, pp. 53-58). Islam also discourages exaggeration in stipulating the amount of *Diya*, encourages a moderate *Diya* that is appropriate to the perpetrator's social status, and rejects the conversion of punishment into blood money until the victim or the victim's family approve this course of action (Karieb, 2012, pp. 56-63). The aim of *Qisas* is thus to give culprits a chance to redeem themselves, rather than act as a licence to avoid punishment.

Any punishment in Islamic criminal law, including *Qisas* punishments, is prescribed in divine revelation by God and granted to Muslims by the prophet Muhammad. These punishments are thus considered to be sacred phenomena that serve the sacred purposes of restoring social justice, protecting religious interests, and providing protection for possessions and morals (Abdullah, 2006, pp. 84-88). Islamic criminal law determines the relationship between the members of Islamic societies, defines the connection between Muslims with their God, and defines the rule of law (Hussny, 2006, pp. 35-41).

Since *Qisas* punishments are prescribed in both the *Quran* and *Sunna*, they may be considered as the cornerstones of Islamic criminal law (Mentawi, 2015, pp. 75-80). The preventive function of these severe punishments, as they have been incorporated into the Islamic legal system, should be considered in a positive light. Islam does not advocate punishment unless it can serve as a deterrent (Al-Beisher, 2001, pp. 45-52). The *Quran* and *Sunna*, the main sources of Islamic law, provide stable, steady provisions for the Islamic legal system (Fahmi, 1995, pp. 68-75).

The most important aims of *Al-Qisas* punishments are to correct criminal activity, prevent future crime, and enforce Islamic values (Jaradat, 2012, pp. 75-81). Punishment should therefore be considered as corrective measure which imposes criminal liability on culprits by depriving them of their freedoms and rights. Punishment can only be administered after the crime has been committed, or when it is predicted, if the crime is retaliatory (Karieb, 2012, pp. 73-78).

THE DEFINITION OF THE *AL-QISAS* PRINCIPLE

Qisas can be defined as a noble principle: the principle of life for life and limb for limb (Fahmi, 1995, pp. 59-64). This principle gives injured parties and their heirs the absolute right to impose the same injuries on offenders. It applies to all killings and certain kinds of serious wounds or damages (Kalf, 2008, pp. 49-55). Islam provides the family of the victims of murders or bodily injury a right to apply *Qisas* against the convicted party after a fair trial (Al-Fasy, 2012, pp. 42-46). For bodily injuries, *Qisas* allows victims and their families the right to execute the same type of injury suffered at the hands of the perpetrator, on the perpetrator themselves. For example, if a victim of a crime loses his or her eye during an attack, he or she can retaliate by inserting a sharp, red-hot needle into the attacker's eye once they have been found guilty (Karieb, 2012, pp. 76-83).

Qisas and *Diya* are prescribed punishments under Islamic law for murder and bodily injuries. The *Quran* and the *Sunna* dictate two specific conditions regarding *Qisas* for body parts and wounds, about which there is a consensus among notable Muslim scholars: the punishment must not result in injustice or transgression, and the body parts must be equivalent in both name and location. Retaliation must be accomplished by cutting off the same body part from the same specific joint. If there is no clear specification of the extent of the retaliatory injury required, retaliation cannot be granted (Kutb, 2005, pp. 62-68). For example, if a perpetrator breaks someone's tooth, his or her tooth must be removed just as violently to fulfil the condition of *Qisas*. Amputating an offender's right arm does not fulfil the conditions of *Qisas* if the victim's left arm was amputated. Similarly, a ring finger cannot be amputated in retaliation for the amputation of a little finger. This condition applies to all body parts, including the hands, eyes, legs, and ears (Abu-Rakiea, 2010, pp. 43-50).

The rule of exactitude applies strictly here. If a victim accidentally inflicts more damage to the perpetrator, he or she is also in violation of the law, and therefore subject to punishment (Al-Fasy, 2012, pp. 56-60). The Ministry of Interior is responsible for the execution of *Al-Qisas* punishments. Because this rule of exactitude discourages the victim's retaliation, Islam introduced the concept of compensation. Offenders and victims can agree on blood money to settle their disputes instead (Al-Najar, 2008, pp. 85-89). *Qisas* punishments in cases of murder and bodily harm therefore range from inflicting the same injury to the payment of financial reparations (Al-Katieb, 2009, pp. 63-67).

Importantly, blood money varies in accordance with the nature of the crime. For example, more money is owed in cases of intentional murder than in those of manslaughter (Karieb, 2012, pp. 63-68). According to the Prophet Muhammad, 'Whosoever kills a believer unjustly will suffer retaliation for what his hand has done unless the relatives of the murdered man consent otherwise. And therein it was: A man shall be killed for the murder of a woman. And therein it was: For the murder of a life, there is blood wit of 100 camels' (Abdullah, 2006, pp. 36-41).

CATEGORIES OF *AL-QISAS*

Qisas can be further divided into two broad categories: homicide and bodily harm. *Qisas* enables defendants to be liable for compensating victims and their families for wounds they have inflicted or murders they have committed in the form of *Diya* (Kalf, 2008, pp. 24-30), and enables victims and their families to inflict identical injuries on perpetrators (Peters, 2005, pp. 54-58). Islam gives equal rights to all Muslims, and this egalitarianism extends to the right of *Qisas*. With respect to physical harm, the *Quran* maintains, 'Remember that the recompense of an injury is an injury the like thereof; but whoso forgives and thereby brings about an improvement, his reward is with Allah. Surely, He loves not the wrongdoers' [042:040]. According to the Islamic penal code, therefore, an equal requital is given to the injured person (Hub-Allah, 2005, pp. 46-53). Mohammed Al-Mashehadany criticises this requital as

uncivilised and primitive (Al-Mashehadany, 2006, pp. 22-28), but others such as Mohammed Kutb argue that because divine guidance, human inclination, and nature remain the same, primitive rules do not necessarily require updating (Kutb, 1998, pp. 32-38). According to the *Quran*, individuals' rights to retribution transcend those of the state or community, and individuals can never take the law into their own hands. Islamic law also suggests that individuals try settlement first to avoid the irreversible procedure of trials and punishments, which involves time, effort, expense, and the interference of government (Jafer, 2008, pp. 43-51).

CONDITIONS NECESSARY FOR *AL-QISAS* PUNISHMENTS

The first and most important condition of *Qisas* punishments is that they only apply in cases of deliberate murder or wounding, and are not valid punishments for accidental killings or injuries (Shafey, 2003, pp. 43-49), offenders in these cases are responsible for paying *Diya* (Karieb, 2012, pp. 34-41). Retribution only applies in intentional murder or injury because God says in the *Quran*, 'O you who believe, retribution is prescribed for you in the case of murder' [2:175]. Another vital element of *Qisas* punishment is that the retaliation must be clear, and there must be enough evidence to support its execution on the perpetrator. In other words, if Muslim jurists cannot exactly determine the appropriate retaliation for injuries due to lack of evidence, *Qisas* cannot be executed (Abu-Rakiea, 2010, pp. 57-63).

One example of an injury case is that of 24-year-old Ali al-Khawahir, who allegedly stabbed his childhood friend and was punished under *Qisas*. The stabbing had occurred ten years previously during a heated dispute between the two, and al-Khawahir left his friend paralysed from the waist down. The *Sharia* law, which is imposed in Saudi Arabia, dictated that al-Khawahir's punishment be based on the 'eye-for-an-eye' principle. However, there was the option of pardon if both parties agreed to legal compensation. The court sentenced al-Khawahir to pay one million riyals to the victim or be surgically paralysed. If al-Khawahir failed to provide financial compensation for his offense, he would be paralysed from waist down for the rest of his life (Al-Essamy, 2014, pp. 45-51).

The second condition of *Qisas* punishments is that the rights of the victim must be fulfilled. The victim (or his or her family) has the freedom to decide whether a defendant should be punished. The judge hearing a case must therefore inquire of the victim (or his or her family) about their right to pardon the offender (Jafer, 2008, pp. 36-42). The *Quran* says, 'If anyone waives the right to retaliation out of charity, it shall be an expiation for him' [5:45]. In this way, Islam encourages the victim to pardon the criminal by promising rewards in the afterlife. However, this infrequently occurs in contemporary Islamic legal proceedings. Pardon can be granted with or without financial compensation (Hussny, 2006, pp. 76-80).

The third condition of *Qisas* punishments is that the state or government must carry out the pronounced punishment. The victim (or his or her family) cannot take the law into their own hands and carry out the punishment themselves (Al-Elwani, 2001, pp. 55-60). The punishment should be implemented publicly by the Ministry of Interior.

CONCLUSION

This paper has thoroughly assessed the law, history, objectives, definitions, categories, and conditions of *Qisas*. It explains why it was necessary to formulate a justice system that combats social ills and extends justice to all stakeholders, and demonstrates the necessity of divine intervention in regulating crimes and punishments to increase stability, promote peace within Islamic societies, provide justice, and halt the victimisation of individuals. *Qisas* eliminated unlawful practices and provided Muslims with just discourse (Al-Katieb, 2009, pp. 34-39). It is necessary to thoroughly define the law and the principle of retribution it codifies to form a better understanding of its characteristics, principles, and prescribed punishments (Al-Zehaily,

2013, pp. 82-86). This examination of *Qisas* further demonstrates that it is based on noble principles. Strictly applying the law of exactitude eliminates discrimination and transgression, and encourages forgiveness and financial restitution.

These legal practices are still alien to many Western legal systems and often carry negative connotations, because the concept of blood money has been overlooked in Western discourse about restorative justice. However, Islam made blood money a fundamental part of *Qisas* law because it offers much-needed solutions to *Qisas* crimes (Fahmi, 1995, pp. 45-51). *Qisas* law is designed to comfort victims and their families rather than benefit guilty parties. A murder or injury can have severe repercussions for victims and their families. When they are given the choice to settle for money, it can save them significant trouble, and may encourage them to forgive the murderer (Al-Saqier, 2015, pp. 42-45). This emphasis on forgiveness encourages the promotion of equal rights and maintains a focus on promised rewards and advancement towards an impartial and healthy society. *Qisas* law has immense potential to support Muslim morality and foster harmony within Muslim societies by eliminating disparities between the rich and the poor, the dominant and the weak, and the resourceful and the uncompetitive (Hussny, 2006, pp. 28-33).

This paper also discussed the role of the judiciary and state in *Qisas* cases. While victims must instigate punishment for *Al-Qisas* crimes, judges and policy-makers must ensure that all of the necessary conditions are met and that the chosen punishments are carried out (Abu-Rakiea, 2010, pp. 56-70). The implementation of preferable or excessive punishments by victims or their families would certainly lead to unlawful activity; victims thus do not have the right to take the law into their own hands, and authorities must be responsible for penalising the accused in public (Kalf, 2008, pp. 42-46). This paper also provides an example that illustrates Saudi Arabian application of *Qisas* law, because Saudi Arabia is one of the few countries that strictly enforces *Sharia* law (Mentawi, 2015, pp. 35-39). There have been instances when victims have forgiven culprits, instances when they have settled cases by accepting financial compensation, and instances when victims' families have demanded that murderers be executed. In all three types of cases, the Kingdom ensures the provision of justice based on *Qisas* principles as defined in the *Quran* and *Sunna* (Al-Essamy, 2014, pp. 38-43).

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EQUILIBRIUM BETWEEN TRADITIONAL MONARCH RULE AND DEMOCRACY RULE IN THAI KINGSHIP OF THE KING RAMA 9THNATTAPAT RUGWONGWAN¹**ABSTRACT**

This study has two goals for phenomena explanation of the political regime in kingship of the king Rama 9th of Thailand: H.M. King Bhumibol Adulyadej the Great. The regime is a constitutional monarchy that combined absolute monarchy and democracy. It can be said that the regime is an equilibrium system. The next aim is a comparative study between Thai traditional monarch rule and Thai democracy rule: constitutional monarchy rule. The Thai king must abide with both of the two rules when the king reigns the throne. The research methods in this study are a comparative study and a historical study. The comparative study is the study of king's multifarious duties of Rama 9th in the period: 1946 – 2016. The study is also an analysis of Thai traditional monarch rule: the virtues of the king, the duties of a universal king and the royal acts of doing favors: and Thai constitution. Beside the historical study, the phenomena explanation of the king Rama 9th period and the phenomena are the equilibrium between two rules in one system. The results from the study found that two rules are conflict with each other because they come from different principle and background. However, king Rama 9th could balance both rules in an optimum stratagem. Many cases from his kingship can show that he can integrate both rules together.

Key Words: Thailand, Monarch Rule, Democracy Rule, the King Rama 9th, Political Science

INTRODUCTION

Thailand has had monarch system since 105 A.D. The monarch system has continued and developed, so the Thai lifestyle has had believe and execution relates with a monarch. Besides, Thailand had many kingdoms inside a country in the history such as Singhanavati, Sukhothai, Lan Na, Ayutthaya, Pattani and Siam. So, the monarch system and culture have deeply rooted in Thailand and Thai citizen. Moreover, Thailand also has had democracy system since 1932 A.D. The democracy has been main stream in the Thai politics and it has developed incessantly. So, Thailand has a combination system between monarch and democracy systems in the present time. From both systems overlap in Thailand, the king must abide democracy and monarch rules. The democracy rule is a constitution and Thai has 19 constitutional rules. Every constitution has different the origin and the end. However, Thai people and society accept and adopt the democracy to be culture and lifestyle. The monarch rule is royal traditional rules that are 10 virtues of the king, 12 duties of a universal king and 4 the royal acts of doing favors. So, it is difficult task for the Thai king that makes political balance between two rules and systems because both have different origin and principles.

Thai traditional monarch rule has three groups (ThammaChaj, 2007). The first group is ten virtues of the king that is rules make the king can be a good king and magistrate. The virtue of the king is a royal procedure. The king must have charity, high moral character, selflessness, honesty, gentleness, perseverance, nonanger, non- encroachment, patience and equity. The second group is twelve duties of a universal king that is duties of the king must make public policies. If king do that activities, the people will have happiness. The king must make happiness to the citizen, conciliate with foreign land, help royal members, support urban, brahmin and householder, help rural people, support clergyman, conserve every animal is not extinction, prohibit citizen do the wrong thing and try to lead them do the good thing, assist

¹ PhD.Faculty of Liberal Arts and Science, Kasetsart University, Kingdom of Thailand. E-mail:- raknattapat@hotmail.com

poor because they can't do the dishonesty and the bad thing in the land, close relate with the priest for study merit and good things, prohibit the mind to go to the bad place and stop greed for property want that is not king's business. The last groups are four royal acts of doing favors. It is the way to make good relations with other people and the way for king must make friends with citizen. So, the king must have charity, sweet speaking, sympathy and consistency. The king must do three groups of traditional monarch rule because they are the royal regulation for every Thai king and royal member since the ancient times.

Thailand in H.M. King Bhumibol Adulyadej or the king Rama 9th kingship had seventeen constitutions in 1946 – 2016. However, Thailand had some period that King Bhumibol was not incapable royal function in 1946 – 1950 because he studied aboard in Switzerland and he had the regent instead officiated in that period. So, this study focuses on the kingship between 1950 and 2016 and it has fourteen constitutions. Every constitution had a different origin, condition and concept, so they affected with politics, society and economics. Besides, most Thai constitutions have had some concepts from foreign country such as United America, United Kingdom, Japan, Germany and France. So, some concepts have not harmonized with Thai society, culture, believe, primitiveness and thainess. The constitution impact with king status and believe unavoidably.

The equilibrium between traditional monarch rule: traditional concept: and democracy rule: modern concept: in Thailand is interesting and important because it makes Thai society has not conflicts such as politics, economics, society and culture. The king Rama 9th could balance between two rules in peaceful and optimum ways. This research tries to explain phenomena of the political regime or equilibrium and to compare between Thai traditional monarch rule and Thai democracy rule in kingship of the king Rama 9th. Both rules do not only establish the political power and duty of Thai king but they also formulate political intention and direction. Thus, phenomena and rule analysis present the equilibrium that is know-how of king, state magistrate and citizen in Thailand.

RESEARCH METHOD

The research methods in this study are a comparative study and a historical study. The comparative and historical studies are the study of king's multifarious duties of Rama 9th, so all data is political history and movement in 1950 – 2016, Thailand. The study is also an analysis of Thai traditional monarch rule: ten virtues of the king, twelve duties of a universal king and four royal acts of doing favors: and fourteen Thai constitutions in 1950 - 2016. This study is analyzed from relation between Thai political phenomena in 1950 – 2016 and two Thai rule groups. This research believes that strike force between traditional rule and constitution rule has a buffer that is royal duties of the king Rama 9th. The buffer can balance between two systems in peaceful and optimum ways. So, the research tries to explain and to analyze the traditional rule, constitution rule and royal duties of the king Rama 9th.

This study collects primary and secondary data from Thai constitutions, Thai royal traditional rules, textbook, article, news and review. All data are evaluated, integrated and analyzed in phenomenological model. The research tries to connect three variables: traditional rule, constitution rule and royal duties of the king Rama 9th: for phenomena explanation.

RESULTS AND DISCUSSION

From three variables analysis, the study found that every factor has different principle, origin and environment, so all factors of variables impact with the other variables. It is especially traditional rule and constitution rule. Thailand had phenomena that traditional rule predominates constitution rule or constitution rule predominate traditional rule in sometime. Or, Thailand also had surplus or absence of democracy and monarchy systems in sometime. The balancing and fulfilled controls between constitution rule and traditional rule in Thai

society was royal duties of the king Rama 9th because Thai people satisfied and accepted the king solved problems as exclusive power.

The first factor is Thai constitutions. The Thai constitutions in 1950 – 2016 had different source and manipulator. The table 1 can show the difference.

Table 1 Source, Manipulator and Environment of Thai Constitutions in 1950 – 2016
(Bantid Janrojjanakit ,2007)

Thai Constitutions	Source and Manipulator
1. The Constitution of the Kingdom of Thailand 1932 (Revised 1952)	Bureaucratic Polity, Bureaucratic Polity
2. Charter for the Administration of the Kingdom 1959	Bureaucratic Polity, Bureaucratic Polity
3. Constitution of the Kingdom of Thailand 1968	Bureaucratic Polity, Bureaucratic Polity
4. Temporary Charter for Administration of the Kingdom 1972	Bureaucratic Polity, Bureaucratic Polity
5. Constitution for the Administration of the Kingdom 1974	Bureaucratic Polity, Bureaucratic Polity
6. Constitution for Administration of the Kingdom 1976	Bureaucratic Polity, Bureaucratic Polity
7. Charter for Administration of the Kingdom 1977	Bureaucratic Polity, Bureaucratic Polity
8. Constitution of the Kingdom of Thailand 1978	Bureaucratic Polity, Bureaucratic Polity
9. Charter for Administration of the Kingdom 1991	Bureaucratic Polity, Bureaucratic Polity
10. The Constitution of the Kingdom of Thailand 1991	Bureaucratic Polity, Bureaucratic Polity
11. The Constitution of the Kingdom of Thailand 1997	Democracy, Democracy
12. The Constitution of the Kingdom of Thailand (Interim) 2006	Bureaucratic Polity, Bureaucratic Polity
13. The Constitution of the Kingdom of Thailand 2007	Bureaucratic Polity, Democracy
14. The Constitution of the Kingdom of Thailand (Interim) 2014	Bureaucratic Polity, Bureaucratic Polity

From fourteen constitutions in 1950 – 2016, the table 1 shows every constitution had different source and manipulator. The most ends of constitutions in Thailand came from coup d'etat, so most of source and manipulator of new constitution often came from coup d'etat council too (Laothamatas, 1996). The study found that if source and manipulator are democracy, the political power of king by the constitution will limit because the political power will be in democratic process such as election and parliament process (O'Toole, 1997). It related with the constitutional monarchy principles that are “the king can do no wrong”. Moreover, the bureaucratic polity system often use non-democratic process and it pass to the king for approval. That phenomenon is a normal situation in Thailand and Thailand has a big

discourse that is “the phenomena are Thai character democracy regime” (Streckfuss, 1995). From changes of Thai constitutions in 1950 – 2016, it impacted with government, public policy and national development because the changes affected with stability, consistency and image of Thailand.

The second factor is the traditional monarch rule. Those rules come from India, Buddhism and Hinduism – Brahman principles. The king Rama 9th cherished three rule groups that are is ten virtues of the king, twelve duties of a universal king and four royal acts of doing favors in rigorously. The good evidence was the king Rama 9th’s behavior, action and activities in 70 years in the king reign such as royal projects, music compositions, political and public roles, royal sermons and book workings. The traditional monarch rule is opposite with the constitutional monarchy principles that are “the king can do no wrong” or the king should not do public and political activities because the traditional monarch rule imposes that the king must do many public and political activities (Henry, 2011). However, the king’s public and political activities affected with development, advancement and image of Thailand in a positive way.

The final factor is the royal duties of the king Rama 9th. H.M. king Bhumibol Adulyadej tried to do all public and political activities belong to traditional monarch rule and constitution rule. Although, both rules are incompatible in a Thai regime but the king have to balance between both. The example, the king commented the principles is “the king can do no long” to the public in 4 December 2005. The king’s comment that are those principles is not equitable for the king because common people can do wrong action. If the king does wrong action, people can comment that action (Kasem et. al, 2010). The king’s comment presented that H.M. king Bhumibol Adulyadej tried to balance between sovereign immunity of constitutional monarchy and freedom of constitutional democracy. So, the king’s actions looked like invisible hands for balance between democracy and monarchy in Thai society. It was peaceful way, compromise and flexibility with two systems. Besides, Thailand has not only monarchy deeply rooted in the country, but it also has had democracy as a new and strong stream. The royal duties of the king were special features for balance and problem-solving. However, the H.M. king Bhumibol Adulyadej had a personal charisma and prestige and the other person could not emulate in easily. The final factor is an important keyword that makes equilibrium in the country.

Three factors interacted with each other and they could make Thailand had progress. Although, Thailand was not a strong democracy in 1950 – 2016 because Thailand had fourteen constitutions and nine coup d'etats but it had development successively. Many indicators showed Thailand had progress such as GDP progress from 2.76 billion USD in 1960 to 1,054 billion USD in 2015, human development index (HDI) progress from 0.50 in 1980 to 0.73 in 2014 and world happiness score progress from 5.79 in 2003 to 6.47 in 2015. Some indicators are the evidence is the equilibrium in Thailand and the king Rama ninth region (Ginsburg, 2009).

CONCLUSION AND RECOMMENDATIONS

The democracy and constitution is the western concept and they are base on republic and people concepts. So, the monarch should be political symbol and they should not act in public and politics. Thai traditional monarch rule is the eastern concept and it is base on India, Buddhism, Hinduism – Brahman and divine king concepts. So, the monarch should not only be political symbol and they should act in public and politics for the national development and people assistance. Two concepts are different and opposite, so they make conflict in the society when Thailand uses democracy and monarchy together (Phongpaichit et. al., 2008). But, the conflict cannot impact with the nation development because the equilibrium from the king Rama 9th. That equilibrium promotes and supports Thailand moves on normal route.

The analysis of equilibrium between traditional monarch rule and democracy rule in Thailand in the king Rama 9th reign has characteristic that is:

- Charisma of H.M. king Bhumibol Adulyadej: H.M. king has singularity that is the equilibrium such as savant, compromise, hard working, developer and billionaire. Every singularity can make and keep balance in Thailand in 1950 – 2016 although, this country often has political conflicts in 66 years (Bowornwathana, 2000).
- The sturdiness of Thai traditional monarch rule: The monarch rule has been in Thailand since 700 years. So, the monarch system, body organs and belief root in Thailand and they affect with Thai people and Thai monarch. Besides, the monarch rule develops adjacently with Thai society. So, this rule is equilibrium by itself (Ockey, 2005).
- The lameness of Thai constitution: Thailand had fourteen constitutions and nine coup d'etats in 1950 – 2016. So, they effect democracy continuation and Thai constitution has a short life cycle (Riggs, 1966). The weakness of Thailand supports the powerfulness of Thai traditional monarch rule in indirect way. Besides, the bureaucratic polity is a major cause of coup d'etat in Thailand and it is also an inheritance of absolute monarchy. This weakness is a supporter of Thai society balance between two rules.

The equilibrium between traditional monarch rule and democracy rule in Thailand in the king Rama 9th is significance in Thailand. The new reign has stated since 13 October 2016. H.M. king Maha Vajiralongkorn Bodindradebayavarangkun or the king Rama 10th still tries to make and keep the equilibrium between both rules because the king action tries to keep the way of the king Rama 9th. It is good hope and auspicious inauguration.

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GOOD GOVERNANCE FOR FOREIGN DIRECT INVESTMENTMALRAJ B. KIRIELLA¹**ABSTRACT**

This is a study on the impact of good governance on foreign direct investment (FDI) inflows. The effect of Six Worldwide Governance Indicators (WGI) on FDI inflows are analyzed for eleven selected countries in South Asia and South East Asia namely, Bangladesh, Cambodia, India, Indonesia, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka, Thailand and Vietnam over the period of 20 years from 1996 to 2015. The GDP Growth is used as a controlled variable. In order to measure the impact of governance indicators on FDI, the study used two tests. Spearman Correlation Coefficient Analysis was used for Country wise Analysis while Panel Data Analysis was used to measure the overall results. Hausman Test results favoured the Fixed Effect Model for the study. The results indicate that three variables i.e. political stability, absence of violence and regulatory quality have a significant impact on FDI inflows in these countries.

Keywords: governance, foreign direct investment, South Asian countries, fixed effect models and panel data.

INTRODUCTION

Governance is termed as the traditions and institutions by which the authority in a country is exercised (Kaufman, Kraay and Zoido-Lobaton, 1999). Good governance is concerned with an independent judiciary, impartiality, equality, accountability and responsibility with effective continuation of public trust (Li, 2005). Good governance is the manner in which the main actors of the society, governments, businesses and civil society work together to make society better (UNCTAD, 2004).

One of the important determinants for FDI is good governance (Loree and Guisinger, 1995; Noorbaksh, Paloni and Yousef, 2001; Addison and Hesh, 2003 and Becchhetti and Hasan, 2004). On the other hand, traditional determinants such as natural resources, low labour costs and good infrastructure become less important (Dunning, 2002). FDI is encouraged by good governance according to Globerman and Shapiro (2003), Biglaiser and DeRouen (2006), Gani (2007), and Staats and Biglaiser (2012).

Although most empirical investigations show the link between good governance and FDI, some investigations in the selected transition countries reflect the negative results. For example, empirical studies suggest that the corruption attracts multinational companies in the selected transition countries (Subasat, 2012). It is convincingly shown that the countries with good governance tend to receive more FDI, whereas the countries with political instability, corruption, bribery, political risks and institutional corporate malpractice bring negative results; and finally end up with socio-economic chaos.

The worldwide indicators of the good governance namely, Voice and Accountability, Political Stability and Non-Violence, Effective and Transparent machinery of the government, Regulatory Quality, Rule of Law and Judiciary and Eradication of Corruption and Bribery are used in this study to measure good governance variable. This research investigates the impact of these indicators on the foreign investment flows of selected South Asian and South East Asian Countries. The selected countries are Bangladesh, Cambodia, India, Indonesia, Malaysia, Thailand, Pakistan, Philippines, Singapore, Sri Lanka, Thailand and Vietnam over

¹ B.A (Econ.) Hons., LL. B, M.A(Econ.), FCMI (UK), FCIM(UK), Chartered Marketer, Attorney at Law and PhD Candidate, University of Colombo, Sri Lanka

the period of 20 years (1996-2015). Two tests are used in the study to measure the impact of governance variables on FDI flows. One is country wise analysis by using Spearman Correlation and the other is Panel Data Analysis to measure the overall results. The Fixed Effect Model was favoured by Panel data analysis by using Hausman Test.

THEORY AND LITERATURE REVIEW

The empirical studies of various experts identified number of determinants showing the positive and negative influence on FDI. The empirical study conducted by Singh and Jun (1995), which focused on the influence of political risk and macroeconomic variables on FDI inflows in developing countries, confirms the significance of these factors in explaining the determinants of FDI. Singh and Jun (1995) use in their study the FDI as a percentage of GDP as the dependent variable, and political risk and macroeconomic variables (manufacturing exports and the fiscal system) as explanatory variables. Also, they used control variables. Both authors have conducted an econometric study with panel data set of 31 developing countries in the period 1970-1993. Wang and Swain showed that political instability negatively affects FDI of multinational corporations (MNCs) and their subsidiaries. Indeed, political instability, corruption and lack of transparency contribute to unfavourable business climate and thus reduce the possibilities of the entry of FDI. Similarly, other works have shown that political and institutional factors are determinants necessary for the entry of FDI in developing countries (Stein and Daude, 2001) and in Latin America (Stevens, 2001).

Morisset (2000) in his study showed that corruption and bad governance, increase administrative costs and therefore reduce FDI inflows. Globerman and Shapiro (2002) stated that a large market would seek more FDIs due to a number of reasons such as robust client base, possible economic clusters, or because of the expected economies of scale in bigger markets. Also, Globerman and Shapiro in 2002, studied the relationship between governance and FDI in the United States. In general, governance infrastructure represents attributes of legislation, regulation and legal systems that affect the security of property rights, transparency of government and legal processes. Their result indicates that the governance infrastructure, including the nature of the legal system is an important determinant to receive FDI. Globerman and Shapiro in 2003 argue that good institutions establish a conducive climate to multinational companies abroad.

Singh and Jun (1995) studied macroeconomic variables such as GDP (Gross Domestic Product), manufacturing, exports and fiscal systems besides their economic study with panel data in 31 developing countries during 1970-1993. They say that the foreign developed countries barely invest in the countries with negative factors such as political instability, corruption and political risks. However, good governance infrastructure including good legal systems and regulation, create good confidence among the foreign donor nations and financing institutions which are instrumental for the inflow of foreign fund to developing countries. Wang and Swain too showed that the political instability and lack of transparency contribute to negative results and affect multinational corporations (MNCs).

Asiedu (2006) argues that investment restriction, macro-economic instability, corruption and political instability have negative impact on FDI in Africa. He uses panel data for 22 countries during the period 1984-2000 to analyze the influence of market, resources of nature, government policies, political instability and the quality of the institution in the host countries of FDI. He also stated that major markets, natural resources, an educated population, a good infrastructure, less corruption and a reliable legal system have a positive impact on the inflow of FDI to the country.

Bénassy-Qu'éré, Coupet, and Mayer (2007) investigated institutional determinants from 1985 to 2000 and concluded that low corruption, efficient bureaucracy, vibrant courts, access to information, and a developed banking sector are crucial factors for FDI inflows. Bissoon

(2011) analysed the impact of institutional quality on FDI from Africa, Asia and Latin American countries. The results show that the strong regulatory laws, low corruption in the institutions, and political stability enhance inward FDI in these countries. Daude and Stein (2007) using 34 source countries and 152 host economies found that regulatory quality and government effectiveness play a vital effect on FDI inflows. Other variables such as corruption, rule of law, political stability and voice and accountability had no significant impact on FDIs.

Mishra and Daly (2007) focused on the effect of institutional quality of OECD and Asian host countries on FDI during the period 1991 – 2001 using the International Guide of country risk. They argue that respect for human rights, the strength and justice of the legal system and government stability in host countries have a positive direct impact on FDI inflows. Correspondently, Shah (2011) shows that corruption, ineffective role of the government and rule of law have negative influence, whereas political stability and regulatory quality have positive impact on FDI inflows. Samimi and Ariani (2010) used annual data of 16 countries in the Middle East and North Africa (MENA) during 2002-2007 and found three governance indicators namely, political stability, control of corruption and rule of law that have positive impact on FDIs in those regions.

Mengistu and Adhikary (2011) analysed the impact of six indicators of good governance on FDI inflows in 15 Asian countries for the period 1996- 2007. They used a panel data model with fixed effects and found that out of these indicators the government effectiveness, political stability and absence of violence, the rule of law and control of corruption are the main factors of FDI location. They conclude that improving the governance environment attracts more FDI.

Hassen and Anis (2012) studied the impact of FDI on the economic growth of Tunisia, over the period from 1975-2009. They found that there is a relationship of co-integration in long-term between the coefficients of financial development, FDI, human capital, trade openness and real GDP of the Tunisian economy.

According to Brada, Drabek, and Perez (2012), excessive corruption could ruin the volume of incoming FDIs. Voyer and Beamish (2004), studying how the level of corruption affects Japanese FDIs in 59 developed and developing countries, found that corruption and FDIs were negatively related. Similarly, Shah (2011) shows that corruption, absence of government effectiveness, and rule of law have negative influence, while political stability and regulatory quality have a positive significant impact on inward FDIs.

Balasubramaniyam (2002) studied the influence of Good Governance on FDI inflows in SAARC Countries and considered the infrastructure as another key to FDIs. Poor governance is associated with excessive regulation, arbitrary interpretation of rules, red tape, unskilled personnel, low level of bureaucratic quality and a lack of transparency. Jensen (2003) states that democratic accountability is important for two reasons. First, it reduces the likelihood of undesirable policies such as nationalization and expropriation. Second, in democratic countries, the leaders are accountable not only to their voters but also to businesses. If not, it may lead to business retaliation by refusing to invest,

According to the suggestion made in the OECD report (2002), when Good governance condition

prevails, it attracts FDI. The poor governance leads to exploitation and malpractice even by multinational companies and as a result, an inconsistency impact is made on FDIs, but good governance of democratic institutions has an enhancing impact.

Campos and Kinoshita (2008) tested the impact of structural reforms and institutional quality on FDIs and found that bureaucratic quality has a positive and significant coefficient when Latin American and transition countries are included for the study. However, when they are not included, it becomes insignificant. Furthermore, political stability and regulatory quality have a significant impact of FDI inflows (Yosra, Ochi and Ghadri, 2011)

According to Staats and Biglaisser (2012), judicial strength and rule of law are important determinants. Daddi (2013) explored Ethiopia to find Governance and FDI and found that the three parameters; efficiency, accountability and decency of public officers have significant impact on FDI. Shah and Faiz (2015) found that the countries affected by terrorism deter FDI.

METHODOLOGY

A sample of 11 countries from South Asia and South East Asia has been taken using Baptist (2005) model to show the effect of the indicators of the governance to induce FDI which resulted in either positive or negative impact.

The complete model is the following:

$$\text{FDI net inflows} = \beta_0 + \beta_1 \text{PSAV}_{it} + \beta_2 \text{RQAL}_{it} + \beta_3 \text{ROL}_{it} + \beta_4 \text{VA}_{it} + \beta_5 \text{COC}_{it} + \beta_6 \text{GE}_{it} + \beta_7 \text{GDPG}_{it} + \varepsilon_{it}$$

The complete model uses the country subscript alphabetically using the English letters as the following;

i	stands for the country subscript,
t	represents time subscript,
β_0	remains constant,
β_i	as coefficients with different variable,
FDI	Foreign Direct Investment (net inflows) BDP current U.S,
PSAV	stands for political stability and the absence of violence,
RQAL	quality of regulations,
ROL	is for rule of law,
VA	represents voice and accountability,
COC	stands for control of corruption and red tape administrative procedures,
GE	shows the effectiveness of the government,
GDPG	growth rate of gross domestic product.

Further, to facilitate the research, number of hypothetical assumptions are made as follows;

The first hypothesis makes an assumption that the political stability and absence of violence (PSAV) positively induces FDI.

The second hypothesis makes an assumption that the quality of regulation (RQAL) makes a positive impact on FDI.

The third hypothesis relates its assumption to the control of corruption (COC) as positive and its significant role on FDI inflows.

The fourth assumption is based on hypothesis that voice and accountability (VA) is positively related to FDI inflows.

The fifth hypothesis makes an assumption that the rule of law (ROL) makes a positive impact on FDI.

The sixth hypothesis makes an assumption that government effectiveness makes a positive impact on FDI.

The seventh hypothesis creates the assumption that the economics of Growth of Domestic Product as the macroeconomic factors on the influence for FDI.

THE DATA AND VARIABLES

a) Data

This data for this study was taken from the World Bank website, the World Development Indicators (Worldwide Governance Indicators (1996-2015)). Empirical investigation focuses on the study of the impact of the six governance indicators on inflows of foreign direct investment (FDI). The sample is an unbalanced panel data over a 20 year period between 1996 and 2015 consisting of 187 observations.

b) Variables description

There are two types of variables. They are dependent variable and independent variables.

The variables that are used empirically are as follows:

The dependent variable of the model is FDI inflows (BDP current U.S.).

The independent variables are the six governance indicators, namely as:

- (1) The fight against corruption and bureaucratic red tape (COC),
- (2) The rule of law (ROL),
- (3) Political stability and the absence of violence (PSAV),
- (4) Voice and accountability (VA),
- (5) Regulatory quality (RQUAL)
- (6) Government effectiveness (GE), and
- (7) The control variables is GDP growth (GDPG).

EMPIRICAL RESULTS

Eleven countries were taken for the study to present statistically showing the empirical results that effect governance indicators.

a) The Global Model

i. Descriptive statistics

Table 1. Descriptive Statistics for the Study Variables

	Observations	Mean	Maximum	Minimum	Ecart-type	CV
COC	187	-0.31048	2.42	-1.49	0.900046	-2.898
FDI	187	8.20E+09	6.85E+10	-4.55E+09	1.32E+10	1.609
GE	187	0.050267	2.43	-1.07	0.845321	16.816
GDPG	187	5.484542	15.24038	-13.1267	3.073919	0.560
PSAV	187	-0.69802	1.34	-2.81	0.961582	-1.377
ROL	187	-0.17856	1.89	-1.25	0.752294	-4.213
RQ	187	-0.05273	2.26	-1.1	0.767833	-14.561
VA	187	-0.41326	0.51	-1.56	0.529009	-1.280

To estimate the model, the study used the econometric technique for estimating panel data using statistical software for data analysis (E Views 9). In this context, the Table 01 reports the descriptive statistics that characterize the series of FDI net inflows retained on the sample period from 1996-2015.

Table 01 shows the descriptive statistics of all variables used in the empirical analysis for 11 countries in the sample. The study reveals that the FDI variable is between US Dollars -4,550 billion to US Dollars 68,500 billion with an average of US Dollars 8,200 billion and a coefficient with a variation of 1.609. In fact, FDI variable shows a higher volatility which is more than 50 per cent. While, the variable COC has an average of -0.31048 with a range between -1.49 to 2.42. GE variable has an average of 0.050 with a highest volatility recorded a coefficient variation of 16.816 in the sample. Growth variable shows an average of 5.48 per cent while recording lowest volatility of 56 percent in the sample. Further variables of PSAV, ROL, RQ and VA have averages of -0.69802, -0.1785, -0.0527, and -0.413 respectively with a standard deviation of 0.96, 0.75, 0.76 and 0.522 respectively.

Table 2. The Impact of PSAV, RQUAL and COC ON FDI

Variables	PSAV	RQUAL	COC
PSAV	2.5** (0.0827)	2.42** (0.0906)	2.85** (0.0551)
RQUAL		8.29** (0.0668)	9.51* (0.0417)
COC			-4.81 (0.2888)
RL			
GDPG	0.310 (0.2155)	0.315 (0.206)	0.363 (0.1553)
GE			
VA			
R2	0.64088	0.6495	0.6531
F	25.877 (0.000)	24.664 (0.000)	23.130 (0.000)
HAUSMAN TEST	0.418 (0.8111)	1.1665 (0.7610)	0.912 (0.9228)

In Table 2, the first line shows the coefficients and the second line shows Probability Value.

First the study introduces the variable PSAV to examine its impact on the attractiveness of FDI. The examination of the Fisher statistic detects the global significance of the model. Indeed, the results have obtained a value statistically significant at the 1% level to confirm the overall significance of the model ($F=25.877$, $P = 0.000$) and conclude that this model is homogeneous.

Next, the study uses the variable RQUAL to measure its impact on FDI inflows. This model is globally significant ($F=24.664$, $P=0.000$) and homogeneous. Then includes the variable of control of corruption (COC) to the model in order to clarify its influence on FDI. The results in Table 02 explains that the model including PSAV, RQUAL and COC is globally significant ($F=23.130$, $P=0.000$).

The coefficient of determination (R2) gives an idea of the percentage of variability. When the study uses the variables of PSAV, it shows the percentage of variability as 64%. However, 65% of the variability of FDI is explained by the variables of PSAV, RQUAL, and COC.

Control Variable GDP growth rate is not statistically significant at 5% significant level. However, the variable PSAV has a positive impact at 10% significant level. This result confirms hypothesis of regulatory quality (RQUAL) and political stability and absence of violence (PSAV) affects positively on FDI inflows. Finally, control of corruption is negative and statistically insignificant. The results of the study confirm that political stability and regulatory quality are important factors in the choice of multi-national enterprises to invest in South Asian or South East Asian Countries while other factors held constant.

Table 3. The Impact of RL, VA and GE on FDI

Variables	RL	GE	VA
PSAV	6.95 (0.4808)	0.736 (0.6153)	0.646 (0.6967)
RQUAL	6.27 (0.1864)	5.49 (0.2442)	5.34 (0.2588)
COC	-7.28 (0.1114)	-7.62* (0.092)	-7.95* (0.089)
RL	12.1* (0.0097)	12.3** (0.0090)	12.0** (0.013)
GDPG	0.413* (0.10)	0.398 (0.1026)	0.39* (0.10)
GE		3.9 (0.321)	4.14 (0.2968)
VA			0.856 (0.7957)
R2	0.6683	0.6577	0.6569
F	22.97077 (0.000)	20.42151 (0.000)	19.0330 (0.000)
HAUSMAN TEST	1.269 (0.9380)	10.6531 (0.0997)	12.51 (0.0848)

* and ** indicate 5% and 10% significance levels, respectively.

In Table 3, the first line shows the coefficients and the second line shows the Probability Value.

The study includes rule of law (RL) with the variables of PSAV, RQUAL and COC to clarify its impact on FDI. This model is globally significant ($F = 22.97$, $P=0.000$). Then the study introduces GE to the model and Fisher Statistics can give the global significance of this model at 1% significant level. Finally, the study includes VA to study the influence on FDI inflows with the variables of PSAV, RQUAL, COC, RL and GE. This model is globally significant at 1% ($F=19.03$, $P=0.000$). The coefficient of determination (R2) indicates 0.65 which explain that 66% of the variability of FDI is explained by the variables of PSAV, RQUAL, COC, RL, GDPG, GE and VA.

Table 4 Correlation Matrix of Country wise Variables

	Bangladesh	Cambodia	India	Indonesia	Malaysia	Pakistan	Philippines	Singapore	Sri Lanka	Thailand	Vietnam
VA	-0.029	-0.676**	.616**	0.823**	0.135	0.066	-0.052	-0.262	-.750**	-0.441	0.17
	0.911	0.003	0.008	0	0.605	0.8	0.844	0.309	0.001	0.076	0.513
PSNV	-0.458	0.865**	-0.083	0.910**	-0.039	-.502*	0.459	.545*	.580*	-0.676**	-0.463
	0.064	0	0.75	0	0.881	0.04	0.064	0.024	0.015	0.003	0.061
GE	-.500*	0.318	0.399	0.757**	0.155	-0.162	0.750**	0.344	.575*	0.012	.706**
	0.041	0.214	0.113	0	0.553	0.534	0.001	0.176	0.016	0.963	0.002
RQ	0.284	-0.183	-0.161	0.393	.536*	.492*	0.212	-0.001	-.543*	-0.08	0.194
	0.27	0.482	0.537	0.119	0.027	0.045	0.413	0.996	0.024	0.761	0.456
ROL	.741**	0.601*	-.687**	0.717**	0.232	-0.318	0.455	0.828**	-.722**	-0.419	0.149
	0.001	0.011	0.002	0.001	0.371	0.214	0.067	0	0.001	0.094	0.569
COC	0.226	-0.218	-0.31	0.726**	-0.112	0.142	0.286	-0.652**	-0.206	-0.385	0.16
	0.384	0.401	0.225	0.001	0.669	0.586	0.266	0.005	0.427	0.127	0.541
Growth	.605*	-0.071	0.103	0.639**	0.081	0.047	0.11	0.108	0.365	0.135	-.502*
	0.01	0.786	0.694	0.002	0.758	0.859	0.673	0.68	0.149	0.606	0.04

Table 4 shows the results of country wise analysis.

The P value indicate that Rule of Law (ROL) is having a strong positive correlation with FDI inflows of Bangladesh, Cambodia, Indonesia and Singapore ($P < 0.05$).

Voice of Accountability(VA) is strongly correlated with FDI of India and Indonesia at 5% of significant level.

Political stability and absence of violence (PSNV) too has a strong positive association on FDI inflows in Cambodia, Indonesia, Singapore and Sri Lanka.

Further, the variable of Control of Corruption (COC) has been a major factor for FDI inflows in Indonesia, but it has limited association among most of the countries.

Government Effectiveness (GE) is strongly associated with FDI inflows to Indonesia, Philippines, Sri Lanka and Vietnam.

Regulatory Quality (RQ) has a positive correlation on FDI inflows to Malaysia and Pakistan.

GDP growth (GROWTH) has a strong association with FDI inflows to Bangladesh and Indonesia.

CONCLUSIONS

The main objective of this research is to examine the influence of governance indicators on the attractiveness of foreign direct investment in selected 11 countries in South Asia and South East Asia over the period 1996–2015 using a fixed effect model, for the majority of models with each explanatory variable in the equation.

The study found that two governance indicators that have a significant and positive impact on the attractiveness of FDI and indicators of governance namely, political stability and absence of violence, and regulatory quality have a significant impact on FDI inflows.

This indicates that foreign investors are interested in political stability and absence of violence, and regulatory quality in their choice of investment abroad.

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THE STRUGGLE FOR CHIANG TUNG: LOYALTY AND TERRITORY ON AN UPPER SOUTHEAST ASIAN FRONTIER, 1800-1900

JOHN SF SMITH¹

ABSTRACT

Chiang Mai, Chiang Tung, and Chiang Rung were three Tai-speaking principalities in northern Southeast Asia, which, despite enjoying a shared history, culture, and language, became part of the separate states of Thailand, Burma, and China over the course of the nineteenth century. While geographic realities informed this division to an extent, the main driving factor was the growth of a culture of loyalty and a tradition of patronage in each of the respective states. A series of military conflicts and political crises over the course of the early nineteenth century saw the major regional powers each attempt to gain ground, but these conflicts were invariably resolved by the actions and decisions of the highland Tai states rather than the lowland empires. The Tai states thus proved the main agents in the delineation of Thai, Burmese, and Chinese territories in upland Southeast Asia, and played a major role in shaping the map of the region that we see today.

Key Words: Thailand, Burma, China, history, borders

A TAI WORLD BETWEEN EMPIRES

Tai-speakers constitute one of the world's great ethnic groups. Spread across East Asia, Southeast Asia and South Asia, Tai-speakers are the majority in two independent nation-states, Thailand and Laos, and a significant minority in at least five more. While the modern-day nation-states of Thailand and Laos possess a culture of ethnic solidarity, the pre-modern Tai world was fragmented and decentralized, divided between multi-ethnic and cosmopolitan lowland centers such as Bangkok and its predecessor Ayutthaya, and isolated hinterland kingdoms. None of these were sprawling empires, but rather independent and semi-independent city-states, tied together through bonds of economic interdependence and personal loyalty.

Between 1351 and 1800, the lower basin of the Chaophraya river, the location of Ayutthaya and Bangkok, became the pre-eminent power in the Tai-speaking world. Ayutthaya began as a small riverine city-state, and over the course of four centuries, grew into a sizeable empire. In 1767, a Burmese invasion led to the destruction of Ayutthaya, and in 1782, the Siamese capital was moved to its modern-day location, Bangkok. By 1800, the kings of the still-regnant Chakri dynasty had established an empire of unprecedented size and centralization for the Tai-speaking world. At the same time, similar processes occurred elsewhere in mainland Southeast Asia. To the east, the Nguyen Dynasty established a similarly powerful grip over Vietnam, and to the west, the Konbaung Dynasty established control over Burma (Lieberman, 2009).

On the highland frontiers of Chakri Siam and Konbaung Burma, a number of Tai-speaking principalities maintained a nominal independence. These states would offer allegiance to one or more of the major lowland kingdoms. Usually this would constitute a military alliance and would allow merchants from the highland state access to the well-connected lowland market. However, the highland state would always maintain considerable autonomy. The two largest highland Tai states in the early nineteenth century were Chiang

¹Suan Sunandha Rajabhat University, College of Innovation and Management, Thailand. E-mail - jsfsmith@umich.edu

Mai, located on a tributary of the Chaophraya River, and Chiang Rung, located on the Mekong. Each of these principalities was the center of its own kingdom, yet each also paid tribute to a larger empire. In the early years of the Chakri dynasty, Siam managed to gain the allegiance of Chiang Mai and the other cities of Lanna, the historical kingdom centered upon Chiang Mai, which had previously been subject to Burma. Chiang Rung, and its kingdom of Sipsongpanna, lay on the southern frontier of Qing China's Yunnan province, and paid allegiance to both Qing China and Konbaung Burma.

At first glance, the allegiance of these principalities seems natural. Chiang Mai shared a watershed with Chakri Siam, and as such, Siam was its natural suzerain. Similarly, Chiang Rung lay on the frontiers of the Qing Empire, one of the world's pre-eminent powers. However, the loyalty of these states was very much in flux. Chiang Mai only paid tribute to Bangkok after the Chakri dynasty helped repel repeated Burmese invasions in the late eighteenth century (Smith, 2013). The conflict in Chiang Rung was much deeper, with pro-Burmese and pro-Chinese factions at court periodically plunging Sipsongpanna into civil war.

Chiang Tung was more remote and smaller than Chiang Rung and Chiang Mai, and its importance derived largely from its strategic position rather than its role as a population center. It was a key stop on the trade route by which Chinese caravans would travel from Yunnan to the British and Thai controlled coastal centers at Moulmein and Bangkok (Grabowsky and Turton, 2003). It lay in the Mekong watershed, like Chiang Rung, but it was far from Chiang Rung, located in a small valley in the mountains separating the Mekong from the Salween. This remoteness drew it towards the Tai states of the Shan country west of the Salween, and placed it as close to the Burmese sphere of influence as the Chinese sphere of influence.

CULTURES OF LOYALTY

While geographic location was significant in determining the loyalty of the Tai states, their alignment was ultimately determined by the development, over the course of decades, of cultures of loyalty to one or more of the major powers. This is seen most vividly in the case of Chiang Rung, which balanced itself between the Burmese and Chinese spheres of influence, and even invited Thai involvement for a short time in the 1850s. It is also apparent in Chiang Mai, whose ruling dynasty developed a close, multi-generational relationship with the Chakri dynasty of Bangkok starting in the late eighteenth century. Chiang Tung served as a fulcrum of sorts between the larger powers of Chiang Mai and Chiang Rung, but the long reign of the ruler Cao Mahakhanan (r. 1804-1857) placed Chiang Tung firmly within the Burmese sphere of influence.

Chiang Rung's location on the Mekong River to the south of China's Yunnan Province made it a contested principality in the nineteenth century's world of expanding kingdoms. However, despite the presence of pro-Siamese and pro-Burmese faction at court, its long-lasting cultural bond with China ultimately proved decisive. Chiang Rung had entered into its first tributary arrangement with the Chinese in the fourteenth century, and had established a separate tributary arrangement with the Burmese in the sixteenth century (Liew-Herres, Grabowsky and Renoo, 2012, p. 154-5). This arrangement of dual suzerainty did not cause any significant problems at the court of Chiang Rung until the 1760s, when a border war broke out between Qing Dynasty China and early Konbaung Burma. In this war, the ruling line of Chiang Rung split, with one prince, Cao Namphung, offering tribute to the Burmese, while another, Cao Suwan, offered tribute to the Chinese (Liew-Herres, 2007, p. 89-91).

Over the course of the following century, the ruling house of Chiang Rung remained divided between the lines of Suwan and Namphung. For most of this time, the Chinese would reliably support the descendants of Suwan, while the Burmese would alternate between recognizing the Chinese-backed ruler of Chiang Rung and supporting challengers to the throne descended from Namphung. These challengers usually ruled from Chiang Rung's tributary

cities west of the Mekong and unlike their Chinese-backed counterparts, rarely held uncontested power over Chiang Rung (Smith, 2013). In 1847, a ruler of Chiang Rung named Suchawan even invited Siamese involvement, leading to a messy conflict between the Siamese and the Burmese in the highlands near Chiang Tung. However, the cultural relationship between Chiang Rung and China was simply too old to be overcome by the politics of the moment. An early nineteenth century visitor described the city's courtly culture and architectural style as mimicking that of the Chinese, and their documents used Chinese characters rather than the Indic script used by their neighbors in Chiang Tung and Chiang Mai (Grabowsky and Turton, 2003).

If Chiang Rung had a historically venerable relationship with China, Chiang Mai had a similar relationship with Siam. This relationship dated all the way back to the fourteenth century, and can be seen in the common influence among the early Tai centers of the upper Chaophraya watershed, as well as the mythical friendship of the Tai rulers of Chiang Mai and Sukhothai (Wyatt and Aroonrut, 1995). Like Chiang Rung, Chiang Mai came under Burmese influence in the sixteenth century. However, this Burmese influence declined rapidly in the late seventeenth century, when the Siamese, under King Taksin of Thonburi, helped the newly autonomous rulers of Chiang Mai and Lampang defeat a Burmese invasion (Wyatt and Aroonrut, 1995, p. 151-2). The ruling dynasty of Chiang Mai remained loyal allies of the Siamese until the foundation of the Siamese nation state a century later.

THE STRUGGLE FOR CHIANG TUNG

Located far from any lowland centers of power, Chiang Tung's situation would have been far less stable and far more in flux than those of Chiang Mai and Chiang Rung if not for the stability of its leadership. From 1804 to 1857, Chiang Tung was ruled by Cao Mahakhanan, a pragmatic leader whose periodic shifts of loyalty ultimately established Chiang Tung as the arbiter of Burmese power on the Siamese and Chinese frontiers. From 1804 to 1812, Mahakhanan ruled from a succession of centers to the south of Chiang Tung and served as a vassal of Chiang Mai which was in turn a vassal of Bangkok. From 1812 until his death of old age, he returned to Chiang Tung and again ruled as a vassal of the Burmese. During his reign, he defended his principality against repeated aggression from the neighboring Tai states and established it as the primary Burmese-backed power east of the Salween.

Cao Mahakhanan became ruler of Chiang Tung when his father, Cao Kong Tai, was captured in a Chiang Mai raid in 1804. Mahakhanan immediately found himself in an awkward alliance with Chiang Mai, as encroachment by the Burmese and Shans west of the Salween forced him to abandon Chiang Tung and relocate, with his followers, to a series of smaller valleys south of Chiang Tung. From 1805 to 1812, Mahakhanan, with the support of Chiang Mai, opposed Burmese efforts to control the population of Chiang Tung and the surrounding highlands (Wyatt and Aroonrut, 1995, p. 192-4). This phase came to an end when the Burmese won the war of attrition, and the Chiang Mai rulers decided to relocate Kavila and his followers to Chiang Saen, closer to the center of Chiang Mai's sphere of influence (Smith, 2013). However, attrition had also taken its toll on the Burmese, who contacted Mahakhanan and invited him to return and rule from Chiang Tung, with Burmese backing (Mangrai, 1981, p. 259-60). With the two major powers having worn each other out, Mahakhanan was free to return and rule in peace.

As a Burmese vassal, Mahakhanan oversaw the wholesale restoration of Chiang Tung's population and infrastructure. Unlike most recovering Tai states, Chiang Tung did not conduct any raids to obtain a captive population. However, the Chronicles recall a period of stability, in which the city was rebuilt and its fortifications expanded from the previous era (Mangrai, 1981, 261). From 1813 to 1849, the Tai principalities as a whole enjoyed a period of relative peace and stability, and when this stability began to come to an end, Mahakhanan would prove

that he had both the political acumen and the fortifications necessary to stand up to the regional powers.

In 1836, the Chiang Rung conflict rekindled with a contested succession. Cao Suchawan, a descendent of Cao Suwan and the appointed heir of the previous ruler, squared off against Cao No Kham, a descendent of Cao Namphung. Initially, the Chinese backed Suchawan while the Burmese backed No Kham (Renoo, 1998, p. 682-4). This arrangement changed in 1842, when a combined Tai and Chinese force drove No Kham to the mountains west of the Mekong. Without a viable candidate, the Burmese acquiesced to the Chinese-backed prince and supported Suchawan (Phongsawadan, 1973, p. 10). Despite the Burmese support for Suchawan, Chiang Tung continued its support of No Kham. When a third prince, Cao Mahachai Ngadam, Suchawan's cousin, gained Chinese backing and rebelled against Suchawan in 1845, Chiang Tung's support for No Kham prevented Suchawan from seeking the assistance of his ostensive suzerains in central Burma (Smith, 2013). He was therefore forced to turn to Siam for help.

Siam quickly discovered that, just like the Burmese, they needed to control the highlands between Chiang Mai and Chiang Rung in order to exert power over Chiang Rung. This meant controlling the major political center of these highlands, which, at the time, was Chiang Tung. The Siamese thus launched three successive efforts to control Chiang Tung, in 1849, 1852, and 1854 (Sarassawadee, 2005, p. 161-2). These were all failures for the Siamese, and changed the political alignment of neither Chiang Tung nor Chiang Rung. They were also sizeable campaigns that involved tens of thousands of troops on either side, and saw direct confrontation between the forces of Chakri Siam and Konbaung Burma (Smith, 2013). Chiang Tung thus proved itself not simply able to obstruct Burmese policy in the frontier regions, but to defend itself against the consequences of that obstruction.

Following the wars with the Siamese, Chiang Tung switched its support back to Suchawan, their previous candidate, No Kham, having been killed in battle in 1850 (Renoo, 1998, p. 689). With the help of Chiang Tung and the Burmese, Suchawan was able to suppress his rivals and regain Chinese support, thus placing the Chiang Rung crisis back into dormancy.

CONCLUSION: LOYALTY AND TERRITORY

Two forces, loyalty and territory, drove the delineation of the Thai-Burmese, Thai-Chinese, and Sino-Burmese borderlands. Loyalty refers to the political alignments that formed between hinterland Tai leaders and the courts of China, Siam, and Burma, while territory refers to the geographic realities that caused the hinterland powers to gravitate towards specific lowland patrons. Chiang Rung, lying on the southern frontier of the vast Qing empire and enjoying a centuries-long relation with China, naturally gravitated in that direction, factionalism at court threatened to pull it in the direction of Burma or even Siam. While Chiang Mai shared a watershed with the Siamese kingdom, it also lay exposed to Burma, and remained a vassal of Thailand through a solid, multi-generational relationship with the kings of Bangkok.

Chiang Tung proved to be a key component in this arrangement. Its geographical location made it necessary for the Burmese or Siamese to control Chiang Rung, for the Burmese or Chinese to control Chiang Mai. Its isolation afforded its leaders a good deal of negotiating power, and at the height of his reign, Cao Mahakhanan was effectively able to dictate Burmese policy towards Chiang Rung, affecting the course of the crisis in Chiang Rung when Burmese support was unable to reach Cao Suchawan, the Burmese-backed candidate. To this day, the Thai-Burmese border remains a porous zone and a zone of constant change, with the decisions of leaders in the borderlands often driving national policy (Sirinya, 2017).

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EXAMINING STRUCTURAL RELATIONSHIPS AMONG TRUST IN GOVERNMENT, PERCEIVED IMPACTS, AND COMMUNITY SUPPORT OF SPECIAL ECONOMIC ZONES IN THAILAND: A CASE STUDY OF TAK SEZ

HATHAIPUN SOONTHORNPIT¹

ABSTRACT

This study developed a comprehensive model of residents' trust in government actors and their support for the Tak Special Economic Zone based on social exchange theory and institutional theory of political trust. The model was tested on a sample of 400 residents of the Mae Sot district, Tak province, Thailand, using confirmatory factor analysis and structural equation modeling procedure. The findings indicated a significant relationship between trust in government actors and resident's support for the Tak SEZ. The results also revealed that resident's perceptions of the benefits and costs of the Tak SEZ were significant determinants of resident's support of government. The study founded social exchange theory and institutional theory of political trust were appropriate for explaining residents' trust in government actors and perceptions toward public support for SEZs project. The researcher suggested that if public project is properly managed and developed, it can have beneficial political effects for government such as increasing their legitimacy among the public.

Key Words: Trust, Trust in Government, Perceived Impacts, SEZ, Tak Province

INTRODUCTION

Public trust in government is considered essential to political support. Political scientists state that high level of public trust leads to reduced administrative costs and citizens' greater compliance with laws and regulations (Levi, 1998; Tyler, 1998). Trust in government also helps reconcile the need for political accountability and the demand for the discretionary power needed to create a flexible administration by encouraging citizens to accept expanded government authority (Kim, 2005). Indeed, trust is central to a modern society and is essential for social, political, and community relations. Consequently, the notion of trust has attracted the attention of several social science researchers. To them, trust allows a government to maintain effective legitimacy and authority in decision-making and is important for good governance, sustainability of the political system, and democratic consolidation (Christensen and Lægreid, 2005; Park and Blenkinsopp, 2011). Thus, maintaining citizens' trust is an important political objective of any government in power.

Trust in government is stated to influence more acceptances of government policies and a greater government role in certain policy areas. It continues to be recognized as the significant factor that influences public support for expansion of government roles and policy implementation. For instance, trust will guide citizens to decide whether to support the increased government spending in particular policy area (Hetherington, 2004; Rudolph and Evans, 2005). Equally important impact of trust in governance is that it affects citizens' support for the governance structure. When citizens have high trust in government, the government bureaucracy is considered to be as the most reliable and consistent service delivery system. In contrast, if citizens do not have confidence in government-bureaucracy system in its service delivery, market-driven structure, such as privatization gets more support by citizens. That is, trust is inarguably important to shape citizens' attitude toward government-oriented

¹ Suan Sunandha Rajabhat University, College of Innovation and Management, Thailand. E-mail-hathaipun.so@ssru.ac.th

governance structure (Hetherington, 2004). In sum, trust in government has the prominent impacts on the scope of government roles and service delivery structures. Most importantly, when a citizen accepts that the government is a reliable entity, citizen's attitudinal trust is transformed into the behavioral response called "political support" (Zand, 1982).

Moreover, Special Economic Zones (SEZs) can be compared to their predecessors, Free Trade Zones and Export Processing Zones, in that they are aimed at stimulating foreign direct investment (FDI) and rapid, export-led, industrial growth. The essential characteristic of such schemes is that they allow the bypassing of particular social legislation or tax provisions which are perceived to be an impediment to progress or the competitiveness of an export-oriented activity. For Thailand, Special Economic Zone is a development method that has been studied for a long time. The idea to develop an area into a special economic zone aims to expand development into different areas through various economic activities as the core of the development. This brings about some investment and improvement of the quality of life of people in a specific area and other areas nearby. However, the method to develop and mobilize the Special Economic Zone to be concrete has received a clearer development direction after the National Council for Peace and Order (NCPO) managed the country. The National Council for Peace and Order (NCPO) has issued an order no. 72/2014 to appoint the Commission of Special Economic Development Zone Policy. In the meeting no.1/2014 of the Commission of Special Economic Development Zone Policy on 15 July 2014, chaired by Gen. Prayuth Chan-Ocha—the head of National Council for Peace and Order (NCPO), an approval was made on the areas with suitable potential to be a special economic zone in the initial period of Thailand. Among five areas that were approved, one of the most important areas is Special Economic Zone of Mae Sot District, Tak Province.

Although, despite the huge rate of approval and establishment of SEZs, and thus their apparent success around the world, the development of SEZs has faced considerable opposition and is stalling in some cases. This resistance has arisen because of various controversial aspects regarding the establishment of SEZs. At the heart of the problem is the resistance from the communities that are directly affected. Moreover, researchers need to consider trust as an important ingredient for cooperation among stakeholders in SEZ development studies. One of the gaps of existing studies on government policies and community political support is that the majority of them have omitted trust as a key component in the structural relationship. Hence, to contribute to the existing literature, the study attempts to develop a comprehensive model and examine the underlying relationship among perceived impacts and support for SEZ development project based on social exchange theory and institutional theory of political trust in Tak province, Thailand.

LITERATURE REVIEW

Recent researches have shown that political trust has the potential to shape public preferences for policies and services. Many scholars have documented the relationships between trust and various attitudes and behaviors at the individual level. For example, research has demonstrated that political trust affects attitudes toward governmental policy (Hetherington and Globetti 2002; Rudolph, 2009) and can also impact individual behaviors related to governmental policy (Scholz and Lubell, 1998; Tyler and Huo, 2002). On the other hand, while many studies focused on the uncertainty that comes with SEZ projects, there are a number of studies that explore the relationship between residents' perceptions of benefits and costs of development projects in other different contexts. A review of related literature indicates that two major theories were appropriate for explaining residents' perceptions toward the impacts of transnational highway development: namely, social exchange theory and institutional theory of political trust.

Social Exchange Theory (SET) and Trust in Government

The social exchange theory (SET) is a social psychological and sociological perspective that describes social change as a process of negotiated exchanges between individuals or groups. This theory, dating back to the early 1920s (Malinowski, 1922), rooted in economic theory and modified by Thibaut and Kelly (1959) for the study of social psychology of groups, focuses on the perceptions of the relative costs and benefits of relationships and their implications for relationship satisfaction. According to Cropanzano and Mitchell (2005), SET is one of the most influential conceptual paradigms in organizational behavior.

This theory posits that “all human relationships are formed by the use of a subjective cost-benefit analysis and the comparison of alternatives (Hormans, 1958; Kang et al., 2008). In other words, it suggests that people engage in interaction or reciprocate with other people because they expect to receive benefits or incentives from the other party (Blau, 1964) or that it generates obligations between the parties (Emerson, 1976). Under infrastructure development context, it argues that residents evaluate infrastructure development in terms of its expected benefits and costs. Hence, human relationships formed by the use of subjective cost-benefit analysis, creating mutual obligations, reciprocity, or repayment over time (Cropanzano and Mitchell, 2005).

In a political context, the outcomes of a social exchange relationship between the government and citizens influence political trust. Government institutions create policies and in return, they receive trust from those individuals who are satisfied of these policies, and cynicism and mistrust from those who are dissatisfied. Trust is a relational construct (Markova and Gillespie, 2008) that is inherent to SET (Blau, 1964). Trust between actors (e.g. residents and government) is fundamental in the emergence and maintenance of social exchanges between two parties (Cropanzano and Mitchell, 2005). In other words, political trust (i.e. residents’ trust in government) is the belief that the political system or some of it will produce preferred outcomes even in the absence of constant scrutiny. Studies on political trust are driven by the importance of linking citizens to institutions, the desire to achieve good governance, and the need to gain public support for development (Scheidegger and Staerkle, 2011). Political trust, as a result, is important because it conveys a message to the governing elite, whether or not their policy decisions conform to the normative expectations of the governed.

To explain in greater detail, trust is an important relationship and interpersonal construct (Duck, 1997; Leonidou, Talias and Leonidou, 2008). It is a psychological state, a positive attitude toward the partner, and confidence that the exchange partner will perform (Nguyen and Rose, 2009). A number of studies investigate citizens’ trust in government institutions in an attempt to build relationships that underlie the economic development, ensure legitimacy of institutions, and promote outcomes, which are in the best interests of the society (Gilson, 2003). Thus, for the purpose of this study, residents’ exchange partner refers to the government and we conceptualize ‘trust’ as residents’ trust in government institutions involved in public project planning and development. Citizens’ trust in government institutions commonly referred to as ‘institutional trust,’ defined as confidence that political institutions will not abuse power (Lühiste, 2006).

An exchange partner’s trust (i.e. residents) in the other actor (i.e. government) is important for the emergence and maintenance of social exchanges between them (Blau, 1964). Trust stimulates cooperation, reduces risk in the transaction, enhances satisfaction, increases partners’ commitment to the exchange (Morgan and Hunt, 1994), and creates goodwill that preserves the relationship, and decreases fear and greed (Hwang and Willem, 1997). Trust between exchange partners can generated through the regular discharge of obligations and through the gradual expansion of exchanges over time (Blau, 1964). The extent to which a partner has proven to be reliable in previous social interactions with another actor determines

the level of trust between them. Trust is also determined by the expectations of one partner (e.g. residents) from another (e.g. government) in a social exchange and the extent to which the partner (e.g. government) appear benign (Yamagishi and Yamagishi, 1994). An exchange partner uses several cues such as benevolence, positive and negative outcomes to assess the trustworthiness of another partner (Sheppard and Sherman, 1998).

Positive economic and social outcomes resulting from an exchange increase partners' trust on each other and commitment to maintain the relationship (Blau, 1964). Farrell (2004) also asserts that the economic and non-material benefits resulting from an exchange relationship influence the level of truth between the actors. In a political context, Critin (1974) suggests that cumulative outcomes between political authorities and citizens determine the level of public trust in government institutions. He further argues that institutions create policies and in exchange, they receive trust from citizens who are satisfied with these policies and cynicism from dissatisfied residents. Based on the theoretical postulates of SET and the arguments that positive and negative outcomes from an exchange influence trust, it is reasonable to extrapolate that residents' trust in government actors may be predicted by the benefits and costs of project development. Higher perceptions of benefits will lead to higher levels of trust in government actors and conversely, higher perceptions of costs will negatively influence trust. Based on these arguments, the following hypotheses are formulated:

Hypothesis 1 (H1): There is a direct positive relationship between the perceived benefits of SEZ project and residents' trust in government actors.

Hypothesis 2 (H2): There is a direct negative relationship between the perceived costs of SEZ project and residents' trust in government actors.

Institutional Theory of Political Trust (Performance and Power)

Institutional theory of political trust is based on the assumption that trust stems from the extent to which people perceive political institutions to work effectively (Hetherington, 1998, 2004). Here, trust is dependent on how people evaluate the performance of institutions with respect to their expectations (Lühiste, 2006). In development in general, citizens often hold the government responsible for policy decisions and call upon the state to improve projects or practices that affect their daily lives (Bramwell, 2011). Institutionalists argue that the economic performance of government institutions is one of the strongest determinants of citizens' trust (Mishler and Rose, 2001; 2005). Citizens trust government to the extent that its institutions produced desired economic outcomes and meet their expectations in the economic domain (Lühiste, 2006). Government's inability to deal with economic challenges such as unemployment and poverty impinge on citizens' trust. Moreover, the performance of government actors also covers issues such as the extent of corruption among public officials, fair treatment of citizens and the protection of their rights in development, and a democratic form of governance (Wong, Wan and Hsiao, 2011). Based on this discussion, the following hypothesis is developed:

Hypothesis 3 (H3): There is a direct positive relationship between residents' perceptions of the performance of government actors and their trust in government actors.

Power is defined as the capacity of individuals to make decisions that affect their day-to-day lives (Johnson and Wilson, 2000). In general, the relationship between power and trust is considered to be complementary and opposing components of social behavior. They function as alternative ways of controlling an exchange relationship, although with different effects. However, power is often a precondition rather than an alternative to trust (Bachmann, Knights and Sydow, 2001). Power influences trust because it influences the partners' evaluation of the relative worth of the exchange relationship and the kinds of cooperation that take place on the basis of trust (Farrell, 2004). In other words, power inequalities create ground for distrust and block the possibility of trust (Cook, Hardin and Levi, 2005). Farrell (2004) also argues that

trust is difficult to achieve when the disparity of power exists. Hence, in the event of power inequalities resulting from the political arrangements of government institutions, political trust is hindered. A number of studies suggest that power positively influences the level of trust one actor places on the other actor in a social exchange relationship (Nunkoo and Smith, 2013). According to these arguments, it is reasonable to propose that powerful residents will have higher trust in government actors compared to less powerful ones. Based on the above concept, the following hypothesis is developed:

Hypothesis 4 (H4): There is a direct positive relationship between residents' perceptions of their level of political power and their trust in government actors.

Trust in Government and Political Support

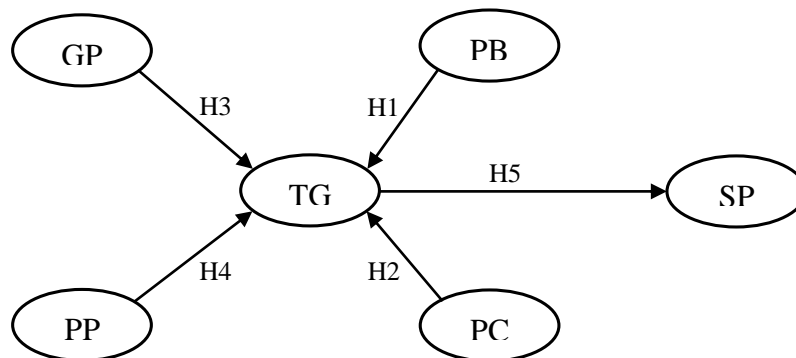
According to the conventional wisdom, trust is a key component of the relationship between individuals and government institutions and is important for consensual decision-making and actions in development. Discussing the importance of public trust in government in a democratic society, Nye, Zelikow and King (1997) noted that: If people believe that government is incompetent and cannot be trusted, they are less likely to provide resources. Without critical resources, government cannot perform well, and if the government cannot perform, people will become more dissatisfied and distrustful of it. Such a cumulative downward spiral could erode support for democracy as a form of governance.

In development, generally, once trust is established, people are willing to commit more time and resources to develop the relationship. Trust is not only about a set of positive expectations, but it also includes the willingness to act on those beliefs (Luhmann, 1979). These beliefs shape attitudes and behaviors of the actors in social exchanges (Sheppard and Sherman, 1998). For example, residents rely on their trust in institutions before making judgments about the acceptability of development projects and policies (Bronfman, Vazquez, and Dorantes, 2009). Easton (1965) further notes that citizens' trust in institutions affects their attitudes toward government policies. He further argues that if residents trust ministries, they tend to support governmental policies and keep their demands reasonable. Residents' trust strengthens their feelings that institutions are acting fairly and are providing equitable benefits to all citizens. However, low trust in public institutions makes an activity unacceptable to the citizens (Bronfman et al., 2009). Citizens' trust in institutions is important to achieve good governance, legitimacy, and collaborative planning. A number of Studies have generally reported a positive relationship between trust in institutions and political support for government policies (e.g. Hetherington, 2004). Taking into account about the predictions of SET and the empirical findings from the literature, it is logical to extrapolate that residents' trust in government actors is likely to be a determinant of their level of support for tourism development. Hence, the following hypothesis is developed:

Hypothesis 5 (H5): There is a direct positive relationship between residents' trust in government and their political support.

From the above literature review, it is clear that in assessing transnational highway infrastructure projects related impacts to a host community, the social exchange theory and institutional theory of political trust (ITPT) are appropriated. This is because these theories have been used predominately in several past studies and accepted as accurate predictors. In this respect, this study employs the SET and ITPT in exploring the underlying relationship among perceived benefits, costs, government performance and power by residents with trust in government and political support. Based on the above assumption, the researcher developed a conceptual model for empirical testing. The illustrated model postulates that exogenous variables have direct effects on trust in government and political support by the residents (endogenous variables). Specifically, the theoretical model to be tested, as shown in Fig. 1,

involved six latent constructs: perceived government performance, perceived political power, perceived benefits, perceived costs, trust in government, and political support.



Notes:

SP: SEZ Project Support; PB: perceived benefits of R3A; PC: perceived costs of R3A; TG: trust in government; GP: perceived government performance; PP: perceived political power.

Figure 1 The proposed theoretical model linking resident's perceptions, trust in government, and political support

METHODOLOGY

Mae Sot district, Tak Province is the research site for this study as it is a location of Tak Special Economic Zone (SEZ). The study population is the household members of Mae Pa, Mae Ku, Mae Kasa sub-districts (Tambon). Specifically, this target population consists of residents who are over 18 years old in the community of Mae Pa, Mae Ku, Mae Kasa sub-districts.

The data for this study were collected by a stratified sampling method based on population size. A stratified random sample was used to reflect the diverse geographical distribution of the residential area of the community (Zikmund, 1997). First, the study areas were identified, and then the sample size of each district was determined by the proportional population of each city/town over the total population of the research area. The sample size was 400, with a sample error of 5 percent and a confidence level of 95 percent (Yamane, 1973).

The data were collected during March-April 2016 using a structured self-administered questionnaire that was hand-delivered by the authors and research teams. The interviewer provided a brief explanation of the study to the interviewee and invited them to participate in the study. To minimize possible bias due to interviewer-participant interaction, it was communicated to participants that their partaking is voluntary and anonymous and they were encouraged to state their own personal opinion as truthfully as possible. Only one person in each household was invited to participate, as people from the same household often hold similar views. As a result, 400 completed questionnaires were retained and used for subsequent data analysis.

A self-administered questionnaire was developed for the purpose of this study. The questionnaire comprised two main sections. The first concentrated on generating a demographic profile of the respondents, including district, gender, age, level of education, occupation, and level of income. The second section contained statements assessing resident members' perceptions of local government actor and the impacts that Tak SEZ may have in their community. Participants were asked to rate each statement on a nine-point Likert-type scale. A value of one denoted a negative response (strongly disagree) and a nine represented a

favorable response (strongly agree). Some items were reverse coded during data entry for consistency.

To purify the scale items, the questionnaire was tested empirically using pilot study with a series of on-site interviews ($n = 30$) to ensure its clarity, reliability and comprehensiveness. The pilot study allowed for the opportunity to gain feedback on the clarity of the directions, the chance to check the face validity of the statements, and establish a baseline for the length of time needed to complete the questionnaire. Then, an exploratory factor analysis (EFA) using a principal component method with varimax rotation was performed on each construct. The purpose of the EFA was to group together correlated variables (Tabachnick and Fidell, 2001). In each EFA, attributes that had factor loadings of lower than 0.40 and attributes that loaded on more than one factor were eliminated from the analysis as recommended by Chen and Hsu (2001). The items that remained after these steps and the results of the EFA are presented in Table 1. The measurement scales were revised based on these results and the survey was sent to the research team in Tak province.

Respondents were requested to demonstrate their perceptions toward the benefits and costs of Tak SEZ on their community, plus their perceptions toward government performance and trust in government actors by using the 9-point Likert-type scale for each statement (1 = strongly disagree, 5 = neutral, and 9 = strongly agree). Factor analysis was conducted to assess the dimensionality of the 14 items (indicators). All exploratory factor analyses were initially performed using the principal axis factoring method and varimax rotation with the Kaiser Normalization. The Bartlett test of sphericity was significant (Chi-square = 3359.318, $p < 0.000$) (Bartlett, 1954). The Kaiser-Meyer-Olkin (KMO) measure of sampling adequacy was computed to quantify the degree of intercorrelations among the variables, and the results indicate an index of 0.839. Since the KMO measure of sampling adequacy was larger than 0.60, it showed that the use of factor analysis was appropriate (Kaiser, 1970; 1974).

Table 1 Exploratory Factor Analysis ($N = 400$)

Scale items	Factor loadings	Eigenvalues	% of variance explained
<i>Perceived benefits of SEZ (PB)</i>		7.64	39.23
1. Employment opportunities	0.88		
2. Opportunities for local business	0.79		
3. More investment	0.77		
<i>Perceived costs of SEZ (PC)</i>		5.49	20.04
1. Environmental pollutions	0.86		
2. Landloss	0.77		
3. Crime rate	0.70		
<i>Perceived government performance (GP)</i>		3.26	7.67
1. Local government effectively uses SEZ to improve the local economy	0.87		
2. Local government is responsive to the needs of the residents in SEZ project	0.77		
<i>Perceived political power (PP)</i>		2.80	6.77
1. Personal influence in planning and	0.93		

development of SEZ			
2. Opportunities to participate in planning and development of SEZ	0.88		
<i>Trust in government (TG)</i>		1.69	5.74
1. Trust in decisions made by local government	0.94		
2. Trust in local government officials	0.82		
<i>SEZ Project Support (PS)</i>		1.59	3.99
1. I support Tak SEZ	0.98		
2. I support the current local government in Tak SEZ management	0.96		

For scale development, a cut-off factor loading of 0.30 and an eigenvalue greater than or equal to 1 were used (Pallant, 2007). The principal component analysis (with varimax rotation) of the 14 items resulted in a six-factor solution that explained 83.46% of the total variation (explaining 39.23%, 20.04%, 7.67%, 6.77%, 5.74% and 3.99% of the variance respectively). Each of the items loaded strongly on one of the six factors. An inspection of the screeplot revealed a clear break after the sixth component. As a result, using Catell's (1996) scree test, it was decided to retain six components for further investigation as the six-component solution explained a total of 83.46% of the variance.

Cronbach's internal consistency reliability is the most widely used reliability test methods in designing a reliable instrument. Nunnally and Bernstein (1994) recommended that a score of 0.7 or higher is desired reliability while 0.6 or higher is an acceptable reliability coefficient for research at the early stage of the scale development. Cronbach's alpha coefficients for the six factors ranged from 0.58 (lowest) to 0.81 (highest) with a total scale reliability of 0.86. This indicates that the variables exhibited a strong correlation with their factor grouping and thus were internally consistent. Table 1 illustrates the items, factor loadings, and % of variance explained for each item in the model.

FINDINGS AND DISCUSSION

Four hundred responses from residents of Mae Pa, Mae Ku, Mae Kasa sub-districts in Mae Sot district, Tak province were obtained from the survey team. The data were first analyzed to present a description of the participants in the study and provide a description, computed as averages, for each statement on the survey instrument. The data obtained were then subjected to a confirmatory factor analysis (CFA) and the model was tested using SEM.

The initial data analysis finds the majority of the participants were aged 40–60 years of age, comprising approximately half of the total respondents. There was a roughly even distribution of men and women with 55% for men and 45% for women, respectively. Most of the respondents were married (66.8%), while 33.3% were still single. The average income of the household surveyed reported at from less than 5,000 Baht a month (46.5%) to 5,001-10,000 Baht a month (37.5%). With regard to educational background, 43% of the respondents were high school diploma holders, while 38% attained elementary education level.

Confirmatory Factor Analysis

SEM involves the testing of a confirmatory measurement model and a structural equation model. Before testing the overall measurement model, the unidimensionality of each construct was assessed by CFA using AMOS package (Version 23) with the maximum likelihood estimation method. The fit of the indicators to the construct and construct reliability and validity were tested. Generally, the item having a coefficient below 0.3 is unacceptable, and thus should be deleted from the further analysis (Joreskog, 1993). However, none of the exogenous variables and the endogenous variable was deleted. Thus, as shown in Table 1, 14 indicators of the latent constructs for Ta residents' perceived benefits, costs, government performance, political power, trust in government, and SEZ project support were identified.

Table 2 Goodness-of-Fit Measures for the Measurement and Structural Model ($N=400$)

Absolute Fit Measures		Incremental Fit Measures			Parsimonious Fit Measures				
χ^2	GFI	RMSEA	AGFI	NFI	TLI	PNFI	CFI	IFI	RFI
(103)	0.95	0.040	0.93	0.96	0.98	0.73	0.98	0.98	0.95
169.55									
$p = 0.000$									

Measurement and Structural Equation Model

The resulting measurement model (Table 2) with three constructs and 14 indicators was derived from the confirmatory factor analysis (CFA). Three types of overall model fit measures were utilized in this study: absolute fit measures, incremental fit measures, and parsimonious fit measures. An absolute fit index directly assesses how well a priori model reproduces the sample data. On the other hand, an incremental fit index measures the proportionate in fit by comparing a target model with a more restricted, nested baseline model (Hu and Bentler, 1995). The values for GFI, CFI, NFI, TLI, and IFI range from 0 to 1, with values greater than 0.90 indicating a good model fit (Hair, Black, Babin, and Anderson, 2010). The value of RMSEA should be less than 0.06 for a model to have a good fit (Bagozzi and Yi, 2012), however, the value less than 0.08 is acceptable (Browne and Cudeck, 1993). As Table 3 shows, the overall measurement model exhibits a good level of fit on all three types of model fits: $\chi^2(103) = 169.55$, $p = 0.000$, goodness-of-fit index (GFI) = 0.95, root mean-square error of approximation (RMSEA) = 0.040, adjusted goodness-of-fit (AGFI) = 0.93, Normed fit index (NFI) = 0.94, non-normed fit index (NNFI) or Tucker Lewis index (TLI) = 0.98, parsimonious normed fit index (PNFI) = 0.73, comparative fit index (CFI) = 0.98, incremental fit index (IFI) = 0.98, and relative fit index (RFI) = 0.95. In other words, the result indicated that the model was a good fit to the data.

Table 3 Confirmatory Factor Model ($N=400$)

Construct and Indicators	Standardized loadings	Composite reliability	AVE
<i>Perceived benefits of SEZ (PB)</i>		0.85	0.65
1. Employment opportunities	0.74		
2. Opportunities for local business	0.85		
3. More investment	0.84		
<i>Perceived costs of SEZ (PC)</i>		0.87	0.69

1. Environmental pollutions	0.86		
2. Traffic problems	0.86		
3. Crime rate	0.77		
<i>Perceived government performance (GP)</i>		0.81	0.69
1. Local government effectively uses SEZ to improve the local economy	0.78		
2. Local government is responsive to the needs of the residents in SEZ project	0.88		
<i>Perceived political power (PP)</i>		0.77	0.63
1. Personal influence in planning and development of SEZ	0.71		
2. Opportunities to participate in planning and development of SEZ	0.88		
<i>Trust in government (TG)</i>		0.74	0.59
1. Trust in decisions made by local government	0.77		
2. Trust in local government officials	0.77		
<i>SEZ Project Support (PS)</i>		0.87	0.78
1. I support Tak SEZ	0.87		
2. I support the current local government in Tak SEZ management	0.90		

The measurement model was further evaluated for its reliability and validity. Reliability of measurement models should also be assessed by the composite reliability and average variance extracted (AVE) of each construct. Values of composite reliability and AVE should be 0.70 or greater and 0.50 or greater, respectively. In addition, an indicator is considered to be reliable if its loading score is at least 0.50 or above (Bagozzi and Yi, 2012). As indicated in Table 3, the composite reliability and AVE scores for each construct were above the recommended threshold of 0.70 and 0.50 respectively. Also, the loading scores of each indicator were well beyond the recommended value of 0.50. These results suggested that the measurement model was reliable.

After assessing the overall model, each of the constructs is evaluated separately by examining the completely standardized loading, error variance, the construct reliability, and variance extracted as shown in Table 3. The *t*-value associated with each of the completely standardized loading exceeds the critical value (2.58) at $p < 0.0$ significance level and the construct reliability of all six constructs (0.85, 0.87, 0.81, 0.77, 0.74, and 0.87) exceeds the recommended level of 0.70. After assessing the structural model, the results showed that both the structural and the measurement models are identified. Hence, the entire model is identified.

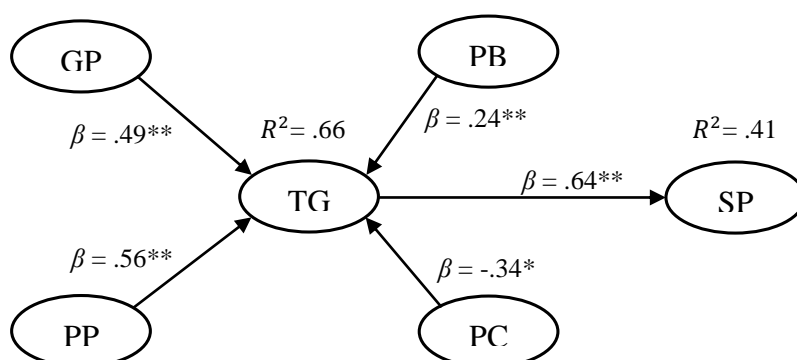
Results of Hypotheses Testing

This study tested a model that predicted residents' perceived benefits, costs, government performance, political power for SEZ project development with trust in government and political support. H1 that proposed a direct positive relationship between the perceived benefits of Tak SEZ project and residents' trust in government actors and H2 that proposed a direct negative relationship between the perceived costs of SEZ project and residents' trust in government actors were both supported ($\beta = .24, t = 2.53$; $\beta = -.34, t = -2.56$). H3 that postulated a direct positive relationship between residents' perceptions of the performance of government actors and their trust in government actors was also supported ($\beta = .49, t = 3.79$). Moreover,

H4 that proposed a direct positive relationship between residents’ perceptions of their level of political power and their trust in government actors was supported ($\beta = .56, t = 5.49$). These results consistent with the institutional theory of political trust (ITPT) which suggested that residents who perceived that they had a strong influence in decision-making were more likely to trust the government.

Moreover, the results provided support for H5 that proposed a direct positive relationship between residents’ trust in government and their support for SEZ project ($\beta = .64, t = 10.87$). This finding is consistent with the study of Nunkoo and Smith (2013). The results also suggest that Tak residents who trust local government are convinced that officials will act in the interests of the community, which prompt them to support and will select the same candidate again when election come. Therefore, from a theoretical perspective, these results provide support for SET and ITPT as it suggested that the model explained 66% of the variance in trust in government and 41% in political support in the specific context of transportation infrastructure development.

The direct positive relationship between residents’ perceived benefits and trust in government indicates that local residents believed that SEZ project will create employment opportunities, generates economic benefits to local people and business, and attracted more investment in their community. On the contrary, the direct negative relationship between residents’ perceived costs and trust in government indicates that local residents believed that SEZ project would create environmental pollutions, landloss, and higher crime rate. On the other hand, a direct positive relationship between residents’ perceptions of the performance of government actors suggests that local residents believed that government effectively uses SEZ to improve the local economy and very responsive to the needs of the residents. Furthermore, the direct positive relationship between residents’ perceptions of their level of political power and their trust in government actors suggests that the local residents believed that they have personal influence and opportunities to participate in the planning and development of SEZ. Lastly, the direct positive relationship between residents’ trust in government and their support for SEZ project indicates that the local residents would support the current government and willing to support in the future as long as the government have their trust.



Fit indices: $\chi^2(103) = 169.55, p = 0.000, GFI = 0.95, RMSEA = 0.040, AGFI = 0.93, NFI = 0.96, NNFI$ or $TLI = 0.98, PNFI = 0.73, CFI = 0.98, IFI = 0.98, RFI = 0.95$

Notes:

χ^2 = Chi-square; GFI = goodness-of-fit index, RMSEA = root mean-square error of approximation, AGFI = adjusted goodness-of-fit, NFI = Normed fit index, TLI = Tucker Lewis index, parsimonious normed fit index, CFI = comparative fit index, IFI = incremental fit index, RFI = relative fit index

* $p < .01$; ** $p < .001$

Figure 2 The Tested Structural Equation Model with β Coefficients and R^2 Values.

CONCLUSION AND RECOMMENDATIONS

This study tested residents' perceived impacts and support model based on two different theories: SET and ITPT. All of the study's findings reinforce the results of previous research. The study also provides new theoretical perspectives on the determinants of residents' perceived benefits, costs, government performance, and political power in Tak SEZ, with trust in government actors and SEZ policy support. The study found SET and ITPT to be highly relevant because the level of perceived benefits and perceived costs were found to be significant predictors of trust in government actors. However, at the moment, this is the early stage of Tak SEZ project. Hence, it is possible that the local residents have yet to realize the true benefits and costs of Tak SEZ. To sum up, this research demonstrates that the perception of benefits, costs, government performance, and political power were important determinants of trust in government and political support within the development context.

The study clearly shows that residents' trust in government actors and their level of political support are complex issues that are determined by several factors. A single theory is unlikely to provide a comprehensive understanding of residents' trust and political support under Tak SEZ project context. Based on the results of this research, future researchers are urged to avoid using a single theoretical perspective when investigating public trust and support for local development and planning. Adopting more than one theoretical perspective in such studies is likely to provide a broader and deeper analysis of findings, prevent premature acceptance of plausible explanations, increase confidence in developing concepts or constructs in theory development, and reduce potential biases in and improve the credibility of research findings.

While the findings suggest trust is a key ingredient of a democratic and sustainable development, more rigorous testing of the model is required with different samples. In addition, researchers should further identify and examine other factors that may influence local residents trust in government and political support under SEZ project context, such as government competency, openness and transparency, bureaucratic politics, and political ideology. Integration of these constructs into the model might help researchers and practitioners further grasp the factors that influence local residents support for Special Economic Zone projects.

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MILITARY INTEREST GROUPS IN THE MAE SOT-MYAWADDY BORDER ECONOMYSIRINYA SIRIYANUN¹**ABSTRACT**

For most of its history, the Thai-Burmese border region of Mae Sot and Myawaddy has been peripheral to the concerns of the Thai and Burmese authorities. However, growing economic connectivity in mainland Southeast Asia promises to transform it into a regional economic crossroads, and it currently has the highest GDP of any region on the Thai-Burmese border. Rather than increasing the control of the central governments of Thailand and Burma, these economic changes have strengthened the Mae Sot-Myawaddy region's character as a border economy. A heavy and increasing military presence has led Thai and Burmese soldiers to join local non-state actors as one of the region's major interest groups, and has led to a proliferation of military-owned businesses and enterprises. The advent of a new period of military governance in Thailand indicates that the power of the military interest group will only strengthen. This raises risks of conflicts of interest with non-military interest groups and indicates that creating an equitable plan to develop the region should be made a high priority.

Key Words: Thailand, Burma, borders, border economy, military rule

FROM PERIPHERY TO CROSSROADS: MAE SOT AS A BORDER ECONOMY

As the Thai and Burmese governments consolidated control over their border regions in the twentieth century, the Mae Sot-Myawaddy region transformed from a periphery to a critical border crossing. From World War 2 until the 1980s, the Thai government was pre-occupied with events on its eastern frontier, and Burmese government was unable to control the Karen highlands. This led to the creation of a porous border and a peripheral economy in which local interest groups directed the economy to a greater degree than the central governments of Burma and Thailand. This border economy has survived the consolidation of central control over the Mae Sot-Myawaddy region.

In the decades following World War 2, the Mae Sot region, and the Burmese border in general, was a relatively minor concern of the Thai government. With the emergence of a powerful communist movement and the spread of war in Vietnam, Cambodia, and Laos, the government's focus was instead on its eastern frontier (Lang, 2002, p. 141-2). Burma's neutralist government and the largely right-wing Karen insurgent movement meant that the Thai government did not feel ideologically threatened by events on its western frontier. In addition, the Thai government lacked the ability to control its entire border with Burma, and, indeed, was unable to effectively govern much of its northern highlands until the 1970s (Race, 1974). Limited government resources and the presence of a major Cold War battlefield on the eastern frontier thus combined to ensure a limited government presence on Thailand's western frontier.

While the Burmese government took a far greater strategic interest in its frontier with Thailand, it had even fewer resources, and even greater obstacles preventing control of the region. From the first year of Burmese independence in 1948, multiple insurgencies plagued the Burmese government, confining government control to the lowlands. The Myawaddy region lies in Karen State, which came to be the longest-lasting stronghold of the Karen

¹ Suan Sunandha Rajabhat University, College of Innovation and Management, Department of Political Science Thailand. E-mail - siriyanunt@hotmail.com

National Union (KNU), one of the first ethnic separatist groups to rebel against the Burmese government. Under the leadership of the Karen general Bo Mya, the KNU established a de facto independent state that only began to lose ground to the Burmese government in the 1980s (Smith, 1999). The Mae Sot-Myawaddy region prior to the 1980s was thus a peripheral region, in which there was little government control. The primary economic movers on the Burmese side of the border were the Karen, and the KNU in particular. On the Thai side, local entrepreneurs and government officials served as the main economic actors.

Two major processes led to the consolidation of government control over the Mae Sot-Myawaddy region. First, increasing gains by the Burmese army in Karen State during the 1980s led to a growing Burmese military presence near the Thai border and precipitated a Karen refugee crisis that was too large for either the Thai government or the international community to ignore (Lang, 2002). Second, the end of the war in Indochina in the late 1980s and early 1990s largely resolved the humanitarian crisis on Thailand's eastern border, thus allowing the Thai government to pay more attention to consolidating control of its western border. While the Karen conflict did not come to an end, the Burmese government won a decisive victory when the government-backed Democratic Karen Buddhist Army (DKBA) captured the KNU capital of Manerplaw in 1995 (Fong, 2008).

In the late 1990s and 2000s, the Mae Sot-Myawaddy region emerged as a major economic crossroads. In 1992, the border crossing was selected as a point on Asia Highway 1. In 1998, it was earmarked as the westernmost border crossing on ASEAN's East-West Economic Corridor, linking Mandalay in Burma with Danang in Vietnam. In the 2000s, the Thai government selected Mae Sot for the development of a Special Economic Zone (SEZ), a plan which accelerated under the governments of Yingluck Shinawatra and Prayuth Chan-ocha, and reached its completion in 2016. The Mae Sot-Myawaddy border crossing is currently the most active border crossing on the Thai-Burmese border, and the third most active border crossing in Thailand, accounting for 15% of all of Thailand's cross-border trade in 2013 (Royal Thai Government). The Mae Sot-Myawaddy region is no longer peripheral.

However, the economy of the Mae Sot-Myawaddy region remains a border economy. The border is porous and loosely controlled, with frequent unauthorized movement back and forth. The Thai government, rather than controlling the border directly, focuses much of its effort on controlling the highways from the border region to the Thai heartland. This necessitates a large law enforcement and military presence in the border region itself, with numerous army checkpoints between the border and the major highways, and police checkpoints along the highways. On the Burmese side, government control remains tenuous and subject to the whims of ethnic militias, which still retain considerable power.

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MILITARY INTEREST GROUPS OF THE BORDER REGION

Military interest groups in the Mae Sot-Myawaddy border region can be divided into three general categories. These are, respectively, the Thai military interest group, the Burmese military interest group, and the Karen military interest group. Each of these three groups consists of soldiers who have spent a considerable amount of time in the border region and have developed a personal economic stake in cross-border trade and conflict.

Karen soldiers, by their very nature, are the military interest group most heavily entrenched in the border economy. These are participants in an uprising which has historically had its base of operations in this particular border region, and many of them are natives to the region as well. The Karen armed groups have a hand in both legitimate and illegitimate cross-border trade. In parts of the border region, the KNU offers tours of “Karenland,” bringing tourists across the Moei river to visit attractions in KNU-controlled territory. In addition, the KNU and other Karen armed groups control stretches of AH1 between Myawaddy and Yangon, and charge tolls on traffic from the border to the Burmese heartland (Weng, 2010). They are thus critical to the continual functioning of the border economy.

Thai soldiers stationed to the Mae Sot-Myawaddy border region come from many different parts of Thailand, and have their posts rotated frequently. As such, individual soldiers are unable to develop strong personal interests in the affairs of the border. However, the Thai military as a whole has a long-established presence in the region, and constitutes one of the border economy's major interest groups. Economic activities of the Thai army include turning a blind eye to cross-border activity of the Karen armed groups. Many members of the Karen leadership have residences in Thailand. Others send their children across the border daily in order to attend school in Thailand. This is all, by necessity, tacitly facilitated by the Thai authorities. In addition, many soldiers in the Thai army have opened businesses or purchased land in the Mae Sot-Myawaddy region, and maintain an economic interest in the region even after being transferred to another part of the country.

The third major military interest group is that of the Burmese army. This is the most recent of the military interest groups to establish a presence in the Mae Sot-Myawaddy border region. The Burmese military presence in the region began in the 1960s with the establishment of the “four cuts” counter-insurgency program, grew throughout the 1970s, and became dominant in the 1980s (BERG, 1998). The fall of Manerplaw in 1995 established the Burmese national army and their allies as the pre-eminent military power on the Burmese side of the border. By this point, the informal border economy was already well-established.

MILITARY GOVERNANCE AND MILITARY INTEREST GROUPS

Military governance is nothing new on the Thai-Burmese border, as both the Thai and Burmese governments have been run by their respective militaries for much of the last one hundred years. This has, quite predictably, strengthened the militaries in both countries, and in turn strengthened the military interest groups in their border regions. In recent years, the Thai army has been on the rise, while the Burmese army has retained much of its power despite co-existing with a new civilian government. This means that we are entering the latest of many periods of military governance in the border region.

The growth of Burmese military interests in the border region dates back to the start of Burmese military rule in 1962. In this period, Burma attempted to become a socialist state, with the military leaders controlling both state security and nationalizing industries as state-operated enterprises. Both Burmese and Thai military leaders in this period had a need to do business in resource-rich areas of the border which were controlled by ethnic minority militias, many of whom were hostile to the government. As such, the military leaders would form relationships with businessmen living in the border region, who would in turn serve as middle-men between the ethnic minorities and the military. Through arrangements such as this, Thai and Burmese authorities were able to obtain resources such as timber and minerals from areas which would otherwise have been inaccessible.

Military factions turn into military interest groups in times of peace. This means that soldiers in the area, regardless of affiliation, have two occupations. They defend themselves in time of war, and in peace they are tasked with providing economically for themselves, their families, and those under their protection. This means that military organizations, as well as

individual soldiers with long-standing ties to the region, need to form businesses and build economic assets in order to survive. The presence of ethnic insurgents exacerbates all of this, with ethnic insurgency being one of the major barriers to international cooperation and domestic unity in Southeast Asia. The separatist ideology of ethnic insurgents requires them to be reject cooperation with the state. At the same time, the need to survive forces pragmatic participation in domestic economies (Thitiwut, 2007).

In addition to all of this, the presence of militaristic ruling cultures in both Thailand and Burma means that even in the national heartlands, there is a strong connection between business interests and the military. As such, the Thai and Burmese militaries are more sensitive to economic needs than the military leadership of many other countries. This proves a deterrent to direct international conflict, and means that both national governments are motivated to quickly end conflict with ethnic minority militias such as the KNU.

CONCLUSION

The Mae Sot-Myawaddy border region is a rare example of an area in which all of the most influential interest groups are military in nature, and in which there are numerous influential interest groups. This is a result of a combination of domestic military rule in Thailand and Burma. It is exacerbated by a history of ethnic insurgency in the border region (Smith, 2013), and the presence of numerous armed insurgent groups in the vicinity of Mae Sot and Myawaddy. Even most of the ostensibly non-military interest groups in the area have connections with the Thai and Burmese militaries or the Karen insurgents.

While this would conventionally be considered cause for alarm, it should instead be seen as a feature of the political landscape of the Thai-Burmese border. It has potential benefits, as the alignment of military and business interests can help avoid lasting conflict. However, it has potential drawbacks, as it threatens to keep the region militarized for an indefinite period of time. Regardless, it is a factor that the international community and the national governments of Thailand and Burma must keep in mind when planning for the region's development.

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THE LEGAL ISSUES RELATING TO THE ADMISSIBILITY OF THE FORENSIC SCIENCES EXPERT WITNESS IN CRIMINAL COURT OF THAILANDDR. SUNTAREE BUCHITCHON¹**ABSTRACT**

In the light of advance technologies, forensic sciences have played a great role in justice system of Thailand. However, there are significant limitations in the use of forensic evidence in the criminal court of Thailand relating to the expertise of the justice team and the testimony of expert witnesses. The admissibility and reliability of the forensic evidence depend greatly on scientific expert who then become expert witness before the court of justice. It is proposed in this article for a reform of the law in Thailand to reflect the nature of forensic science. Taken into account the differences in social and legal status, the article examines the US Federal Rules of Law, the UK legislation, as well as Germany and France to propose a model law to regulate the testimony of the forensic expert in the criminal court of Thailand. The result shows that Thai legislation needs reform in three prospects. First, there should be general standards that the trial court must use to assess the reliability and helpfulness of the expert testimony. Second, there should be a general format of report which the expert has to provide before testifying. Third, the forensic expert qualifications as well as the directories of court expert witness should be frequently updated to reflect the advance of sciences.

Keywords: Forensic science, forensic expert witness, criminal court.

INTRODUCTION

Over the recent years, there has been a considerable amount of cases presented in the court of justice that related to the use of forensic evidences and forensic expert witnesses (Roberts, 2013). Still, in Thailand, there are significant limitations in the use of forensic evidence in the criminal court. Generally, in identifying limitations regarding the use of forensic science, much of the research has focused on the lack of nationwide laboratory standards, and overburdened laboratories (Soni, 2015). However, the weighting of expert witness testimony should also be highlighted. The admissibility and reliability of the forensic evidence in the court of justice depend greatly on scientific experts who then become expert witnesses. As the nature of scientific knowledge is endlessly advancing through times, certain application or hypothesis could have been modified or discarded. It is necessary to for experts witness to update their knowledge and scientific applications. As well, judges and law persons normally do not have preliminary understandings of advanced science in particular field. The interpretation and understandings of forensic science in the court of justice would depend on the legislation regulating the hearing and the testimony of forensic expert witnesses. This article identifies the problems associated with the admissibility and the understanding of forensic expert testimony and evidence in the criminal court of Thailand. Furthermore, this article recommends for a law reform to address the identified problems.

¹ Faculty of Integrated Social Science, Khon Kaen University Nong Khai Campus, Thailand. E-mail :-suntareebu@kku.ac.th

METHODS

This research uses the normative juridical research method. The research emphasizes secondary legal materials, including articles, books, laws and regulations that relate to the hearing of forensic expert witness. Furthermore, the research uses primary data, collected through in-depth interviews and focus group discussion. The key persons interviewed for this research are forensic scientists and judges. All data was analyzed based on its content. Content analysis using a qualitative approach is being used to address the issues related to the use of forensic expert witness and to suggest a reform of the law regulating forensic expert witness testimony in Thailand.

DISCUSSION

It has long been accepted that specialized areas of knowledge such as forensic science can be explained to the court by experts in the field. Therefore, it is necessary that expert witnesses having relevant degree of expertise are competent to testify in order to guide and to assist the court in finding the fact in the disputed issues. Theoretically, forensic expert witnesses are expected to provide opinions and the fact on the examination of the evidences in order to assist the judge to properly assess the evidence to which it relates (Holobinko, 2012). However, in the cases where the field of expertise is particularly complex and requires a preliminary understanding of advanced science in particular field, it can be expected that the judge may simply rely on the expert's knowledge and opinion when considering the dispute factual issues. In the case of complex science, the more persuasive the testimony is, the more likelihood that the judge will defer to the expert without forming an opinion of its own (Sanders, 2003). The problem is particularly highlighted when there is no available expert in the same field or when the opposing party fails to provide an effective criticism on the expert witness in question. Furthermore, a non-specialist in science such as judges and lawyers may have insufficient understandings of the limitations of scientific evidence and examination (The law commission: Consultation paper no 190, 2009). In addition, despite the amendment of the Criminal Procedure Code of Thailand, the tradition of a passive fact-finder role of the court of justice has stopped the judges to appoint the court expert witness to examine and give relevant opinion on the evidence. They may assume that just because the testimony is presented based on forensic science, thus guarantee to be true and reliable. This interpretation is too far implication of the science.

Legislative Overview

The administrative system of the criminal cases in Thailand is regulated by the Criminal Procedure Code of Thailand B.E.2477 (1934) as amended. According to section 244/1 of the Criminal Procedure Code, the court is able to order the examination of physical evidence by a forensic scientist where appropriate by virtue of the court discretion or the request of the litigants. The testimony of the expert witness is theoretically weighting against other evidences and witnesses in finding factual issues. It is entirely the judge discretion in forming the decision with no duty to explain why the weight is given to some evidences more than the others.

Professor Kritzer (2009) stated that legal and scientific conventions are being differs. For the scientific convention, four components are involved including, the willingness to search for general and theoretical knowledge, the acceptance in employing the methodologies and techniques that was reviewed and accepted by specific field, the testing of hypothesis and waiting for persuasive evidence before making decision, and a commitment to share knowledge and data with intellectual honesty (Sanders, 2009). In contrast, legal conventions focus on

experience and specific events rather than systematic and general knowledge (Roberts, 2013). Legal profession looks for the relation between cause and effect in particular event while science prefers to look for general knowledge that can be applied in all events of the same manner. Furthermore, legal convention prefers certainty not 'wait and see' attitude. These differences create important effects in the court of trial when litigants and judges expect a specific answer while the expert witness only answers the same question in the form of general knowledge. Then, the answer may be taken as far more specific and real than the nature of such science can give, or in adverse, such answer might be regarded as being too general to be considered for the case (Shuman, et al., 1994).

The issues surrounding the admissibility and reliability of expert witness testimony in Thailand can be explained as follows

Court Role

Unlike other civil law countries, the court of justice in Thailand familiar with the tradition to rely on the adversarial system. Judges generally take passive role at the trial or hearing. Parties have control of investigations, the presentation of evidence and the selection of witnesses. The judges rarely appoint court expert witness to give opinion but rather rely on the parties to present the evidences and witnesses. However, where the case involved with scientific evidence, the court might not possess adequate knowledge in order to assess the accountability and reliability of the testimony of the expert. The discretion of the judges to order further examination or to call for forensic scientific expert witness would assist in finding the factual issue rather than depending only on the opposing parties to present the evidence (Roberts, 2013).

In the judicial system of Germany, the judge has the role to determine the truth by collecting and evaluating the evidence as well as to determine the evidence suggested by the parties. An expert witness in Germany has a role to assist the court to resolve the issues on which scientific information is required (Jurs, 2012). To put in other words, expert witness does not owe any duty to the litigants which can be assumed neutrality. Still, a party can challenge the expert for the lack of neutrality, as well as request the court to appoint a new expert or offer a private expert to supplement the record and provide an additional opinion (Jurs, 2012).

In addition, the U.S. court has taken a step toward reducing the effects of the adversarial selection of witnesses. The Federal Rules of Evidence, the *Fyre* rule and the *Daubert* revolution have pushed courts in the U.S. to take more active, inquisitorial role in assessing the quality of the experts (Fradella et al., 2004). The law imposes that expert witness can testify in the court trial only when such expert evidence passed certain tests of relevance and reliability (Holobinko, 2012). However, the law of Thailand does not require such tests. As a result, there is the possibility of junk science to be presented in the court room, or worse, the only science that is presented and relied on.

Expert Witness

Expert witness in Thailand refers to expert in any fields of knowledge including science and non-science, by research and education qualification and by technical experience. There are no separate list of experts by fields of expertise. In addition, the requirement for forensic scientists to become expert witness in the criminal court in Thailand does not include the professional standards of scientific fields. According to section 6 of the Provision of the President of the Supreme Court of Thailand relating to Court Expert, any scientist who has experience in the field for more than 5 years can be appointed as expert witness. Furthermore, the challenge on the ground of neutrality and qualification can only be made on the court appointed experts not the parties' appointed experts.

In contrast, the law of Germany and France requires specific qualification for expert witnesses in each field. The directories of experts are maintained by regulatory agencies which consist of professional list and trade or industry list (Jurs, 2012). When the need for expert arises, the selection of well-qualified expert would be readily available.

Furthermore, as stated that the nature of scientific knowledge is endlessly advancing through times, certain application or hypothesis could have been modified or discarded. It is necessary to for experts witness to update their knowledge and scientific applications. As well, the directory of the expert should also be regularly updated to reflect up-to-date qualifications in the science fields.

Expert Testimony and Report

The law of Thailand, according to section 243 of the Criminal Procedure Code, requires that expert witness has to give verbal testimony in the court trial. However, a written report of examination on the evidence is not mandatory required by law. With only verbal testimony, the judges would have to use their own discretions in determining the creditability and validity of the science used for examination. However, this requirement would ordinary be out of expertise of judges and law persons. Furthermore, with the adversarial system, opposing parties would generally discredit the creditability and accountability of the expert witnesses. When combining with the fact that there is no general standard for the acceptance and weighting of forensic expert testimony, reasonable judges would have difficulties in concluding the factual issues presented in the court. The disclosure of examination report would allow judges and all parties to screen the qualifications of the expert witness, to monitor relevant experience and reputation, as well as to validate scientific techniques that are being used in the trial.

Suggestion for Reform

Analyzing from secondary legal materials and in-depth interviews of key persons from forensic science and legal fields, this research suggests for a reform of the law regulating forensic expert witness testimony in Thailand.

Table 1: Legal issues relating to the admissibility of forensic expert witness and recommendations for reform

No.	Legal Issues	Recommendation for reform
1	Court role	<ul style="list-style-type: none"> • Encourage judges to appoint the court expert witness where necessary. • Endorse general standards that the trial court must use to assess the reliability and helpfulness of the expert testimony.
2	Expert witness	<ul style="list-style-type: none"> • Keeping the directory of forensic expert witness for the criminal court of Thailand. • The qualification of the expert witness must reflect the professional standards in each field of science. • Frequently updated the forensic expert qualifications as well as the directories of court expert witnesses to reflect the advance of sciences as well as to guarantee the non-bias testimony
3	Expert testimony and report	<ul style="list-style-type: none"> • Endorse general standards that the trial court must use to assess the reliability and helpfulness of the expert testimony. • Required the expert witness to give report of opinion and examination in accordance with the uniformed court format.

CONCLUSION

Theoretically, forensic expert witnesses are expected to provide opinions and the fact on the examination of the evidences in order to assist the judge to properly assess the evidence to which it relates. However, where the case involved with scientific evidence, the court might not possess adequate knowledge to assess the accountability and reliability of the testimony of the expert. Furthermore, with the adversarial system, opposing parties would generally discredit the creditability and accountability of the expert witness. When combining with the fact that there is no general standard for the acceptance and weighting of forensic expert testimony, reasonable judges would have difficulties in concluding the factual issues presented in the court.

It is suggested in this article that Thai legislation needs reform in three prospects. Firstly, there should be a statutory list of guidelines to assist the court in determining the reliability and creditability of expert evidence in criminal proceedings. The expert evidence should only be admitted if the court is satisfied that the evidence is passing the test provided in the list of guidelines as being sufficiently reliable. This guideline would assist judges, scientists and other key players in the criminal justice system to determine whether a theory or technique is sufficiently robust and evidence-based to merit reliability and trustworthiness in court.

Secondly, there should be a general format of report which the expert has to provide before testifying. It is encouraged to pass the law for the disclosure of examination report which would allow all parties to screen the qualifications of the expert witness, including relevant experience and reputation, in advance of the trial.

Thirdly, the forensic expert qualifications as well as the directories of court expert witnesses should be frequently updated to reflect the advance of sciences. Professional

standard in each field of sciences should be taken into account in imposing qualifications for registered expert witness.

Furthermore, it is recommended to develop the training course for judges and lawyers to equip them with the understanding of necessary forensic information in assessing the viability of a scientific hypothesis and the validity of sciences that are being used to examine the evidence.

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TO WHAT EXTENT DOES THE LAW NEED TO DO MORE TO ADDRESS THE GENDERED DISCRIMINATION IN EMPLOYEE DRESS CODES?CHARLOTTE WERNER¹**ABSTRACT**

This paper advocates reform to address discriminatory dress attitudes, focusing on the adverse effect on women. It agrees with the conclusions of the High Heels and Workplace Dress Codes Inquiry – compensation should be awarded in the interim, with serious reconsideration of the Equality Act 2010 (EA) in Parliamentary debates in March 2017. Nevertheless, the high threshold tools for reform, through notions such as “direct discrimination”, fail to tackle the nuances of the problem; not least that “sex sells” (Chapter Three), and debates surround “what woman is” (Chapter Four). An element of scepticism is needed for a law that has at least perpetuated, and at most created, rigid gender binaries seen as relevant when establishing dress code policies. A holistic socio-legal analysis of why gender distinctions are relevant is more appropriate than law alone, in providing sustainable reform in this area.

Keywords: Gender equality, Dress Codes, Discrimination, High Heels Inquiry

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CHAPTER ONE: “UNDERGARMENTS”**Thesis**

The *de jure* “glass ceiling” operating through unequal treatment of women in dress discrimination is symptomatic of outmoded patriarchal attitudes, restricts true equality and operates as a significant anomaly to otherwise progressive EA motives. The Parliamentary Inquiry has significant strength in taking seriously the unacceptable practices, and overdue legal reform is now suggested to be on the horizon. However, legal tools cannot operate in a vacuum and the deeply-entrenched views underpinning society must also change. Blanket legal reform is made more difficult by two problems: i) that objectifying women through their sex has tangible commercial benefits (a “sex sells” argument) and ii) that society’s discrepancies in gender identity are ill-addressed (a “femininities” argument). To be effective, reform should not be used politically to quieten feminist thinkers, if these two strands remain operative considerations for employers. Reformists must borrow socio-legal, psychological and philosophical thought to see law’s interaction with societal perceptions as the only way to achieve significant reform.

Aims

2016 was a significant year for dress - from the French “burkini” prohibition, to Theresa May’s “glass cliff” (Ryan et al., 2014) Ministership overshadowed in the media by her loud footwear. The instant case reached a particularly high profile - Nicola Thorp sent home from Pricewaterhouse Coopers for refusing to wear high heels. The media attention, online petition and subsequent Parliamentary inquiry brought this issue to the forefront of numerous other legal debates –defining discrimination/equality, individuality in law, perceptions of femininity, formal and substantive equality and the masculine bias of law creation/enforcement. Thorp’s

¹ Final Year Undergraduate, LLB Law, University of Exeter, United Kingdom. E-mail:- charewerner@gmail.com

plight caught my attention and I decided to locate the legality of “reasonable and conventional” standards of dress, before analysing its compatibility with wider societal views. In this objective, I will be one of the first to pursue academic, extended research related to the Inquiry.

This Paper attempts to raise awareness of an issue that may only offend a number of feminist theorists and fall on deaf ears in our particular socio-political climate, still out of reach of the patriarchal system. Reflecting on these aims, the increased political interest in the issue has also led to conservative backlash forcing me to re-group and further justify the worth of the research. Tabloid-style rhetoric could not disguise some valid opposing arguments – freedom of contract, the dangers of paternalistic intervention in capitalist societies, that dress ranks low in a hierarchy of political problems facing a “Brexiting” Britain. This has prompted much of the “macro” outlook adopted throughout – the law must do more to address discrimination in dress because of its symbolic and thematic relevance.

During preparation, the conscious decision to focus on women’s discrimination has been made; acknowledging that racial, disability and age discrimination, their intersectionalities and the marginalisation of the transgender individual, probe linked and relevant questions but fall beyond the scope of the thesis set out here. It is hoped that others will ask whether legal reform is needed to overcome these problems.

Methodology

This essay combines a black-letter analysis of English and Welsh law, with socio-legal understandings and feminist theory to form a relevant, modern analysis rooted heavily in its 2016 context. The frequented legal position forms only the “undergarments” of the suggested importance of this thesis, and it has been necessary to directly apply the fast-moving discourse to abstract law through non-traditional sources; Thorp’s own website, the Twitter hashtag #highheelsinquiry, evidential podcasts, news sources and blogs.

CHAPTER TWO: LEGAL CRITIQUE – “A PWC V THORPE [2017]?”

In considering a “PwC v Thorp [2017]” should her dismissal be litigated, this section will apply and evaluate the four types of discrimination under the EA – direct (s.13), indirect (s.19), harassment (s.26) and victimisation (s.27).

Direct Discrimination

The nature of binary gendered dress codes is often alarmingly simple, “men wear X, women wear Y”. Thorp’s case is likely to fall under this heading of direct discrimination - discrimination “because of gender” – as the Code stated women must wear heels, with no corresponding requirement for men. However, this would likely be another frequented example of “demeaning” discriminatory women’s uniforms² that are not treated judicially as less favourable to an “actual or hypothetical” man (s.13 EA). If women’s polyester uniforms while men wore suits³ or women-only “little hats”⁴ did not lead to a legal remedy, why should high heels, which many see as conveying authority or power?

Furthermore, “women must wear nail varnish” rules returned the verdict of *de minimis*⁵ – the requirement that women alone paint their bodies to display a version of their gender identity being so insignificant as to destroy the likelihood of a claim, even though the elements of direct discrimination were made out (Zalesne, 2007, p. 2). This suggests that even if Thorp’s heels could be found to be more onerous than the men’s dress code and satisfied the test, it could be struck out by unsympathetic “judicial laissez-faire” (Levi, 2008, p. 5). Highly offensive to the

² *Burrett v West Birmingham Health Authority* [1994] IRLR 7.

³ *Cootes v John Lewis Plc* [2001] All ER (D) 395.

⁴ *Burrett v West Birmingham Health Authority* [1994] IRLR 7.

⁵ *Murphy and Davidson v Stakis Leisure Ltd ET* (1989) S/0534/89.

proposed significance of dress discrimination, obiter judicial statements to “restrict a culture of hypersensitivity” (*Richmond Pharmacology v Dhaliwal*, 2011) reflect a potential prevailing view explaining inaction and ambivalence from the Bench. Highlighted as out of touch with the progress of other sex discrimination claims (Levi, 2008, p. 3), dress law interpreted on “conventional sex differences”⁶ is seen to rebut the underlying rationale of the legislation to challenge discriminatory assumptions.⁷ Alarmingly, this has led to commonplace attempts to strengthen cases through supplementary considerations encompassing some of the worst discriminatory elements; psychiatric damage⁸, gender dysphoria⁹ or that the dress codes perpetuate stereotyped views of women as inferior or as sexual objects. The legal approach therefore remains one of a large margin of appreciation to employers¹⁰, with “accessories” to law needed for substantive legal benefit.

It could be argued that the judiciary, sitting themselves in archaic wigs and gowns (Robson, 2013, p. 48) remain immune to these problems. Judges often represent masculine viewpoints, if not being all male. They see their wives applying make-up, or apply it themselves, so struggle to empathise with those bringing claims (Levi, 2007, p. 20). Female judges put on high heels to gain status in the courtroom (ACAS, 2016, 38). The privileging of the “ornamental” woman (Crane, 2000, p. 16) through appearance codes is seen as sensible, competitive and not illegal. Dress codes instigating specific and different rules for women and men are commonplace, “conformity” with societal gender norms encouraged, and the professional projection of companies successfully used to justify¹¹ an apparently non-derogable obligation.¹² It is apparent that in this area the views that high heels should be a “choice not requirement” and an obligation to wear them “reeks of sexism” (Bates and Parkinson, 2016), remain unique to the abstract commentators lobbying reform. Conclusively, until this position is debated, the law would respect the innocence of PricewaterhouseCoopers in looking to “common practice” within the industry, and “professional appearances” without analysing whether this could be achieved in a less onerous way.

Lemes (2009) highlighted *obiter* that many women feel uncomfortable, objectified and prostituted when forced to wear heels. However, the College of Podiatry’s Inquiry responses highlight genuine health concerns from permanent back, posture, ankle and foot problems, through to pain tolerance averaging only around 40 minutes. These show that the aesthetic reason compelling heels is not taken lightly, and is engrained and normalised amongst many fashion choices that impede health. Opponents arguing the fragility of the symbolic argument would surely struggle to rebut proven medical harm caused by heels. Furthermore, in a “compensation culture”, we would question why high heels on shiny marble floors are not prohibited rather than mandated to avoid employer liability, following trends elsewhere.

Other Grounds

The peculiar situation is that many unsuccessful direct discrimination cases are squeezed into indirect discrimination; which provides for gender-neutral rules with the effect of differential treatment through a “policy, criterion or practice” (PCP). Albeit incorrect, use of indirect discrimination is more favourable to employers, as it rebuts *prima facie* illegality by allowing justification – business conventionality and perhaps even brand image akin to aesthetic labour (Chapter Three) become engaged. A genuine indirect gender claim could be the PCP of a

⁶ *Fuller v Mastercare Service and Distribution* [2001] All ER (D) 189

⁷ *Smith v Safeway plc* [1996] IRLR 4656 CA

⁸ *Lemes v Spring and Greene Ltd* (2009) ET 2201943/08.

⁹ *Kara v London Borough of Hackney* [1996] UKEAT 325_95_2802.

¹⁰ *Schmidt v Austicks Bookshop Ltd* [1978] ICR 85.

¹¹ *Kara v United Kingdom* (1999) 27 EHRR CD272.

¹² *Department for Work and Pensions v Thompson* [2004] IRLR 348.

blanket prohibition of earrings, which adversely impact women as they tend to have pierced ears more often (ACAS, 2016). Ultimately, however the majority of dress codes bypass this discussion as they have nothing to hide – the law allows gendered distinctions, so common practice is to have two dress codes. They are not caught out because they fall short of the “bolted on” tests for favourability of treatment that legal direct discrimination has developed to protect current practice (Wadham, 2012, p. 55). The utility of indirect discrimination lies beyond the scope of this paper in the religious parallel - in not allowing head coverings¹³ or jewellery,¹⁴ which adversely affect demonstration of faith (skewed towards women), perhaps reflecting unaddressed cultural insensitivities in the UK, or worse, using the shield of derogable obligations to discriminate. Victimisation and harassment also have some limited utility, such as where skimpy clothing encourages unwanted attention, and are prevalent for their value in pre- and post- employment claims. However, the frequency of all four being claimed despite direct discrimination being obvious in gender cases reflects the lack of certainty/confidence in success in these cases and reflects further why the law should be reformed.

Suitable?

The media attention has raised the profile of dress in the last six months. However, 2010 legislation is unlikely to be wholly inaccurate or unsafe in the 2016/7 context. Reform proposals must acknowledge that the law reflects extensive domestic review and conclusions regarding what non-discrimination looks like constitutionally. Without explicit legislative comment on dress discrimination, it remains “good law”. I do not believe there is value in upholding discrimination, but the opposing view may represent the oft-criticised masculine lens of law which struggles with the nuances of the women’s advancement position. Moreover, some viewed the Act as “political correctness gone too far”, summarised – “white men need not apply” (Wadham, 2012, p. x). Law’s ambivalence can therefore demonstrate that, for many, the legal position is still suitable or even overly generous.

Conclusion

Thorp’s case would undoubtedly run all four types of discrimination, as well as health and safety concerns to strengthen the case. In a culture without legal aid, this creativity necessary for successful application of law is unsuitable. The masculine-lensed ambivalence of the judiciary in implementing law prohibit true efficiency through legal reform alone, and notions of gender normality in society need to be outlined in some form for any intended consequence to trickle down to individualised justice in employment tribunals. Further probing as to the roots of discrimination in law are needed.

CHAPTER THREE: THE “OCCUPATIONAL QUALIFICATION” OF SEXISM – LESSONS FROM THE USA?

Within “sex” discrimination, the central consideration premising differential treatment is the objectification of women for the purposes of sex. The idea of “privileging of the ornamental” (Crane, 2000) across Western societies must be developed, most notably comparing the domestic situation with the explicit American legislation through Title VII Civil Rights Act 1964 to draw attention to the prevalence of sexualisation in the dress code discourse. Despite consideration, this analysis is confined to “forgetting lessons from the USA”, arguing that the US exemption for discrimination when “selling sex” (Assiter et al., 1999) jars with a satisfactory resolution of the autonomy/equality discourse.

¹³ *Azmi v Kirklees Metropolitan Council* [2007] IRLR 343.

¹⁴ *Eweida v British Airways plc* [2010] EWCA Civ 80.

When seeking a comparator for Chapter Two's compulsory heels for organisational professionalism, we draw an uneasy parallel with the same requirement alongside "tight-fitting, sexy, uncomfortable costumes" in the "Babes and Beefcakes" of the American literature (McGinley, 2007). The US Title VII prohibition against sex discrimination allows employers to hire women for sex appeal, if the "central mission" of the business is to sell sex (Rafaeli and Pratt, 1993, p. 3) - a "bona fide occupational qualification" (BFOQ) (s.703(e) Title VII Civil Rights Act 1964). Perhaps counterintuitively, this means that the highly-legislated, constitutional "protection" (Shin, 2007) which we could be calling on for UK reform advice, means exotic dancer clubs, (McGinley, 2007, p. 17) and perhaps Hooters or the Playboy mansion (Williamson, 2006, p. 16), can rebut a sex discrimination claim by invoking that their business model necessitates women only, scantily clad.

Autonomy?

If the link of sexuality in Thorp's case was inexplicit, an additional element of the BFOQ test springs from another, albeit relatively archived, Price-Waterhouse litigation - discrimination must adversely affect the claimant's ability to her job¹⁵. The law's utility is therefore demarcated by the idea of "willingness to serve" (Watt, 2013, p. 184) and the fact that many women feel empowered, in control, valued for their sexuality and autonomous by such dress codes that others would find discriminatory, needs thought. The argument could be invoked that women have earned the right to dress in a provocative manner and be proud of their sexuality (Keenan, 2001, p. 45), and if sex-based industry is a reality, the US law would be paternalistic to not respect the proven effectiveness for sex to drive up business amongst willing participants. However, this goes to the heart of a feminist debate of allowing the right to choose to be sexually attractive vs. protecting equal treatment for men and women.

Virgin

The dangers of justifying sex discrimination through Title VII have led to its narrow successful application by courts in the case study of airlines; *Diaz v Pan American World Airway* (1972)¹⁶ and *Wilson* (1982) highlighting BFOQ failure where "safe transportation of passengers" was the business purpose, with "the sex appeal portion of the job tangential to its duties" (McGinley, 2007, p. 9). However, ACAS moots Virgin Atlantic as having one of the worst offending dress codes. Falling short of the US "BFOQ" test should not prevent us from noting that air hostesses' appearance is seen as relevant to their role, despite and perhaps above their performance. While we could see the "extremely feminine silhouette" of professionally styled Vivienne Westwood uniforms are a genuine ode to power-dressing (Friedman, 2016) and truth in Sir Richard Branson's "If you dress in clothes that make you feel you look good... [you] do your job a lot better" (Nicholson, 2014), comments like this mirror the direct gendered discrimination of Chapter Two, as they are targeted at the "erotic capital" of women in exclusive hiring.

Abercrombie

As an all-American "tweenaged" brand, explicit sexuality would no doubt be age-inappropriate in the case of Abercrombie. Nonetheless, perpetuating a "cool" brand has seen much of the aforementioned law applied – their business aims aligned with strict application of appearance codes and the aestheticisation of labour. From prosthetic arms¹⁷, to headscarves (Basin and Fairchild, 2013), a number of litigations have led Abercrombie to "overhaul" its distinctive exclusive hiring policy where "models" were previously selected for interview when shopping

¹⁵ *Price Waterhouse v Hopkins* (1989) 490 US 228.

¹⁶ *Diaz v Pan American World Airways* (1972) 346 F Supp 1301.

¹⁷ *Dean v Abercrombie and Fitch* (2009) 2203221/2008

in store rather than being able to apply, and were weighed at interview, as well as “sexualised marketing” such as through featuring semi-nude models on gift cards and shopping bags (Goode, 2015). However, while official statements reassure customers of the hardly novel or forward-thinking approach that Abercrombie will not “discriminate based on body type or physical attractiveness”, the real motive behind the change can be summarised in plans “to cater for more shoppers” and remedy the 39% fall in shares (Kasperkevic, 2015). Using the language of BFOQ defence in its public statements, it is clear that the “famously preppy, rumpled, hormonally charged aesthetic” in its Look Policy is at the “very heart of its business model”.

Conclusion

As the law mobilises to address gendered discrimination, it must have open and frank discussions about exclusive hiring arrangements and the commoditisation of female sexuality leading to tolerance of discrimination. Directly skewed against the interests of equality for women, the US approach to Title VII is inappropriate in purpose - to allow equal access to job opportunities, not to abolish every sex dependent practice from the workplace in the abstract (Willingham, 1972). While acknowledging differential context, not least in the European influence on our equality laws, it is evident that our messy, judicially-created law should not draw influence from the American situation which considers employee protection last. Suing for \$35 million from Abercrombie’s flagship store (Showalter, 2016), the tale of a transgender employee forced to ascribe to the already-criticised gendered dress as what “customers wants to see” provides an ideal bridge between “selling sex” (Chapter Three) and gender identities (Chapter Four).

CHAPTER FOUR: GENDER IDENTITIES – “WOMEN ARE FROM VENUS”

A legal framework no more nuanced than direct gender distinctions (Chapter Two) presents further problems when we consider that notions of “what woman is” are not homogenous. Beyond the realms of Human Rights campaigns urging that transgender employees be able to dress consistently with full-time gender presentation, while women could be required to wear heels, a “conventional standards” approach means even now it would be almost impossible for a man to claim for not being able to wear the same.¹⁸ There will be no domestic or European remedy in the absence of an intention for gender reassignment surgery following Kara, and judicial anachronism can be highlighted in that sex and gender terminology is still used interchangeably in court judgements (Lemes, 2009). Despite prevailing views that one is biological and one reflects gender identity, conventionality is so engrained as to ignore their severance. This Paper considers one facet of an artificially binary system, not the impact of dress for trans individuals, but this extreme end of a continuum where gender identity jars with required “conventional” dress can illuminate the struggles of an individualistic element of femininity mapped far from what dress codes consider uncontentious.

Fair treatment is premised on these binary assumptions - women wearing skirts¹⁹, men wearing suits.²⁰ Some “unwritten” dress codes expect the socialisation of individuals to second-guess the subjective employer expectations of conventionality, or “learn the dress norms”, using phrasing like “no unconventional hairstyles”. This suggests that even for professionals, cautious of litigation scrutiny and refraining from explicit Codes, dress conventionality has relevance. Yet three feminist viewpoints challenge this artificiality; Butler’s view that gender is communicated through social performances via appearance, not the other way around, with

¹⁸ *Ryder Barratt v Alpha Training ET* (1991) No. 43377/91.

¹⁹ *Schmidt v Austicks Bookshop Ltd* [1978] ICR 85.

²⁰ *Department for Work and Pensions v Thompson* [2004] IRLR 348.

no concrete, inherently feminine or masculine self (Butler, 2000), Davis' view that hegemonic femininities are patriarchal, emphasising sexuality and appearance for control (Davis, 1999) and Heckman that feminism is no longer based on a universal concept of womanhood (Heckman, 1999). This "new conventionality" is making an impact.

However, judicial reasoning represents the polar opposite. A waitress' refusal to wear a short red dress was "vehement", her views about modesty and decency "unusual in Britain in the 21st century" (Lemes, 2009). One questions which feminist theorists, or even women, were consulted to get this homogenous view of conventional femininity and their attitudes towards modesty. With the unilateral modification of dress, without consultation, making the claimant "constitutionally unable" to work, we question why this does not form precedent as a good example of constructive dismissal; sexualised dress only justified anywhere if it is relevant to the performed role (Title VII), unlike waitressing. The answer is that conventionality is perceived by the judiciary with no objective analysis, catching here a dress which most women regardless of their politicisation would class as inappropriate. This is not anomalous; *Stevenson's* non-conformity misunderstood and justified - "the image of a stereotypical heterosexual female is a female wearing a dress, heels and make-up... The claimant normally wears trousers, flat shoes and no make-up. She dresses well, would normally wear a trouser-suit for work" and her above average performance ignored.²¹ Short of a "lesbians ignite" badge²², reflecting a freedom of expression case but jarring with standard notions of appropriate dress, the claimants in these cases were still dressing conventionally in business dress, simply refusing elements of a dress code they found grossly offensive, and could not find legal remedy.

Thorp falls into this category – she would have looked smart, if not smarter, in flat shoes with a business suit. Yet she was dismissed. In Thorp's case, *de minimis* and conventionality arguments make it likely that her discrimination claim would have failed without the current scrutiny of high heels. Regarding identity, Nicola herself in the Parliamentary inquiry offers that if she identified as "Nicholas", her case may be stronger (Petitions Committee, 2016). Ultimately, this represents that despite the prevalence of marginalising trans discourse in law, they are seen as significant in the ranking of dress code violations and prioritised over the inherent problems with conventional femininity, which rank last and are accepted and justified in law.

Conclusion

Disparate identities make a law premised on "reasonableness and conventionality" difficult. The nuances of why female dress code conventionality sustained on patriarchal norms is absurd, nor the increasing range of individualistic notions of identity, are not understood or enforced by the current judiciary which must be addressed during reform considerations.

CHAPTER FIVE: "COVERING UP"

This research has identified gendered discrimination in dress codes through the lens of the current High Heels Inquiry. However, the expected conclusion of Equality Act reform has been tempered by societal barriers to reform, suggesting that removing the law as it currently operates without addressing *why* our constitutional protection of discrimination was so limited in the first place would lead to foundational flaws. In providing effective reform, consultation and democratic consideration of the issue is needed; for example, in analysing why we distinguish between genders *ab initio*.

The narrow focus of this Paper may simultaneously be unsuitable moving forward. In tackling dress discrimination, we must acknowledge that in granting intermittent equality

²¹*Stevenson v Avon Cosmetics* [2014] WL 8663532.

²²*LM Boychuk v HJ Symons Holdings Ltd* [1977] IRLR 395.

protection for minority groups, we send a discriminatory message. Reform proposals should acknowledge beyond “high heels, skirts and make-up”, not least the societal ignorance of dress customs of religious groups that are not catered for in contemporary dress codes. Furthermore, the law’s approach could be too juvenile to deal with linked discourses surrounding how the Equality Act has focused its “protected characteristics”, and whether discrimination falling outside of the scope of the current law such as against tattoos and piercings in the workplace, should be considered.

There is no way of predicting the outcome of the current Inquiry – there are precedents for upholding the minimum level of formal equality to suit political desires, without necessarily engaging with the disparate views on the issue. Disquiet on other gendered issues has not led to complete reform as proposed, and indeed we may question whether the law wants to get involved, or change its inherent attitudes. Therefore, a conscious effort should be made to perhaps even re-route the likely legal solution concentrating on high heels, of limited protection against a backdrop “hypersensitivity” viewpoint, and locate the relevance of the debate with macro approaches. Law can provide an element of “stick” through effective legal enforcement of new rules and punishment and “carrot” through raising awareness to change attitudes, such as has been sustained already through media and social media attention.

This Paper has contributed the formal literature on the legal reform position – “law must do more”, proposing reform of discrimination generally, acknowledging pitfalls out of the law’s control and trying to use legislation and law enforcement procedures to ensure an effective, sustainable mechanism. The problems with dress discrimination are symptomatic of discrimination generally and narrow legislation or ill-addressing the outmoded views of tribunals and employers could lead to discrimination change rather than eradication. This research could therefore act as a springboard for further analysis opportunities into judicial training and appeal procedures, for example, which could contribute to an extensive consultation process.

However, in explaining *why* discrimination exists political contexts have been important – sex sells, and in a capitalist society, over-intervention may challenge business growth; regulation and legislation must be justifiably important to retract from a *laissez-faire* approach otherwise. Similarly, law’s utility in prompting change in this issue is restricted as the vehicle of historic perpetuation of binary genders and patriarchal control. The predominant approach is one of “separate but equal”, “different but not less favourable” rather than seeking true equality and the opinions of those affected. Law does not operate in a vacuum and in a post-Brexit turbulent climate, political insight to challenge this issue is unlikely. Whilst perhaps tempering the likelihood of wholesale reform, law-makers’ ignorance to the issue demonstrates the need for the accountability of media, the value in Parliamentary Petition and not least the importance of academic theorising in an area which could perhaps otherwise have escaped scrutiny.

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THE CASE OF NYAMWASA: THE THIN LINE BETWEEN A ‘VULNERABLE’ ASYLUM SEEKER AND AN EXCLUDED ASYLUM SEEKER

ADETOUN QUADRI¹ AND KAFAYAT MOTILEWA QUADRI

ABSTRACT

The legal status of a refugee is to a very large extent comprehensible but the framework for dealing with excluded asylum seekers is largely untouched especially in situations where it may be hard to differentiate between a potential refugee and an excluded asylum seeker. South Africa is a State Party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol and had subsequently integrated the Refugee Convention into its National Laws as the South African Refugees Act, No 130 of 1998. The case of Nyamwasa is pertaining to Faustin Kayumba Nyamwasa who was a former general of the Rwandan Patriotic Army and is suspected of being a war criminal but was granted a refugee status in South Africa in 2010. The Consortium for Refugees and Migrants in South Africa challenged the refugee status of Nyamwasa on the grounds that there was evidence to show that Nyamwasa had committed crimes against humanity, genocide and war crimes in Rwanda and the Democratic Republic of Congo and that by virtue of Section 4 of the South African Refugees Act 1998 and Article 1F of the Refugee Convention of 1951, the refugee status given to Nyamwasa was invalid. The fate of an excluded asylum-seeker is a problem of the world especially if the excluded asylum seeker is suspected to have committed crimes under the Rome Statute. In this regard, the only sensible option for a host country is to refer the excluded asylum seeker to the ICC discreetly in order for the Prosecutor of the ICC to investigate with the help of the host country. The host has to also keep a close watch on the excluded asylum seekers in order to be able to make an arrest on behalf of the ICC if the investigations of the Office of the Prosecutor exhibit a reasonable believe that crimes under the Rome Statute may have been committed. This paper would analyse the Nyamwasa case and the reasons for the decisions of the South African High Court to retain a refugee status for Nyamwasa. Recommendations would be made as to how the International Criminal Court via the Office of the Prosecutor can be involved through investigations to unravel the certainty of the true status that should be accorded to a suspected excluded asylum seeker.

Keywords: Excluded Asylum Seeker, Refugee, South Africa, International Criminal Court, Office of the Prosecutor

INTRODUCTION

The Rwandan genocide is one of the most dreaded memories of genocide in recent times and many of the war criminals that committed the atrocities are still at large. In an African adage, it is said that it is difficult, if not impossible to have smoke without fire. No matter how small or short-lived that fire was; nothing else could have led to a cloud of smoke but fire. In this instance, the likelihood of a suspected war criminal being protected and given asylum by the South African government defeats the whole purpose of the exclusion clause, which does not require a conviction of the crimes but only requires that there are ‘serious reasons to consider that an individual’ has committed such crimes that require the application of the Article 1F clause. It is obvious, then, that from the wordings of the Refugee Convention that to have been convicted or found guilty of a crime is not the same as having committed the crime. In other

¹ LLB, B.L, LLM (London), MCI Arb, Monitoring Officer, Human Rights Commission Abuja, Nigeria. E-mail: tounomotola@yahoo.com

words, to commit a crime does not necessarily mean that there has been a conviction but to have been convicted of a crime shows that a person had been found guilty by a court of law.

This paper is premised on the argument that where an asylum seeker is suspected of having committed an international crime as recognised under the Rome Statute; then the host/refuge country may want to involve the Office of the Prosecutor of the International Criminal Court to commence an investigation on the matter or to take up an advisory role with the host's national court in the determination of the whether the exclusion clause should apply or not.

Asylum-seekers and Refugees under the International Law Framework

It is important at this junction to identify the difference between a refugee and an asylum seeker. An asylum-seeker is someone whose request for sanctuary is still been processed. That is a sanctuary as a refugee. An asylum seeker is said to be a person who has applied for asylum under the Refugee Convention of 1951 for the refugee status on the ground that if he is returned to his country of origin he has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. Such a person remains an asylum seeker for so long as his application or an appeal against refusal of his application is pending. Whereas a refugee in this context means an asylum seeker whose application has been successful. To describe a person as an asylum seeker is in principle a neutral statement, not making any assumption as to whether his claim is justified or not. But most often everyone fleeing a civil war or natural disaster would normally be called a refugee. (Mitchell, 2006)

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) in its Article 1 defines a refugee as every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. A similar provision can be found in Article 1 Paragraph A (2) of the United Nations Convention Relating to the Status of Refugees (1951).

The provisions of the OAU Convention (1969) further stated whilst distinguishing itself from the UN Refugee Convention (1951), that a refugee should also include every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. (Worster, 2010)

The Exclusion Clause under the Refugee Convention

In the case of *Union of Refugee Women and Others v Director* (2007)², it was contended that refugees are indisputably a vulnerable group in our society and the problems that they face daily breaks the very shred of what is left of humanity. People become refugees due to events over which they have no control and they usually would have been forced to abscond their homes because of persecution, violence and other forms of human rights violations. They face this violence because people they know or they themselves are victimised on the basis of very personal attributes or values such as ethnicity or religion. As if this is not enough, there is also the further trauma associated with been displaced to a foreign country. However, in the midst

² *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others*, 2007 (4) SA 395 (CC)

of these refugees are usually persons suspected of having committed war crimes, genocide and crimes against humanity. (Moore and Van Wijk, 2014)

The Refugee Convention (1951) provides the framework on an international level on how a refugee can be protected with their rights and duties in the refuge country. However, there are also specific provisions to exclude certain individuals from those benefits (Singer, 2014). Article 1F of the Refugee Convention (1951) states that the provisions of the Convention do not apply where there are serious reasons to consider that an individual:

- a) Has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- b) Has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee
- c) Has been guilty of acts contrary to the purposes and principles of the United Nations

Looking at the above provisions, the first two paragraphs provide for individuals that have committed certain crimes but the third paragraph distinguishes the meaning of ‘committed a crimes’ from ‘has been guilty of’. This actually makes it easy to observe that the criteria in the first two paragraphs are that of implication and suspicion rather than that of conviction.

The Case of Nyamwasa

In the case of *Consortium For Refugees and Migrants in South Africa v. President of the Republic of South Africa and ors* (2014)³, (also known as the case of Nyamwasa), the applicant which is an NGO saddled with helping and assisting asylum seekers and refugees in South Africa had brought an applicant before the court asserting that the refugee status given to Faustin Kayumba Nyamwasa, a Rwandan national should be revoked on the grounds that Faustin who was also a respondent in this case, was implicated in the commission of war crimes, genocide and crimes against humanity in Rwanda. The respondents denied the request and then the applicant asked for the Faustin's refugee status documents which the South African government also denied. Subsequently, the applicant brought the case before the court but the court held in favour of the respondents. The decision was given in September 2014 and the applicants intend to appeal to a higher court. (check NEWS)

It may be difficult for a national court to give a decision that implicates the President and other executive officers of its country as being partial to suspected war criminals, so the decision of the South African court in the above case is not surprising. However, in order to give a more balanced observation of the rule of law, a third party, whether in full or advisory capacity such as that of the Office of the Prosecutor of the International Criminal Court should keep all doubts at anchorage as to the validity of the exclusion claims against Faustin or any suspected war criminal in the future.

The Intervention of the International Criminal Court

In 1998, International Criminal Court in The Hague was established by virtue of the Rome Statue as a permanent institution with the power to exercise its jurisdiction over persons for the most serious crimes of international concern. Since Article 1F(a) can be invoked irrespective of the location where the alleged crime was committed and since this is a form of universal jurisdiction, (UK Home Office, 2016) the international criminal court can intervene in circumstances where the country involved is unwilling or unable to determine whether crimes under the Rome Statute are reasonably believed to have been committed by an asylum seeker.

In determining the fate of an asylum-seeker suspected to have committed crimes under the Rome Statute, there are two ways to involve the International Criminal Court. The host

³ *Consortium for Refugees and Migrants in South Africa v. President of the Republic of South Africa and ors* (2014), Case No: 30123/2011

country may hold their own proceedings to determine whether an asylum seeker can be excluded from the refugee status but can request the observations and submissions of the Office of the Prosecutor from the ICC as a form of evidence before the court in order to have a party neutral to the dispute of the parties before the court. Another option is that the host country can refer the asylum seeker to the ICC discreetly in order for the Prosecutor of the ICC to investigate with the help of the host country. The host has to also keep a close watch on the asylum seekers that may fall under the exclusion clause in order to be able to make an arrest on behalf of the ICC if the investigations of the Office of the Prosecutor exhibit a reasonable believe that crimes under the Rome Statute may have been committed by such an asylum seeker.

In order to involve the ICC, anyone can submit a communication to the Office of the Prosecutor and the Prosecutor may then inform the Pre-Trial Chambers of the reasons to proceed with investigations by virtue of Article 15 of the Rome Statute (1998).

CONCLUSION

Genocide, war crimes and crimes against humanity are some of the most serious international crimes that exist and having an individual that is suspected of such crimes roaming the street is absolutely daunting to say the least. This is especially so, if a national court may not have the prerequisite independence from the executive arm of its government to give a verdict against such persons that are executive officers of such a country in granting a refugee status to a person suspected of committing such crimes. The clearest solution in order to break the thin between a vulnerable asylum seeker and an excluded asylum seeker is having a third party intervention in the form of the International Criminal Court whether in a monitoring/advisory capacity or by full involvement.

Though the South African government has served a notice to pull out completely from the International Criminal Court; the work and relevance of the Court cannot be quantified especially in its commitment to bring justice to victims of some the worst crimes in the world. However, countries such as United States, India, China, etc. have already set down precedence by not ratifying the Rome Statute. This obviously remains one of the major setbacks that the International Criminal Court still faces – the lack of the cooperation from State Parties and Non-Party States alike especially permanent members of the Security Council of the United Nations in their individual capacities as Member States of the United Nations. While they refer countries like Sudan and Libya but are yet to refer themselves to the International Criminal Court for the atrocities that they have committed and are still committing.

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CHILD MARRIAGE: A MEDICOLEGAL APPROACH UNDER INDONESIAN LEGAL SYSTEM AND FUTURE ETHICO-LEGAL IMPLICATIONS

MS. KARTIKA QONITA PUTRI¹, MS. EVA MARIA PUTRI SALSABILA², MR. AZAM HAWARI, MS. RISA JAEHAN³, MS. ERZA PINAYUNGAN, MS. SALMA ALSAKINA QURUTUAIN AND PROF. AGUS PURWADIANTO

ABSTRACT

The Marriage Law of 1974 in Indonesia allows girl under 18 to marry causes the ineffectiveness on child protection. On medical perspective child marriage leads to higher risk of physical and psychological health problems on children. Furthermore, it violates the principle of non-maleficence. Reflecting on Syekh Puji's case, a man who married a twelve years old girl, this paper analyzes the debate on whether a child has the capacity to consent of marriage. This paper aims to present future ethico-legal implications on future generations with the proposed solutions. Firstly, Indonesia should revise the current marriage law to optimize child protection. Secondly, the government shall arrange a regional regulation on families' supervision regarding the practice of child marriage. Lastly, each region should have a non-penal responsive policy on rewards for people's participation on sex education by using peer groups to raise awareness on reproductive health issues.

Keywords: child marriage; medico legal; non-penal responsive policy; capacity to consent; special sex education.

INTRODUCTION

Child marriage is an urgent issue that has invited significant attention worldwide. A research by UNICEF (2014) said that child marriage is defined as a formal marriage or informal union before age 18. Child marriage happened all around the world and can lead to a lifetime of disadvantage and deprivation. Worldwide, more than 700 million women alive today were married as children. More than 1 in 3 – or some in 250 million – were married before 15. Girls who marry before they turn 18 are less likely to remain in school and more likely to experience domestic violence. Young teenage girls are more likely to die due to complications in pregnancy and childbirth than women in their 20s; their infants are more likely to be stillborn or die in the first month of life (UNICEF, 2014).

OHCHR (p. 8) views that child marriage robs a girl of her childhood-time necessary to develop physically, emotionally and psychologically. In fact, early marriage inflicts great emotional stress as the young woman is removed from her parents' home to that of her husband and in-laws. Her husband, who will invariably be many years her senior, will have little in common with a young teenager. It is with this strange man that she has to develop an intimate emotional and physical relationship. She is obliged to have intercourse, although physically she might not be fully developed. Universally, child marriage is a violation of human rights whether it happens to a girl or a boy because it eliminates the child's freedom to choose when and whom to marry (United Nations, 2011). There are several international conventions that condemn child marriage, such as but not limited to:

- The Universal Declaration of Human Rights (1948)
- The Convention on the Rights of the Child (1989)

¹ Ms. Kartika Qonita Putri, Student, Universitas Indonesia.

² Ms. Eva Maria Putri Salsabila, Student, Universitas Indonesia.

³ Ms. Risa Jaehan, Student, Universitas Indonesia.

- The Convention on the Eliminations of All Forms of Discrimination Against Women (CEDAW) (1979)

Some significant factors in child marriage are poverty, low level of education, and culture. Poverty is one factor that plays a major role. Early marriage is intended as an economic survival in some countries such as Southeast Asia and middle east. Young girls often become victims of early marriage. They were forced to marry older men in order to fulfill family debts. Another case in western Java, the region has the number of marriages and divorces in Indonesia. In Indonesia, there are two types of weddings, formal marriage and informal marriage. Arrival state representative / officer from *Kantor Urusan Agama* or the Religious Affairs Office is required on a formal wedding. In this case, marriage is written in the book and some amount of money are paid. Meanwhile, religious officers assisted informal marriage without registering formally. Marrying an underage groom or bride can cause the marriage to be cancelled. So, some people misuse informal marriage as a way to implement child marriage (Jones, Hull and Mohamad, 2011).

The root of child marriage is in gender inequality and the beliefs that girls and women are inferior to boys and men. Child marriage occur most often in patriarchal societies where parents and elders have a significant role in selecting spouses for their children and new brides are absorbed into their new families as domestic help. Girls are often married shortly after puberty to maximize their childbearing potential (Council on Foreign Relations). In many communities where child marriage is practiced, girls are not valued as much as boys – they are seen as burden on their family. Marrying your daughter at a young age can be viewed as a way to ease economic hardship by transferring this ‘burden’ to her husband’s family (Thompson, 2003).

In Indonesia, child marriage is common on some rural areas. It was usually the areas where the patriarchal societies have very strong influence on the culture. The communities accept it as part of their social fabric and they seldom think or even say a word about its consequences. It is often that parents may consent to child marriages out of economic necessity because marriage may be seen as a way to find a stable economic life for their daughter and reduce the burden of the family. However, there is one special case that takes a spotlight in 2009. It was the Syekh Puji’s case. In 2009, Syekh Puji tried to marry a girl who just graduate from elementary school, Lutfiana Ulfa. The interesting fact is that the twelve years old girl actually agreed to marry Syekh Puji. There was no force from the family. Some may say the girl is really in love with him. It brings the question or whether or not the consent that the girl gives is valid and it’s fine for the two of them to be married. Indonesian Marriage Law of 1974 itself opens an opportunity for a girl under sixteen years old to be married. This paper will discuss the clash of Marriage Law of 1974 and the Child protection Law in Indonesia with the consideration of medical views. Moreover, it will analyze the Syekh Puji’s case and discover the limit of child’s ability to give consent, particularly in marriage.

DISCUSSION

Marriage Regulation versus Child Protection: a Contradiction on Indonesian Legal System

According to the 1974 Marriage Law, girls can be married at age 16 with parental permission. Meanwhile, boys can only marry at the age 19. This legal age of marriage is not rigid. In article 7 paragraph 2 of the 1974 Marriage law, a dispensation in that rule can be asked in the court or other official that is appointed by both parents of the couple. That means a girl or a boy that is below 16 can still be married as long as their parents agreed to it.

The regulation regarding the legal age of marriage proves to be contradicting the spirit of child protection itself. Child marriage has not been a new slant issue in Indonesia; yet is still happening commonly which involves many kind of perpetrator, in both rural and urban

contexts. There are variety of factors supporting this matter, such as poverty, low level of education, culture and religion interpretation, married by accident (pre-marital pregnancy), and so on. Asides social problem that arises, child marriage also still finds it way at stake in Indonesian legal system. The inconsistency of legal provision regarding minimum age to marriage and the ongoing question on child's capability to consent brings the case onto the surface. The configuration addresses contradiction on the child marriage's framework to be eradicated in term of national legislations and international legal context.

In any international legal framework, minimum age to marriage has never been set explicitly, either that was ratified into domestic law or not. Convention on the Rights of the Child 1990 which ratified by the Presidential Decree No. 36 of 1990 does not state minimum age to marriage but definition of the child that is on 18 years old. This convention mandates state party to take all appropriate legislative and administrative measure in order to protect and take into account all actions concerning children for the sake of best interests from the children.

The parliament legislated a new legal instrument on protection of the children by the Law No. 23 of 2002 yet remains silent on minimum age to marriage—it merely determined definition on child age. The law was intended to protect the child rights from all forms of discrimination and inhuman treatment that can stipulate violation of the child rights. Implementation of child protection based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 as well as the basic principles of the CRC include:

- non-discrimination;
- best interests of the child;
- the right to life, survival and development; and
- respect the opinions of children.

Relating to child marriage, Article 26 (1) Law No 23 of 2002 states about parental responsibility that obliges parents to prevent child marriage. On another side, there is apparent loophole regarding to prevention. Under the Marriage Law of 1974 that sets the legal parameters for marriage in Indonesia, parental consent is required for marriage under age 21. With parental consent, females can legally marry at age 16 and males at 19. Parents can petition marriage officers or district-level religious courts for an exemption to marry their daughter even earlier, with no minimum age limit (Mark Evenhuis and Jennifer Burn, 2014). The Marriage Law not only fails to meet the age 18 threshold for marriage recommended by International Human Rights Treaty Bodies, it contradicts Indonesia's own 2002 Law on Child Protection, which prohibits marriage under age 18 under any circumstances. It also sets the minimum marriage age lower for girls than boys, even though girls are more vulnerable to the harmful consequences of child marriage (United Nation's Children's Fund, 2015). Therefore, existing law in Indonesian legal context still fails to prevent child marriage.

Impact of Child Marriage to Children's Physical and Psychological Health

Parents usually want to ensure their daughters' life, financial security, and virginity. Some of them think and see child marriage as a protective mechanism against unintended pregnancies, premarital sexual activity, and sexual transmitted disease (STD). However, young married girls are more likely to be infected with sexual transmitted disease than the unmarried girls. For instance, are HIV and HPV infection. Girls with age between 15 and 19 years are at least 2 times more to become infected with HIV than boys of the same age. Marriage before the age of 20 has become the high-risk factor for HIV infection on adolescent and young girls. With huge differences on age between husband and wife on child marriage, many girls lose their virginity to HIV-infected husband (Nour, 2006). While every girls' parents want their daughter to be married at younger ages, the boys' parents usually want their son to be prepared first. During the time he is preparing himself, it is very common that some boys attract to practice

and try sexual stuff. With increasing experiences, they tend to have sex often which is the risk factor of HIV transmission.

It is generally known that cervical cancer has been considered as the fourth most common cause of death in women for the past few years (Ferlay et al., 2015), while in Indonesia, cancer of the cervix uteri is the 2nd main cause of female cancer deaths. Although the disease can be prevented and healed at certain stage, increasing incidence can be observed every year. It has a multi factorial risk, but mostly caused by Human Papilloma Virus (HPV) infection. Child marriage plays an important role in developing invasive cervical carcinoma. It has been known that the incidence of invasive cervical carcinoma is related to sexual activity. The correlation of sexual activity with invasive cervical carcinoma is related to transmission of the oncogenic HPV and the epithelial trophic. Cervix is divided into endocervix that covered by columnar epithelial cells and exocervix that covered by squamous epithelial cells. The border between those two epitheliums is called squamocolumnar junction (SCJ). With increasing age, SCJ will migrate from exocervix into the distal endocervical canal. Normally, columnar epithelium will become squamous epithelium which is called metaplasia. With HPV infection, dysplasia will also occur that will develop into early stage of cancer (Jhingran et al., 2013). As the first HPV infection often occurs soon after the first sexual intercourse, early age at first sexual intercourse means the higher risk of first exposure to HPV. Married girls with age 15-18 years are prone to HPV infection as their reproductive organs, especially the vagina and cervix, are still immature and can be more easily eroded. However, they are naturally forced to have sexual activity and even giving birth with that condition.

Pregnancy has many challenges for young girls. Girls who have their first pregnancy before the age of 17 twice more likely to be exposed to diseases like malaria and its complications. The interaction between HIV infection and malaria in pregnant girls could be fatal. The problem is not only when the girls have their pregnancy, but also when they are giving birth. Girls aged 10-14 are 5-7 times more likely to die from childbirth and twice as likely for girls aged 15-19 (United Nations, 2001). Mortality rate for girls before 20 years old giving birth is as might be expected high. Some reasons for the high mortality rate, specifically in Indonesia, include postpartum hemorrhage, HIV infection, obstructed labor, and eclampsia. Obstructed labor is often occurred as the result of a girl's pelvis is too small to deliver a fetus (Nour, 2006).

Marriage is a further step of independency that requires loads of strong commitments, decision making, and responsibilities; but most of early married couple fail to deal with it as marriage needs high level of mental and physical maturity. Common factors which responsible for early marriages, such as male dominancy, lack of awareness and knowledge, parent ignorance, pressures from environment, or even to enhance family socio-economic status (Bayisenge, 2011). Those common reasons of early marriage are able to contribute psychological stress for the young couple. Early married couple is also susceptible to reproductive disorder, fertility dysfunction, pregnancy and partition complications, child congenital disorder, prematurity, low birth weight of child, and even death. These conditions are potential to increase psychological stress (Nour, 2008). Moreover, early married couple is at higher risk of psychological disorders due to the restriction of education and right to express their view. Previous study stated most of early married couple has low level of education (Glassier, 2006). A cross sectional and observational study conducted to record the depression level in early married girls before and after marriage, the data shows 25% have depression in both before and after marriage, 43,18% have depression after marriage, and 31,82% of girls have depression before marriage (Ahmed, 2013). Early married women are more likely to access health care than those who married in adulthood (Le, 2011). In addition, early-married couple more likely experience violence from their husband or wife due to their lack of emotion maturity to face their problem (Raj, 2010). Those all problems are able to drive them to divorce

or even suicide (Gage, 2013). Based on those all psychological stress related to early marriage couple, mental and physical maturity are essential components on marriage.

Children's Capacity to Consent in Indonesian Legal Context

Consent means the permission for something to happen or agreement to do something (Oxford Dictionaries, 2016). In the law perspective, someone is able to give consent when they are considered incompetent and capable to legally engage in a certain activity. Usually it is the age that is acknowledged as adulthood in law. In Indonesia, there are several age standards that diverse in recognizing adulthood itself.

Table 1: Minor's age in Indonesian Legal System

Legal Basis	Article	Minor's Age
Indonesian Penal Code	45	Under 16 years old
Marriage Law of 1974	47	Under 18 years old
Labor Law No. 13 of 2003	1 (26)	Under 18 Years old
Penitentiary Law No. 12 of 1995	1 (8)	Until 18 years old
Juvenile Justice System Law No. 11 of 2012	1 (3), 1 (4), 1(5)	Children in conflict with the law: From 12 years old until under 18 years old.
Human Rights' Law No. 39 Of 1999	1 (5)	Under 18 years old and not married, including a child that's still in the womb
Child Protection Law No. 23 of 2002 as changed in the Child Protection Law No. 35 of 2014	1 (1)	Under 18 years old, including a child that's still in the womb
Pornography Law No. 44 of 2008	1 (4)	Under 18 years old
Republic of Indonesia's Citizenship Law No. 12 of 2006	4 (h)	Under 18 years old and not married
Human Trafficking Law No. 21 of 2007	1 (5)	Under 18 years old, including a child that's still in the womb
Indonesian Civil Code	330	Under 21 years old and not married

Table 2: Adulthood in Indonesian Legal System

Legal Basis	Article	Adulthood
Indonesian Civil Code	330	21 years old
Islamic Law Compilation	98 (1)	A capable adult is 21 years old as long as they are not physically or mentally disable or haven't been married

Decree of the Minister of Home Affairs of the Republic of Indonesia 1997

Differentiating between:

- Politically adult: the minimum age for voting in an election is 17 years old
- Sexually adult: the minimum age to marry is 18 years old
- Legal age: the specific age to be recognized as capable of doing legal activities. (i.e: signing contract, driving, etc)

From the two tables above, we can conclude two things:

1. Most of the regulation in Indonesia defined children as someone under 18 years old.
2. The differences in the legal age exist because the stages of maturity for doing certain legal activities are different.

There is a certain age of majority which is defined as the stage where you reach maturity, that is called the adulthood. Contextualizing the adulthood age in Indonesian civil code, which is twenty-one years old, into the marriage law definition of the minor's age itself, we realized that even though the adulthood stage is different, child marriage is still allowed in the Marriage Law of 1974 whether you see it in minor's age of the Indonesian civil code perspective or the minor's age in the Marriage Law itself.

Now, we are on to the big question: can a child give consent to marry? In the Article 16 paragraph 2 of the Universal Declaration of Human Rights (1948), marriage shall be entered into only with the free and full consent of the intending spouses". The right to enter marriage with the free and full consent is also enshrined in the article 23 of the International Covenant on Civil and Political Rights and article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (1979). It is recommended by The Convention of Elimination of Discrimination against Women that all necessary action, including legislation, shall be taken to specify a minimum age of marriage because it's believed that a child cannot give a free and full consent.

In case of Syaikh Puji, a rich businessman and prominent kyai in Salatiga, Central Java, who took Lutfiana Ulfa, a 12-year-old female student, as his second wife, with, according to him the consent of the first wife. In November 2010, Syaikh Puji was eventually sentenced to four years in prison for violation of the children's right according to Law No. 23/2002 on Children Protection (Kurniawati Hastuti, 2015). He is charged with Article 81 (2) Law No. 23/2002, which states that everyone who deliberate deceit, series of lies, or persuading Children intercourse with him or with other people shall be punished with a minimum imprisonment of 5 (Five) years and a maximum of 15 (fifteen) years and a fine of not more Rp5,000,000,000.00 (five billion rupiah). It arises question on how far consent that is given by parents will differ to deception of the perpetrator. It shall be steering clear of discourse on child's consent. The right to free and full consent to a marriage is recognized in the Universal Declaration of Human Rights (1948) with the recognition that consent cannot be "free and full" when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. The convention on the Elimination of All Forms of Discrimination Against Woman (1979) states

that the betrothal and marriage of a child shall have no legal effect and all necessary actions, including legislation, shall be taken to specify a minimum age to marry (UNICEF, 2006).

Exception to legal age of marriage with the parent consent can be beneficial for the perpetrator to dissimulate “consent” of the parent. In terms of child marriage prevention, the “consent” of the parent is in question since there is no apparent bourn toward any circumstance in “deliberate deceit, series of lies, or persuading of children”. In case of Syaikh Puji, he is accused of persuading s twelve years old girl, Lutfiana Ulfa, to marry him. Child marriage still common and, for a small, but significant, segment of the population, are culturally and religiously acceptable in contemporary Indonesia (Smith, 2014) and (Woodward, 2014). For this reason, parent consent becomes irrelevant since there has been social construction that justified it, no matter what the parent’s stance. In some cases, there also has to be power relation between perpetrator and parent. Power is understood as the capacity of an agent to impose his will over the will of the powerless, or the ability to force them to do things they do not wish to do. In this sense, power is understood as possession, as something owned by those in power. But in Foucault's opinion, power is not something that can be owned, but rather something that acts and manifests itself in a certain way; it is more a strategy than a possession—in Syaikh Puji case, he used his power as religious figure whose adherent.

Public opinion was split in half for this issue: supporting party who are committed by a conservative and fundamentalist, find it normally happens without breaking any social norms; on the contrary, there also half scope opposing which is done by human rights activists, academics, NGO’s, and so on. By placing early marriage in the public square, it stipulates exhalation of religious sentiment as well as it perceived to be religious practice. Thus, some part of the society assumes that marriage is interpreted as private form—free out any kind of intervention. Berger (1967) and Luckmann (1967) described this as privatization of religion. Sheikh Puji also pull the issue on the child marriage into larger discourse concerning state-religion relations.

The consent concerning the parental approval remains in doubt. At some point, it contradicts to parental responsibility that obliges them to prevent child marriage in Law No. 23/2002. It is perhaps for this reason that Indonesian religious activist, including Islamic Party, PKS, carrie to Syaikh Puji’s defense, even though they utterly reject his more general religious orientation. According to a report on SciForum (2008), PKS politician, Hilman Rosyad described Syekh Puji’s marriage to Lutfiana Ulfa as being not only religious valid, but also normal practice. He also stated that the Indonesian law establishing 16 as the legal age of marriage for the young woman only a suggestion and that is not obligatory. It is mainly because the existing law—marriage law fails to set minimum age of Marriage Law No.1 of 1974 as well as Law No. 23 of 2002 regarding child protection. Moreover, it still also enables children under 16 years old to marriage by parent’s or guardian’s approval. Therefore, there has to be revision on marriage law in order to set minimum age of marriage that coherent to another existing law such as Child Protection Law No. 23 of 2002.

Ethical Dilemma on a Minor’s Consent to Marriage

In a pluralistic and multicultural society, ethical choices usually confront us every day. Because of the many variables that exist in the context of clinical cases, there are several ethical principles that seem to be applicable in many situations. However, these principles are not considered absolutes to any case, but serve as powerful action guides in clinical medicine (McCormick, 2013).

Four basic principles in bioethics are autonomy, beneficence, non-maleficence, and justice (Gillon, 1994) and (Beauchamp and Childress, 2013). This basic prima facie provides a simple and culturally neutral approach on ethical issues in health care (Gillon, 1994).

One of the basic principles that is the major focus on this paper is non-maleficence. The principle of non-maleficence requires physician to not intentionally create harm or injury to the patient whenever possible. Examples of more specific rules in the principle of non-maleficence is “do not kill”, “do not incapacitate”, “do not cause offense”, “do not cause pain or suffering”, and “do not deprive others of the goods of life” (Beauchamp and Childress, 2013). Providing proper standard of care to avoid the risk of harm should be supported not only by moral convictions, but also by the laws of society as well. From this principle, it clearly stated that we should avoid something bad happen to the patient, especially children. Seeing the negative impact of child marriage on health and the other risk for the girls who marry early, we conclude that the principle of non-maleficence should be applied.

CONCLUSION

In the marriage law of 1974, article 6 requires that marriage shall be based on consent of the future spouses. A person who has yet reached the age of 21 years old shall obtain the consent of both parents. The consent of parents is not hard to get in the patriarchal societies of Indonesia’s rural areas. Even so, the article 7 on the Marriage Law of 1974 sets the minimum age at 19 for the man and 16 for the woman, with an exception that may be granted by the Court at the request of the parents. The marriage law tried to accommodate the need of the society, but is on a continuous battle with the Child Protection Law itself. The inconsistency of the law is a concern itself, for the positive law should harmonize and not contradicting one another.

In the Syekh Puji’s case, even though the child gives consent in marrying him, the judge still decides that the child marriage phenomenon as a crime. That’s because the child is not considered to be capable of giving consent and therefore reflects on the ethical views. On the medical view, a girl under 20 years old is not yet considered physically ready to be married. Furthermore, someone can be convicted for having sex with a minor, with or without the permission of the child. In summary, using the medical and criminal law perspective, Syekh Puji’s guilty on marrying the twelve years old girl. His effort on exploiting the loophole in the Marriage Law of 1974 fail as there are still the Child Protection Law that guard girls’ rights. In the future, to combat child marriage, it’s highly advised to align all the positive law in Indonesia so the child’s protection will be effective.

RECOMMENDATIONS

Considering the analysis of the data, the solution of the issue above is to implement these three types of policy:

1. The reform of legal minimum age of Marriage in Indonesia is needed in the Marriage Law of 1974. By reflecting on the researches and the medical knowledge, the law must adjust the minimum age into ones that are non-threatening girls’ physical and psychological health. This time, the law must take its role to change the patriarchal culture instead of making a regulation based on the society situation.
2. An arrangement shall be held by the central government to local governments to create a regional regulation on families’ supervision regarding the practice of child marriage. That way, while waiting for the revision of the Marriage Law of 1974, the child marriage practice done by parents will be reduced by complicating the progress for families to held a child marriage. If a family is accustomed to marry their children, the government will review the previous marriage of the earliest child and sees whether or not the child lives a happy and prosperous life. If the result of the first child’s marriage in their family is not good, then the family will have a hard time into marrying their other under minimum-age children.
3. A multifaceted approach focusing on using a non-penal responsive policy to give rewards on people’s participation on sex education by using peer groups to raise awareness on reproductive health issues. The awareness on sex education is still low for some rural areas

in Indonesia that pushes the rate of child marriage's higher. That's why the government must encourage the involvement of people so that the education on the risks of child marriage reaches not only children, but also their families.

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2-AM34-4793

ARCTIC ENERGY, ENVIRONMENTAL CONCERNS AND POLITICAL COMPLEXITIESDR. SANJAY KUMAR PRADHAN¹

The Arctic region is home to 30% of the planet's undiscovered natural gas reserves and 13% of global undiscovered oil. The increasing involvement of littoral countries and their investments have resulted in growing production of oil and natural gas in the Arctic and Arctic region, and the present production constitutes one-tenth of the world's oil and a quarter of global natural gas. However, the present day production and future of drilling in the Arctic is highly contested i.e. debated, 'energy security vs. environmental sustainability'. Environmental risks and hazards, which are manifold and intertwined, are reflected through oil spill, release of toxins, emission of greenhouse gases, gas flaring, noise and melting of ice caps. Apart from these issues, the infrastructural networks such transport routes and facilities for energy exploration have serious implications on Arctic ecosystem and global environment. However, due to the protests by the civil societies and some countries, the Arctic stake holders, the Arctic claimants and the energy companies have argued that they will be taking care of all the factors of concern for the sustainability of the Arctic, and mitigation or minimization of the adverse effects in the region. Likewise, international laws and regimes have been emerged to deal the menace. But, the overlapping zones, territorial disputes and poor political consensus on the Arctic landscape have weakened the sincerity and commitment of the littoral and other countries for the protection of fragile environment, while drilling for energy resources.

Taking into account all these aspects, the paper is intended to analyse the nature and extent of energy exploration in the Arctic region and its implications on environment and ecosystem, protest by the civil societies or other means, steps taken by the Arctic stake holders and companies to mitigate or minimize adverse effects of exploration, effectiveness of the laws and regimes, and critical evaluation of political cooperation among the countries for sustainability of the Arctic region.

Key Words: Arctic, energy, hazards, civil society, law and regimes, environment, politics, sustainability.

3-AM11-4612

THE APPLICABILITY OF THE MORE FAVOURABLE-RIGHT-PROVISION ON ENFORCING FOREIGN ARBITRAL AWARDS UNDER NEW YORK CONVENTION OF 1958.PROF. LAFI DARADKEH²

There are a number of regimes for recognition and enforcement in the state where recognition and enforcement are sought. Some regimes provide a number of conditions for enforcement and a number of grounds of refusal. At the same time, other regimes provide different conditions for enforcement and different grounds of refusal. They are connected with one another by means of the more favourable-right-provisions. In this situation, two or more regimes may claim jurisdiction to enforce the same foreign arbitral award. According to this connection, the winning party can bypass the provisions under which the losing party can resist enforcement. It is very often the case that the winning party can choose alternatively any regime

¹ Dr. Sanjay Kumar Pradhan, Assistant Professor, Pandit Deendayal Petroleum University.

² Prof. Lafi Daradkeh, Professor, Yarmouk University.

from these regimes which represents his interest to enforce the arbitral award by virtue of the more favourable-right-provision.

That is to say, the grounds of refusal provided by the applicable regimes become a dead letter. According to this situation, it can be said that enforcing regimes are in favour of the winning party.

The common example of using the more favourable-right-provision is found in the USA, France, Belgium, and Germany. In these countries, it has been shown how, in practice, the local law may be more favourable to the recognition and enforcement than the New York Convention of 1958. Under the New York Convention, the losing party can resist enforcement if the arbitral award has been set aside or suspended in the country of origin. The courts of these States recognised and enforced the arbitral award according to their local laws on the basis of the more favourable-right-provision as provided by article VII of the New York Convention, even though the award was set aside in the country of origin.

Since the mandatory modes of enforcement are numerous, it then becomes important to show how can the winning party resort to a particular mode of enforcement as the more favourable one? And By which means can he do so?

12-AM17-4726

THE ROLE OF THAILAND FOLLOWING THE DISPUTE BETWEEN THAILAND AND CAMBODIA OVER THE OWNERSHIP OF PREAH VIHEAR TEMPLE

DR. SUNTHAN CHAYANON³

This paper aims to study 1) the causes of dispute between Thailand and Cambodia over the ownership of Preah Vihear Temple, and 2) the role of Thailand on the dispute between Thailand and Cambodia over the ownership of Preah Vihear Temple. Using qualitative research methods, all the data had been collected through the secondary sources and interpreted with data analysis technique.

The findings revealed that:

1. In 1958, beginning of the conflict between Siam or Thailand and Cambodia over the whole territory of Preah Vihear Temple. Because of both countries had claimed to have sovereignty over the Preach Vihear Temple which is located on the promontory of the Dangrek Mountains between Kantharalak district in Sisaket Province of northeastern Thailand and Siem Reap and Stung Treng of Cambodia. According to the different maps which had been used by Thailand and Cambodia to claim the ownership along the border line of the Dangrek Mountains' natural watershed causing the disputed land around the Preah Vihear Temple. In 1959, Cambodia requested the International Court of Justice (ICJ) in Hague of the Netherlands to interpret this case and Thailand had agreed with that. The judgment which it delivered on 15 June, 1962 by nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia. However, Thai people are not happy with this judgment and the dispute between Thailand and Cambodia still continue and causing damage for the two countries.
2. In, 2005 after 40 years of peacefulness, Cambodia has claimed the territorial sovereignty on the overlapping area of 4.6 square kilometers following the Annex I map which France had made it. Moreover, Cambodia has requested that UNESCO World Heritage Committee inscribe the site of the Temple of Preah Vihear on the World Heritage List. However, Thailand under the Prime Minister General Surayud Chulanont had rejected it. He believed that Cambodia had claimed that because they wanted to have sovereignty over 4.6 square kilometers of Thailand. After that during the Prime Minister Samak Sundaravej, Thailand

³ Dr. Sunthan Chayanon, Lecturer, Suan Sunandha Rajabhat University.

and Cambodia had better relationship which leading to the joint communique regarding the temple registration as long as that process must not affect the disputed borderline. However, the People's Alliance for Democracy had campaigned against the People Power Party government of Prime Minister Samak Sundaravej. Finally, the Thai Constitutional Court upheld judgment that the foreign minister's joint communique with Cambodia was unconstitutional. The protest had continued until the Prime Minister Abhisit Vejjajiva had protested the inscription of Preah Vihear Temple by UNESCO. These had brought to withdraw Thailand from the World Heritage Committee. However, on 8 July, 2008 the temple of Preah Vihear had been listed as the UNESCO's World Heritage. The relationship of Thai government Prime Minister Abhisit Vejjajiva from the Democrat Party with the Cambodia government Prime Minister Hun Sen has degradation. Soldiers of the two countries with a variety of weapons and artillery fire to fight. The damage to property have all fallen on both sides. It can be seen that the disputed over the Preah Vihear Temple had brought the two countries back to the World Court for the second time. In dispute about land area of 4.6 square kilometers. Meanwhile, the UN Security Council agreed to use the bilateral talks. On 18 July, 2011 the ICJ had introduced a temporary agreement for Thailand and Cambodia to withdraw their troops as well as to open the way to Cambodia for carrying people and materials to repair the temple.

3. The government of Prime Minister Yingluck Shinawatra who had followed the government of Prime Minister Abhisit Vejjajiva had continue taken part in litigation with Cambodia at the ICJ. By using the former lawyer, H. E. Mr. Virachai Plasai, the ambassador extraordinary and plenipotentiary of Thailand who had been working as the chief lawyer and foreign legal consultant. His work had been admired by the Thai people. The ICJ judgment on 11 November, 2013 the court stated that 1) Phu Ma-Khuela and comprises of 4.6 square kilometers that both side agreed was in dispute is not territory under the sovereignty of Cambodia, 2) Annex 1 map (1: 200,000) does not certify by the ICJ as the frontier line. However, it can be used only the north part of the disputed land following the judgment in 1962 that the frontier line between Cambodia and Thailand, in the disputed region in the neighborhood of the Temple, was the Annex I map line, 3) the boundary line which had been surrounded by barbed wire in 1962, was the unilateral action of the Thai government, and 4) the ICJ suggests both countries, Cambodia and Thailand must co-operate between themselves in protection of the site as a world heritage and emphasize the important of ensuring access to the Preah Vihear Temple from the Cambodian plain.

13-AM16-4727

A STUDY OF POPULAR POLITICAL PARTICIPATION IN KLONGYONG SUBDISTRICT, BUDHAMONDHOL DISTRICT, NAKORNPATOM PROVINCE, THAILAND

DR. WALLOP PIRIYAWATTHANA⁴

This study examines popular political participation in Klonyong Sub District, Bhudhamondhol District, Nakornpatom province, Thailand. The purpose is to 1) study knowledge levels and understanding of the functions of the constitution, and 2) to examine the sources of knowledge and motivations for political participation. The research strategies that relate to these objectives are a literature review about political participation and the content of the Thai constitution, especially in regards to the right of Thai people in local management, and a sample survey consisting of 384 samples from 9780 people.

⁴ Dr. Wallop Piriyaawatthana, Lecturer, Suan Sunandha Rajabhat University.

The major findings are: 1) The samples show a moderate level of knowledge regarding the Thai Constitution and local political participation. They report, however, a low level of participation in local government. 2) The factors that affect the level of participation are gender, educational level, group membership, and media consumption regarding the Thai constitution and local governance.

16-AM22-4732

RESOLUTIONS OF THE UNREST PROBLEMS IN SOUTHERN PROVINCES: THE PEOPLE'S PERSPECTIVE

DR. LUEDECH GERDWICHAJ⁵

This study aimed to survey people's attitudes towards the unrest problems in southern provinces. The researcher utilized mixed method as research methodology and used the survey as a lead to conduct a quantitative research and then utilized in-depth interviews to expand knowledge through qualitative findings and formed a theoretical model in term of inductive characteristics. The population in this research was people who lived in the 3 southern provinces, including Narathiwat, Pattani, Yala and 4 districts of Songkhla.

The findings concluded that;

Most of the sampling group of 2,500 people who lived in 3 provinces and 4 districts of Songkhla province were mostly female, aged between 25-33 years old, the majority were Muslims, level of education were high School or Sanawi (8-10), mainly domiciled in Narathiwat, married status, most of them were agriculturists, had monthly income of 3,000-6,000 Baht, and family income per year was 50,001 baht and above, and had their own lands and houses.

The attitudes of the people towards the unrest problems in southern provinces were classified by assigned group found that the people had overall attitudes of "agree with". As considering to each 7 assigned groups, it revealed that every group had "agree with" attitudes. The first priority was the education, religion, and cultural group followed respectively by the conflict resolution through peaceful approach group, the establishment of understanding of domestic and international tasks and human rights group, the security of life and property group, the development of potential area and people's quality of life group, the increasing of public efficiency and policy-driven group, the justice administration and the healing and restoration of the damaged and affected by unrest problems group.

⁵ Dr. Luedech Gerdwichai, Associate Professor, Suan Sunandha Rajabhat University.

25-AM03-4538

ROLE OF WOMEN LEGISLATIVE MEMBERS IN DOMESTIC WORKERS PROTECTION LAWMR. SATYA LEGAWA KENCANA⁶; MS. AMALYA FITRIA TAJA⁷; MR. CRISTIAN FERNANDES RIDO SOMBU UAS⁸; AND MS. MARIA GODELIVA KRISTIANNINGRUM FERDINANDUS⁹

The phenomenon of patriarchy in Indonesian political system is one topic that need to be examined. Women legislative members are seen as not giving their maximum effort to create interests of women in the parliament. Quantitatively, women legislative members are less than men, for the majority parties in Indonesia still 'use' women to boost their number of voters. Thus, numbers of draft bills relating to women are not represented well although the presence of women in parliament becomes important. Their roles are needed, for example, for the formulation to the enactment of a bill such as the Domestic Workers Protection Law (UU PPRT). Domestic Workers Protection Bill (RUU PPRT) is one of the 'stuck' bills. Ideology platform, interests of legislative members, and logical thinking of women legislative members are the benchmark of why the bill is yet to be ratified. Domestic Workers Protection Bill is a bill that refers to the substance of ILO (International Labour Organization) 189 Convention on decent work situation for domestic workers that is considered important to be the foundation of protection, respect, promotion, and fulfillment of rights of the domestic workers. In this case, the role of women legislative members is required because the Domestic Workers Protection Bill also bond to the plight of women domestic workers. Physical and mental violence are some cases that often occur. Protection for women workers form sexual harassment is one of the thing to be fought for in the bill. However, the support from women legislative members toward the bill is relatively few and is not considered serious. If the bill is enacted, the workers, especially women workers can get more decent facilities.

35-AM23-4708

GUIDELINES FOR INCREASING PARTICIPATION IN COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PHILOSOPHY OF SUFFICIENCY ECONOMY BY THE LOCAL GOVERNMENT OF KHLONG YONG COUNCIL, PHUTTHA-MONTHON DISTRICT, NAKHON PATHOM PROVINCEMR. TAWAT PUMDARA¹⁰

This research has three objectives. They are, 1) to study increasing participation in community development in accordance with the philosophy of sufficiency economy by a local government, 2) to compare participation in community development in different villages, and 3) to give suggestions in solving problems of community development for Khlong Yong Council The researcher was able to gather data from the 2,394 residents of Khlong Yong Council Village 2 and Village 4 in Phuthamonthon District, Nakhon Pathom Province by using a questionnaire. The statistics used to analyze the data include frequency, percentage, average, and standard deviation in t-test and f-test (one-way Anova) The results of the research are as follows. 1. The majority of the population of the area of Khlong Yong Council village 2 and village 4 are

⁶ Mr. Satya Legawa Kencana, Student, University of Indonesia.

⁷ Ms. Amalya Fitria Tjaja, Student, University of Indonesia.

⁸ Mr. Cristian Fernandes Rido Sombu Uas, Student, University of Indonesia.

⁹ Ms. Maria Godeliva Kristianningrum Ferdinandus, Student, University of Indonesia.

¹⁰ Mr. Tawat Pumdara, Lecturer, Suan Sunandha Rajabhat University.

females aged 35 to 55 years with a high school education level. For the most part they do not have careers, but there is a portion who are employed as workers. The income level is between 5000 and 8000 baht, and the average length of time lived in the community is 10 years. 2. Participation in community development by the population of Khlong Yong Council village 2 and village 4, Phuthamonthon District, Nakhon Pathom Province. Total income is a medium level, and qualitative research indicates a higher level of participation in minor operations, including recognition and understanding of the administration of local leaders and decision making 3. Factors that influence participation in community development in Khlong Yong Council village 2 and village 4, Phuthamonthon District, Nakhon Pathom Province, include career. 4. Factors that do not influence participation in community development in Khlong Yong Council village 2 and village 4, Phuthamonthon District, Nakhon Pathom Province, include gender, age, education level, income, and length of time residing in the community. It is proposed that the headman (community leader) or government department assigned to take care of community work should spread participation in community development to those employed in different careers and allow for closer participation in order to create new perspectives on various forms of community self-development, and to allow for sustainable development and progress.

53-AM36-4814

CLIMATE CHANGE AND GOVERNANCE: PROSPECT IN THE LIGHT OF UNFCCC

MR. SHUBHANG PAREKH¹¹

In the wake of globalisation in present times and the past industrial growth, climate change and environmental degradation have emerged as acute challenges of our times. It has truly become a global phenomenon, not confined to any individual country or region. It is viewed that, with the rapid increase in climate change issues the problem of climate change has become one of the topmost subjects of major global dialogues and discourses, particularly after the Climate Change conference in Paris, in December 2015. If not addressed on time, we may soon have to face the wrath of an escalating crisis, especially in the absence of a global and coordinated response from the Copenhagen meeting of the Conference of Parties to the UN Framework Convention on Climate Change (UNFCCC). The success and failure of Copenhagen meeting will also determine the prospects of effective global governance, as there are many more global issues that also require global action.

The roots of UNFCCC date back to the Rio conference of 1992 where it was formed. It is also viewed by the scholars that, in the following years, UNFCCC has identified various climate change threats and its dimensions such as mitigation and adaptation. But though there is a common principle on global action on climate change, the responsibilities and the capabilities differ greatly. As the issue of climate change emerged mainly due to the greenhouse gas emissions from the fossil-fuel based activities in the developed countries over the two centuries, it is commonly assumed that primarily, the developed countries must take action for climate change as they are more obligated to do so. But on the other side, the developing countries also have substantial, if not equal, obligations to sustain and control climate change. Looking at the changing global scenario on climate change and the urge to take efficient and useful steps in the direction of climate change, this paper will look into the role of UNFCCC as a global actor in climate change and to what extent it will be able to address these serious climate change issues. Secondly, how the UNFCCC will set an example for global governance in climate change in bringing countries together for a serious and common cause. Moreover,

¹¹ Mr. Shubhang Parekh, Post Graduate Student, Pandit Deendayal Petroleum University.

the paper will also try to answer till what extent the previous UNFCCC conferences have succeeded and what will be the main focus area of the next UNFCCC conference in Bonn, Germany, and what will be its prospect?

Key Words: UNFCCC, Climate Change, global governance, developed and developing countries, fossil fuel, greenhouse gases.

55-AM15-4695

GUIDELINES FOR INCREASING PARTICIPATION IN COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PHILOSOPHY OF SAMSEN RESIDENT'S WHO VOTED 2016 REFERENDUM

MR. BARAMEEBOON SANGCHAN¹²

Following the referendum on the draft Constitution of the Kingdom of Thailand B.E. which was held on 7 August 2016, it revealed that most voters approved this draft constitution. Nevertheless, in this study of Samsen Community's people who voted, they have their opinions about the political structure which are; Thailand is ready for the 2-party system, the qualification of the candidate should be graduated with a bachelor's degree, and the head of the government should come from the party with a majority vote. Additionally, they disagree about the prime minister who comes from the senator's nomination, and the senator should not have the authority of controlling the independent entity.

64-AM28-4781

DETERMINING THE AGE OF JUVENILE'S CRIMINAL LIABILITY IN ISLAM

MR. HAJED ALOTAIBI¹³

Adjudication upon juveniles and their criminal responsibility are different. One cause for this is that it depends on a variety of their age stages from birth till puberty. With this in mind, the Saudi juvenile system stated that the age of adulthood is 18 years old for boys and 30 years old for girls. However, judges (i.e. in their verdicts) are deciding according to Hanbali doctrine, which argues that the adulthood acquired either by natural signals like appearance of pubes or, if not, at the age of 15 years old to be fixed. Therefore, the contradictory could appear between theoretical (the statutes) and practical (judgment) sides. Meanwhile, great international concern in addition to different perspectives of Islamic scholars exist on determining the age of puberty. Herein, we will investigate this problem within Saudi Islamic law and provide some potential solutions.

The methodology used here is qualitative approach. Inductive method will be utilized so as to build and develop the existing theories on the age of juvenile criminal liability in Saudi. Therefore, we will deeply discuss relevant laws/instructions related to Saudi juvenile system. The upshot is that, the situation probably opens the door to projections and fluctuations since there are no well written nor revised rules pertaining to juveniles in Saudi. In other words, the discretion might be given to judges to decide about the age of puberty.

¹² Mr. Baramееboon Sangchan, Lecturer, Suan Sunandha Rajabhat University.

¹³ Mr. Haged Alotaibi, Phd Student, Bangor University.

65-AM33-4809

REGULATING TRADE IN THE GLOBAL COMMONS: THE CASE OF DEEP SEABED MININGMS. SAYURI MOODLIAR¹⁴

Achieving sustainable economic development while exploiting natural resources has historically been challenging for regulators. With the impending depletion of terrestrial mineral and metal reserves, the unabated demand for these raw materials for the manufacture of products such as electric cars, wind turbines and electronic devices has led to the inevitable exploitation of marine resources. While international law instruments recognise the sovereignty of states to regulate activities that occur within their territorial boundaries, regulation becomes complex when extractive industries venture into the high seas which form part of the global commons or common heritage of all humankind. Global environmental politics, together with the influence of non-state actors such as non-governmental organisations and multinational corporations, exacerbate the conundrum that faces the international community in their efforts to devise effective regulatory instruments.

The International Seabed Authority has awarded contracts for exploration of the deep seabed in various areas of international waters, and the next step is to allow contractors to go ahead with mining the ocean's resources. In the past, international regulations in respect of trade have often been drafted only after the harmful effects to the global commons have been suffered and widely publicised. Examples of this include curbing the manufacturing of products containing CFCs that damage the ozone layer or banning trade in products of endangered species. With the mining of the deep seabed, however, the international community has the opportunity to proactively put in place financial mechanisms and environmental protective measures before contracts for its commercial exploitation are awarded.

This paper examines the current and proposed international regulations in this regard, and critically analyses whether these instruments provide adequate environmental protection for the vulnerable marine ecosystem in which these extractive activities will occur. The analysis also considers the challenges that are inherent in this complex and fascinating convergence of ecology, economics and law.

67-AM07-4675

IMPACT OF SOFT POWER IN AMERICAN FOREIGN POLICYMR. ÇAĞLAR SÖKER¹⁵

“Power” is a very important concept that is subjected to lots of studies and discussions in the discipline of International Relations which established after the World War I. Although it is associated to military power when it is enounced, “power” is not only consists of military power. Historical experiences and other various factors determined to rise new power concepts, like “economic power” and “soft power”.

Destruction of two World Wars in the beginning of 20th Century revealed results and costs of war. Lessons which was taken from this period incited states to be more cooperative and encouraged international institutionalization. In addition, with the help of technology and globalization process, international system began to be more complex and intricate. As a result, people, institutions and states have become much more dependent on each other. For example, a decision of American Central Bank (FED) can effect all world markets. A protest in Africa

¹⁴ Ms. Sayuri Moodliar, PhD Candidate, University of the Witwatersrand.

¹⁵ Mr. Çağlar SÖKER, Research Assistant and Student, Selçuk University.

can reach all over the world and become international issue by media. In this world, effecting and convincing other country's people has become necessity for nation-states. Traditional methods such as military power, coercion, threats, and sanctions have lost their priority and soft power is coming into prominence.

Soft power is very important aspect for the United States of America which is also mentioned as "Super Power", "Hegemonic Power", and "Dominant Power". The US that has great political, economic, and cultural potential, needs soft power in order to enhance its capacity to convince, increase its attractiveness, and legitimize its politics.

The main object of this study was to analyze the place of soft power in American Foreign Policy. First of all, the concept of "Soft Power" is examined. Theoretical framework, discussions and critics of the concept was evaluated with the starting point of the definition of power. After that, various dimensions of US Soft Power were mentioned. Finally, the situation of US Soft Power after World War II was analyzed.

69-AM32-4806

THE RELATIONSHIP BETWEEN NASAL SEPTUM DEVIATION AND RHINOSINUSITIS IN SOETOMO HOSPITAL-JANUARY 2017

MS. LIDYA PERTIWI SUHANDOKO¹⁶

Background: Rhino sinusitis affects 1 in 7 adults in the USA. Its prevalence varies from 6-15% depending on the climate and weather. In Indonesia, new cases of rhino sinusitis in adult patients who visit Rhinology Division of the Department of Otolaryngology-Jakarta Cipto Mangunkusumo during January-August 2005 was 435 patients. Data from the Ministry of Health of Indonesia in 2003 declare that the disease nose and sinuses was ranked 25th out of 50 major rankings disease pattern which is about 102,817 outpatients at the hospital. Besides being a very high prevalence of rhino sinusitis, rhino sinusitis can significantly degrade the quality of life of patients.

One of the anatomical factors that can affect rhino sinusitis is a nasal septum deviation. Nasal septum deviation can cause changes in airflow on cavum nasi, nasal cycles, and cleaning by mukocilier cells. Nasal septum deviation can be easily evaluated through rhinoscopy anterior. The relationship between the deviation of the nasal septum with rhino sinusitis is still unclear. In this study, the authors expect to know the relationship of the deviation of the nasal septum with acute or chronic rhino sinusitis.

Material and methods: The design of this study was an observational study with cross sectional study to determine the relationship between nasal septum deviation with rhino sinusitis. The relationship between nasal septum deviation and rhino sinusitis were prospectively evaluated in 56 patients. Nasal Septum deviation is stated by anterior rhinoscope. Out of 56 patients, 45 patients were included in the study. Patients with nasal polyp and nasal tumor were excluded from the study. Patients with nasal septum deviation were enrolled in the study group and patients without nasal septum deviation were enrolled in the control group.

Results: There was no statistically significant difference between nasal septum deviation group and non nasal septum deviation group in relation with rhino sinusitis ($\alpha=0.05$).

Conclusion: The mild and moderate nasal septum deviation were not a risk factor for rhino sinusitis. Only severe deviation of the nasal septum itself is a risk factor for the development of rhino sinusitis. More detailed investigation is needed to define the relation between the nasal septal deviation and rhino sinusitis.

¹⁶ Ms. Lidya Pertiwi Suhandoko, Medical Student, Universitas Airlangga.

70-AM31-4810

ORGAN TRAFFICKING IN INDONESIA: A CASE STUDY OF ETHICO-LEGAL ANALYSIS AND ITS FUTURE SOLUTION

MR. FADHIAN AKBAR¹⁷; MR. REZA HARYO YUDANTO¹⁸ ; MR. IMAMURAHMAN TASLIM, STUDENT; AND OKTAVINDA SAFITRY, DOCTOR.

Transplantation is the transfer of organ from a donor to recipient with the aim to restore the function in the body. According to World Health Organization (WHO), Kidney transplantation is the most transplanted organ with 63,000 recipients annually.

In Indonesia, more than 100.000 end-stage renal disease patients need kidney donor to sustain their life. Kidney transplantation is preferable to hemodialysis due to improvement of quality of life. However, this condition was used by some people as organ trade opportunity. Many of problems stem from inequality between high demand from patients and low availability of organ donor. Poverty and economical motivation also predispose this practice.

At early 2016, Police of Indonesia found out the organ trafficking in Cipto-Mangunkusumo Hospital, Jakarta. Three brokers recruited some people to become kidney donor thus they could get profit from the trade with patients.

Practice of organ trafficking in some countries considered inappropriate, expensive and unethical. Under the Indonesian law, the organ donor should lies on humanity reason and does not expect for rewards. Although, there is a legal system which control this issue, the brokers could deceive the hospital and physician through fake documents and administration. Physician and health provider was not considered as the guilty parties since they had followed the standard operational procedure.

In this issue, we face a dilemma about how to increase the supply of organ transplant in a manner that is ethical and humane and how to prevent this organ trafficking. In this case study, we aim to discuss about organ trafficking, ethico-legal analysis with the comparison of another countries legal system, and find the solution for the problem.

Method : Search engines PubMed and Google Scholar with “Organ”, “Trafficking”, “Trade”, “Transplantation” and “Law” keywords were used to systematically find the organ trafficking study and its ethico-legal aspect. The case is reviewed using relevant literatures. We also review another country legal system about organ transplantation and compare with Indonesian legal system.

Result: WHO Guiding Principles has forbidding organ sales through regulating “The human body cannot be the subject of commercial transactions”. Singapore is the first country which decide to give incentive for the donor. Saudi Arabia also set this rule including life-time medical care for unrelated organ donors. Spain maximizes donations from deceased individuals by using professionals to identify potential donors in hospitals. Several country have the organization/ committee to regulate the transplantation organ and prevent trafficking such as United Network for Organ Sharing (UNOS; United States), National Organ Transplant Committee (NOTC; Singapore), and Saudi Centre of Organ Transplantation (SCOT; Saudi Arabia).

Conclusion : In conclusion we offer some points. First, Indonesia should have clear and legal system on organ transplantation. Law enforcement is needed to ensure the compliance in practice. Second, We should enhance the centralized organization/ committee as Donor Pool to regulate the recipients priorities and verify the donor to prevent commercialization. Third, We should raise awareness to vulnerable people and protect them from organ trafficking.

Keywords: organ trafficking, transplantation, ethico-legal, Indonesian law

¹⁷ Mr. Fadhian Akbar, Student, Universitas Indonesia.

¹⁸ Mr. Reza Haryo Yudanto, Student, Universitas Indonesia.

74-AM43-4828

CONCEPTUALIZATION OF FAIR EXCHANGE IN FINANCIAL CONSUMER CONTRACTS WITH A SPECIFIC REFERENCE TO ISLAMIC BANKING BUSINESS

MR. AMINURASYED MAHPOP¹⁹

This paper aims to conceptualise the ‘fairness of terms on an account of consideration in financial consumer contracts’ with specific reference to the ‘sui generis’ contracts adopted in the Islamic banking business in Malaysia. The empirical evidence from the decided case laws and on various Islamic banking contracts which syndicates the Islamic nominate contracts with the use of hiyal (legal strategm) (for example, multiple sales in bai al-inah and murabahah contracts; purchase undertaking in musharakah contract; and profit equalisation reserve mechanism in mudarabah investment contract) demonstrates the anxiety among the legal actors of how the principles concerning adequacy of consideration in the classical contract law regime is formulated, hence the issue of fair exchange.

The theoretical debate in the common law regime and Shari’ah over the application of good faith principle at the pre-contractual stage and during the contract performance is the grounded theory of this research. A comparative study of the good faith principle in the common law countries of the United Kingdom and Australia as well as in Shari’ah is undertaken to conceptualise the fair exchange under study. The researcher assumes that the construction and interpretation of Islamic banking contracts should consider recognising the advantages of imposing good faith duties on negotiation and performance. The research first engages with a scientific concept for Islamization of knowledge in economics to examine the nature of the contractual relationship between a financial service provider and a financial consumer with the framework of Islamic banking business. The extent of Shari’ah jurisprudence adaptability to enable the Islamic banking business to be at the same level of playing field and benefits from the same economic results as its conventional counterpart forms part of the examination. Having examined the nature of the contractual relationship, the research further employs the Janus-faced concept as an intermediary concept with a view to provide a coherent legal reasoning in establishing a set of standards of what constitutes fair exchange in various forms of Islamic banking contracts.

The emergence of Islamic Financial Services Act 2013 brings about a new landscape of financial regulation for the protection of financial consumer in Malaysia. The Central Bank of Malaysia, being a regulatory body, is empowered, to specify, amongst other, standards relating to the fairness of terms in a financial consumer contract for financial services and products. As of the date, the Central Bank has not yet made available this standard. The standards, though are in the form of financial regulation in its nature, may also be used to inform the contract law to decide whether or not case law tests are satisfied on any given set of facts. It is expected to adduce a significant contribution to the literature in the law of Islamic finance generally and also, practical implication to the construction and interpretation of Islamic finance contracts which include those in Islamic banking business.

08-AM21-4747

¹⁹ Mr. Aminurasyed Mahpop, Doctoral Researcher, University of Sussex.

THE POLITICS OF ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW: ISLAM AND RATIFICATION OF THE UN CONVENTION AGAINST TORTURE IN THE GULF COOPERATION COUNCIL (GCC) STATES.

RACHEL GEORGE²⁰

ABSTRACT

Modern international human rights treaties developed over the latter half of the 20th century to address a wide range of human rights issues. Their number is large and growing, yet, there is little evidence that these instruments make a difference. Nowhere does the evidence appear more glaring than in the Gulf Cooperation Council (GCC) states, where high ratification rates correspond with relatively poor human rights records in practice. Still, states in the Gulf have today voluntarily acceded to most UN human rights conventions. The resulting engagement has brought about an ongoing and vibrant diplomatic discourse – particularly about human rights and Islam. Using the case of the ratification of the 1987 Convention Against Torture (CAT) in the GCC, this paper examines the nature and content of discourses about Islam and human rights over time resulting from CAT ratification in the region. The paper demonstrates how arguments about Islam and human rights have been shaped by interactions with the CAT over time, arguing that where UN human rights treaties have failed to result in improved human rights practices, they have provoked an evolving and variegated dialogue about Islam and human rights worthy of greater scholarly attention.

Key Words: Islam, International Law, United Nations, Convention Against Torture, GCC

07-AM02-4636

PANOPTICONS MIGRATE TOO AND GIVE BIRTH TO CRIMINALS: THE CASE STUDY OF A TURKISH MUSLIM ‘SULTAN’ IN ELIF SHAFAK’S *HONOUR*

NOUR SEBLINI²¹

ABSTRACT

In this article, I combine the insights of new historicism with feminist criticism to comprehensively analyze Shafak’s novel *Honour* (2012). I focus on the male protagonist, Iskender, as I aim to gain new insights on the phenomenon of honour killings by adding the “why” and “how” the crime is viewed through the lens of the perpetrator himself. And, I argue that the idea of honour is linked to communal surveillance. By communal surveillance, I mean that traditional codes from the killer’s country of origin has been displaced into the migrant community. These displaced beliefs that do not fully fit in with the new British society nonetheless define the killer’s notion of honour. I demonstrate how internalized surveillance encourages crime rather than hindering its commission while paradoxically it preserves the main concept of discipline and punish. Accordingly, honour killings are based on what I would call Foucault’s ‘panopticon in reverse’.

Key Words: Surveillance, International Migration, Panopticism, Honour Killings, Security

68-AM48-4831

²⁰PhD Candidate in International Relations at the London School of Economics and Political Science. She holds an MA in Middle Eastern Studies from Harvard University and a BA in Politics from Princeton University.

E-mail:- R.George2@lse.ac.uk.

²¹ Wayne State University, Department of Classical and Modern Languages, Literatures, and Cultures

United States. E-mail- nour.seblini@wayne.edu

LEGAL FRAMEWORK OF CORPORATION AND SHIRKAH AL-INANHARTINIE ABD AZIZ²² AND ZUHAIRAH ARIFF ABD GHADAS**ABSTRACT**

Under the civil law, the metaphor of corporate personality is used to justify the existence of corporation as a legal person. As a creature of the statute, the existence, going concern and dissolution of a company is totally dependent on the Companies Act. Such principle is not found to be applicable to *Shirkah al-Inan*, which has been assumed by many Shariah scholars to be similar to a civil corporation. With the recent vast and rapid development in Shari'ah compliance businesses such as Islamic banking and finance and halal products, it is important to study whether Shari'ah businesses could be carried out in a civil law business structure. This paper analyze the legal framework of civil corporations and compare them with *Shirkah al-Inan* to highlight the misconception of many scholars that *Shirkah al-Inan* is similar to a civil law corporation.

Key word: corporation, *shirkah 'inan*, juristic person

72-AM44-4763

MULTIDISCIPLINARY ANALYSIS OF ROHINGYA REFUGEES IN INDONESIA BASED ON FOREIGN POLICY, DOMESTIC LAW AND MEDICO LEGALMUHAMMAD AKBAR²³, ACHMAD RIZKI YONO²⁴, ABID ABDURRAHMAN ADONIS, ANNUR RIZA DEWI IMTICHANI AND RIZKY SAPUTRA TELAUMBANUA**ABSTRACT**

The Rohingya Question has been considered as one of the most severe humanitarian problem in modern Southeast Asia history. Indonesia situates itself in special position over Rohingya problem historically, culturally, and politically. Given such complex relations with Myanmar, Indonesia is also a host country for Rohingya refugees that affects domestically and internationally on almost every aspect related to refugee. However Indonesia is a non signatory country to the refugee convention. By then, Indonesia's lack of domestic framework managing asylum seekers such as Rohingya refugees which make them vulnerable to the deprivation of their rights. Most of Rohingya's refugee transits are considered as illegal migrants. As a result of being unlawfully present foreigners, they have been detained in Immigration Detention Center of Indonesia in an indefinite period. Some of them have been lack of neither education nor health care. In health perspective, rohingya refugees are very suscpetible to both mental and physical problem due to lack acces of health care facilities. Health care providers also have to put ahead medicolegal aspect of refugee as it needs to be taken into policy consideration. Medicolegal report requires the responsible clinicians to state their opinion toward problems refugee.

Keywords: Rohingya Refugees, Asylum, Immigration, Medico Legal

²² Academy of Islamic Studies, Kolej Yayasan Pahang. Email: hartinieabdaziz@gmail.com

²³ Universitas Indonesia, Faculty of Medicine, Indonesia. E-mail:- akbar.muhammad1710@gmail.com

²⁴ Universitas Indonesia, Faculty of Medicine, Indonesia. E-mail:- rizkisan675@gmail.com

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