

The Legal Problems in Water Management: A Case Study of Paknamchawang Sub-District Municipality, Nakhon Si Thammarat, Thailand

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Abstract

The objective of this research is to study the legal problems related to water management. This is the qualitative research to study the documentation and in-depth interviews from key informants. The key informants are purposively selected. The tools used in the study are structured interviews. The data is analyzed by content analysis revealing that in legal problems related to water management, several laws involve. This has caused the local administration to encounter the problem of enforcing relevant laws and lack of coordination among the agencies resulting in the delay in solving the problem in a timely manner. Besides, there are no specific laws related to water management as well as not having the real transfer of power over water management to local governments. The problem solution in managing each agency has no integration. As each agency follows their own missions, the maximum benefits do not occur to the people affected by the flood in Paknamchawang Sub-District. Therefore, that the water management of Paknamchawang Municipality can be successful requires the specific laws which are not separate and the agencies responsible for water management will need to integrate and cooperate.

Keywords: Problems, Laws, Water Management, Paknamchawang Sub-District Municipality

Introduction

Thailand is located in the monsoon zone with high rainfall. There are flooding problems in many areas in almost every region. His Majesty King Bhumibol Adulyadej was always

concerned on the problems and he analyzed the physical characteristics of the areas affected by the floods. He considered the selection of methods to be used suitable for the local conditions and the capacity of the existing officials as well as the budgets for related expenses (Chaipattana Foundation, 2018). His Majesty the King gave the royal initiation in solving the flood problem such as the construction of dyke, construction of water diversion way, improvement and modification of river conditions, Kaem Ling Projects (Chaipattana Foundation, 2018). In 2011, Thailand suffered the huge flood causing severe damage. It was historical crisis of Thailand causing local administrative organizations as the main organizations for public services to be contributed in solving the problem. Local administrative organization is an organization that has the important mission in dealing with the disasters, especially flood management. According to the Constitution of the Kingdom of Thailand B.E.2550, "Individuals or communities have the right to maintain and utilize natural resources, environment, and biodiversity sustainably following the methods as prescribed by law." In addition, the Act defines the plan and procedures for decentralization to the local administrative organization B.E.2542 requiring the local administrative organization to have power to protect and alleviate the disasters for the benefits of local people. Meanwhile, the Disaster Prevention and Mitigation Act B.E.2550 (2007) empowers local government organizations to prevent and alleviate disaster in their local areas as well (Mala, Chobyos, and Phromphitakkul, 2014). Although Thailand has several mandatory flood management laws, there is no law at the level of the flood disaster management as a specific case. Thus, the disaster management is not clear and is not systematical. There is no unity as well. From the absence of specific law, it also affects the consideration on state liability in terms of the agency's liability and other liabilities (Bannasan and Cersansee, 2016).

Research Objectives

1. To study the legal problems related to water management of Paknamchawang Sub-District Municipality, Nakhon Si Thammarat Province.
2. To propose the amendments of the laws related to water management.

Literature review

Domestic laws

- 1) Constitution of the Kingdom of Thailand B.E.2560: Constitution of the Kingdom of Thailand B.E.2560 defines the rights and freedom of Thai people in Chapter 3. Article 43 stipulates that the individuals and communities have the rights to manage, maintain, and utilize the benefits from natural resources, environment and biodiversity sustainably in accordance with the law.
- 2) Disaster Prevention and Mitigation Act B.E.2550: Although this Act is the law related to the prevention of general disasters, it has been used for the prevention and mitigation of flood disaster for several times.
- 3) Regulation of the Office of the Prime Minister on National Water Resources Management B.E.2550: This regulation is enacted to ensure the management of water resources of the country in terms of management, procurement, utilization, maintenance, development, prevention, resolution, conservation, rehabilitation, and other actions related to water resources to be united and integrated in the watershed and national levels with the participation of people in all sectors.
- 4) Municipal Act B.E.2496 and the Amendment No. 13 B.E.2552: Under municipal law, municipalities must perform the following duties; 1. To provide land and water maintenance, 2. To maintain the arts, customs, local wisdom, and local culture.

International laws

1) USA

1.1) Flood Control Act of 1917: The Water Quality Act 1965 is the law that enacts measures for the promotion of engineering projects and flood diversion projects to control flood and flood risk with the budgets to support the construction to be used in the management under the supervision of the US Army. The water sources having been developed by this law are such as the Mississippi, Ohio, Sacramento Rivers, etc. USA is the country that has enforced and developed legal measures to prevent flood for long time ago.

1.2) Water Resources Development Act (WRDA) of 2010 is the new law that enacts measures for the implementation of civil and irrigation engineering projects to control flood and flood risk with various projects under the direction of the United States Army Department. In addition, US Army is also responsible for the restoration of ecosystem, infrastructure for wastewater treatment, disaster alleviation, and other activities under the plan and procedures set forth by this law (Tathongduang, 2014).

2) Japan

2.1) River Law 1964 is the main law on water resources of Japan. It is the law that defines the basic framework of Japanese water management. The key measures are defined to prevent floods by using river-based water management mechanisms. In 1964, the provisions of laws were amended in several issues. In 1997, the conservation and maintenance of the river's environment was added as Japan has become more concerned on the management of the river's environment. This law is intended for flood management, beneficial water use, maintenance and conservation of the environment of rivers.

2.2) Flood Protection Act 1949 is the particular law to prevent flood or storm surge. This law has a number of important issues. First of all, this law promotes decentralization so that local governments are empowered to implement preventive and mitigating public actions on direct flooding as local authorities are aware of the problems and specific geographic characteristics of each locality including the risks of flooding in different areas. Secondly, this law also defines the duties of Japanese government in flood forecast authorizing Meteorological Department of Japan to forecast and process the weather related to the flood forecast. Thirdly, such law also requires local administrative organizations to map the hazards of flood in order to determine where the risk may be affected or the risk of flooding as well as specifying the points that have already been prepared to prevent and fight the flood. For the benefit of the map identifying the danger of the flood, apart from that the government and local administrative organizations can plan or anticipate floods in the long run, it can also be another flood information to help people know the strengths and weaknesses of the terrain or geography for their communities in advance so that people can avoid the danger instantly.

2.3) Disaster Measures Basic Act 1961 is the law that regulates measures in dealing with the disasters possibly occurring and having negative impact on the public. This law lays down criteria for the government to take measures as necessary to prevent disasters possibly affecting the public. The government must also determine the responsibility for the prevention of natural disasters possibly harming the people. In addition, such law also provides 3 levels of warning measures; disaster management level by national agencies, emergency response level by the provinces and practical level for disaster alleviation by locality.

2.4) Flood Protection Act 1949 strengthened the decentralization so that locality and local people could fight flood. The cooperation between locality and people is possibly called Suibo-dan or Flood Fighting Team Working by local administrative organizations, volunteers, and people involving in preventing and mitigating the effects of flood such as community alerts, sandbag arrangement, building the dykes, for the communities, etc. (Tathongduang, 2014).

Related researches

Udomsak Sinthipong (2017) conducts the research on legal problems in water resource management. It is found that water resource management is in the authority of many agencies. According to many separate laws, there is the overlapped authority in management. The problem is that there are multiple agencies and several management-related laws resulting in the difficulty in managing such resources. There should be the revision on the roles, authority, and duties of the agencies and the measures of the law that overlap. As every agency sees the importance of water resource management, they will join without considering the key elements. This research proposes the amendment of laws to serve as policy framework and implement national water resources management measures.

Sajja Banjongsiri, Bamphen Kiawwhan, Palirat Kande, and Rasika Angkun (2016) conducted the research on the Participatory Water Resource Management: Case Study of the Yom River Basin. It is found that for the participatory water resource management, the favorable environments are; 1. The relevant laws are not suitable. There are many agencies that oversee and enforce. People are more aware of laws and rights about water. 2. The watershed strategy comes from gathering plans from different sectors, coordination and management of the Yom River Basin. The strategies also contain the gap. 3. The support from several sectors to people still continues.

Sumate Supatjamnian, Phanasathorn Yuprasert, Gran Thanuthep, and Lalida Pakkaomayang (2016) conducted the research on the legal measures and problems in community solid waste management: Case Study of waste management in Ku Mueang Sub-District Administrative Organization, Ubon Ratchathani Province. It is found that there is no specific agency responsible for environmental management including community waste. It is the duty of the Office of the Secretary of Ku Mueang Sub-District Administrative Organization. There are local regulations related to solid waste management. However, such local ordinances are not sufficiently effective to deal with the problem of recycled waste mixed with municipal solid waste. This is because such provisions do not define and do not promote separation of waste from the sources. In addition, as the main waste disposal in Ubon Ratchathani is located in the area of Ku Mueang Sub-District Administrative Organization, when the recycled waste classification is ineffective, the amount of waste that is disposed is in the large quantity causing pollution in the area.

Rahman and Khalis (2009) conducted the research on the Water Recourse Management in Malaysia: Legal Issue and Challenges. It is found that the laws are complicated in the current legal framework for water resource management in Malaysia. The problems about water resource management in Malaysia are partly due to the clear separation of power between the federal government and the state government and there are disparate water management laws.

Research Methodology

1. Research form is the qualitative research studying relevant documents and in-depth interviews with the key informants.

2. Key informants and the selection of key informants

2.1 In-depth interview: The key informants and the selection are the officers of Paknamchawang Sub-District Municipality consisting of 3 Municipality Officers and 2 experts in water law totaling 5 persons. The key informants are purposively selected according to the criteria or objectives of the researcher so that it can lead to the answer to the research questions. All of the informants have the direct experienced in such issues.

3. Research tools used in the research are the structured in-depth interview forms used for conducting the research.

4. The data analysis is done by using content analysis with the synthesis and descriptive writing.

Research Results

1. Regarding the legal problems concerning water management of Paknamchawang Sub-District Municipality, it is found that the laws on water management having problems in management are; 1. Municipal Act B.E.2496 and the Amendment (Vol. 13) Section 50(2) and (9) and the Sub-District Municipality may undertake any operation in the municipality area in accordance with Section 51(1) and Section (8), 2. The Act defines the plans and procedures for the decentralization of power to the local administrative organizations B.E.2542 which stipulate the functions of public service provision under Section 16 to authorize the municipalities to have power and duty to provide public services for their own local interests related to water management. According to the law, municipalities are responsible for managing water by maintenance, provision of other construction. If the municipality carries out otherwise, the municipality must seek permission from the relevant authorities which results in the delay in municipal work not being able to help people in a timely manner. In addition, some duties or assistance must be timely because it will affect lives and properties of people. Such laws do not favor the duties of municipal officers and the involvement of communities in water management.

Moreover, there are several laws on water management because the provision of water services is public service which can be considered as the important task of Paknamchawang Sub-District Municipality. The Constitution of the Kingdom of Thailand B.E.2560 states about the rights and freedom of Thai people in the conservation, rehabilitation, management, maintenance, and utilization of natural resources. This includes the laws on Disaster Prevention and Mitigation B.E.2550 and the Municipal Act B.E.2496, the law on the Establishment of Decentralization Plans and Procedures for Local Administrative Organizations B.E.2542. There are also the regulations of the Office of Prime Minister on National Water Resources Management B.E.2550. However, it can be found that at present, although there are many laws governing water management, the implementation to comply with the law is delayed because it requires permission. There is no decentralization to the municipality. Thus, the solution to the problem of water especially flood for public services cannot be fast affecting the well-being of people.

Furthermore, the community wants to participate in water management. However, the authority of the provincial governor to approve the dredging of the canal B.E.2543 has several processes. The law of municipalities B.E.2496 amended with No. 13 B.E.2552 and in the regulations of the Ministry of Interior except to be not related to the law of the Harbor. The municipality applied the law when dredging the canal in 2011. However, there are other laws that are not conducive to work. Some laws may be redundant and many must be retained or perhaps delayed. Regarding the Municipal Act, there is no Act but the Municipal Act. The Municipal Act on water management has not been issued. On the other hand, if it is issued as the Municipal Act on flood management, it will be related to many laws which are not beneficial to one another. Perhaps there is a limit to the law that the law has many problems and the Municipal Act cannot be issued as it has to involve several problematic laws.

In addition, the Municipal Act on the disbursement is not conducive to the practice. When there is the flood, the budget cannot be disbursed for the operation.

2. Amendment of laws related to water management

2.1 Amendment of laws related to water management services require the government to accelerate the transfer of decision-making authority to local governments in terms of materials, equipment, necessity, budget, power of water management as stipulated by law as well as helping to develop the personnel of the local administrative organizations as professional in public service.

2.2 There must be specific laws governing water management and can be enforced by law enforcement agencies. Water management can be separated into law enforcement.

2.3 Law enforcement agencies need to be integrated in working.

- The laws are needed to be updated timely and enforceable to empower the municipality to fully enforce the law so that it can help people quickly.

2.4 The government or relevant agencies must review the roles and power of the authorities in the law enforcement.

In achieving the implementation following the missions of Paknamchawang Sub-District Municipality, the community's participation in water management for the maximum benefits to the public can only be made only if prescribed by law. The present Constitution of the Kingdom of Thailand B.E.2560 defines the rights and freedom of Thai people in Chapter 3, Section 43, by providing persons and communities with the rights to manage, maintain and utilize natural resources as well as duties of Thai people. People have the duties in cooperating and supporting the conservation of biodiversity resources and the environment. Moreover, the Disaster Prevention and Mitigation Act B.E.2550 defines the functions of planning, surveillance, prevention, warning and the development of surveillance and warning. Municipal Act B.E.2496 and the Amendment Vol. 13 B.E.2552 establish the plans and procedures for the decentralization of law enforcement to the local administrative organizations B.E.2542 requiring local governments to provide public services to local residents. It can be seen that there are many laws in water management. In the absence of unity and separation, water management is delayed, unable to address the problem in a timely manner. Besides, in the management of water, there is no specific law on flood prevention. As the current applicable law will be applied after the occurrence of flood, the water cannot be managed successfully. In addition, there is no real transfer of power to the local administrative organizations. In issuing the Municipal Act of the local administrative organizations, there are no detailed plans for the evacuation of victims or alert in advance. Moreover, non-integration work between law enforcement agencies is common. There are no benefits to people and the flood victims in Paknamchawang Sub-District Municipality.

In summary, legal problems in water management are also problematic because of the wide range of law enforcement and law enforcement agencies involved. There is neither integration nor specific law in water management that causes problems in water management. The maximum benefit does not really occur to people and the local administrative organizations do not issue any precautionary measures or precautions for the evacuation.

Discussion

1. The legal problem concerning water management of Paknamchawang Sub-District Municipality is that the law on water management has problems in management. The laws mention that the municipalities responsible for water management by maintenance, provision of other constructions. If the municipality carries out otherwise, the municipality must seek permission from the relevant authorities which results in the delay in municipal work and cannot help people in a timely manner. In addition, some duties or assistance must be timely because it will affect lives and properties of people. This law does not favor the duties of municipal officers.

Furthermore, there are several laws on water management as the water management is considered the crucial mission of Paknamchawang Sub-District Municipality. However, at present, even though there are several laws on water management, the implementation following the laws is delayed because the permission is needed to be requested.

As there is no decentralization to the municipality, the solution to problems with water, especially flood for public services is not fast affecting the well-being of people. The community wants to participate in water management but there are other laws that are not conducive to the operation. Some laws may be redundant and many must be retained or perhaps delayed. Regarding the Municipal Act, there is no Act but the Municipal Act. The

Municipal Act on water management has not been issued. On the other hand, if it is issued as the Municipal Act on flood management, it will be related to many laws which are not beneficial to one another. In addition, the Municipal Act on the disbursement is not conducive to the practice. When there is the flood, the budget cannot be disbursed for the operation. There are several laws of water management. In the absence of unity and separation, water management is delayed and unable to address the problem in a timely manner. Moreover, in the water management, there is no specific law on flood protection and current applicable law will be applied after the occurrence of flood. The flood cannot be managed successfully. In addition, there is no real transfer of power to the local administrative organizations. In the ordinance of the local administrative organizations, there are no detailed plans for evacuating the victims or alerting them in advance. Besides, there is no integration of work among law enforcement agencies. There are no benefits to people and the flood victims in Paknamchawang Sub-District Municipality at all. This is correspondent with the research of Udomsak Sinthipong (2017) revealing that the water resource management is in the authority of many agencies. According to many separate laws, there is the overlapped authority in management. The problem is that there are multiple agencies and several management-related laws resulting in the difficulty in managing such resources. This is correspondent with the research of Sajja Banjongsi, Bampheh Kiawwhan, Palirat Kande, and Rasika Angkun (2016) revealing that for the participatory water resource management, the favorable environments are; 1. The relevant laws are not suitable. There are many agencies that oversee and enforce. This is correspondent with the research of Sumate Supatjamnian, Phanasathorn Yuprasert, Gran Thanuthep, and Lalida Pakkaomayang (2016) revealing that there is no specific agency responsible for environmental management including community waste. It is the duty of the Office of the Secretary of Ku Mueang Sub-District Administrative Organization. There are local regulations related to solid waste management. However, such local ordinances are not sufficiently effective to deal with the problem of recycled waste mixed with municipal solid waste. This is because such provisions do not define and do not promote separation of waste from the sources. This is correspondent with the research of Rahman and Khalis (2009) revealing that the laws are complicated in the current legal framework for water resource management in Malaysia. The problems about water resource management in Malaysia are partly due to the clear separation of power between the federal government and the state government and there are disparate water management laws. This is correspondent with the interview of the expert on the water law,

“...The law related to the water management has the problems which are: 1. Municipal Act B.E.2496 and the Amendment (Vol. 13) Section 50(2) and (9) and the Sub-District Municipality may undertake any operation in the municipality area in accordance with Section 51(1) and Section (8), 2. The Act defines the plans and procedures for the decentralization of power to the local administrative organizations B.E.2542 which stipulate the functions of public service provision under Section 16 to authorize the municipalities to have power and duty to provide public services for their own local interests related to water management. According to the law, municipalities are responsible for managing water by maintenance, provision of other construction. If the municipality carries out otherwise, the municipality must seek permission from the relevant authorities which results in the delay in municipal work not being able to help people in a timely manner. In addition, some duties or assistance must be timely because it will affect lives and properties of people. Such laws do not favor the duties of municipal officers...”

This is correspondent with the interview of another expert on the water law,

“...There are several laws on water management. Although there are several laws on water management, the implementation following the law is delayed as it requires the permission. There is no decentralization of power for the municipality to implement instantly. This causes

the problem solution on water especially flood is not fast and affect the well-being of people. The government has to accelerate the transfer of decision-making authority to local administrative organizations in terms of materials, equipment, necessity, budget, power of water management as stipulated by law as well as helping to develop the personnel of the local administrative organizations as professional in public service..."

This is also correspondent with the interview of Municipality Officer,

"...The community wants to participate in the water management. However, there are other laws not conducive to the operation. Some laws may be redundant and many must be retained or perhaps delayed. Regarding the Municipal Act, there is no Act but the Municipal Act. The Municipal Act on water management has not been issued. On the other hand, if it is issued as the Municipal Act on flood management, it will be related to many laws which are not beneficial to one another. Perhaps there is a limit to the law that the law ..."

2. For the recommendation on amending the laws on water management, the government has to accelerate the transfer of decision-making authority to local governments in terms of materials, equipment, necessity, budget, power of water management as stipulated by law. There must be specific laws governing water management and can be enforced by law enforcement agencies. Water management can be separated into law enforcement. Moreover, the law enforcement agencies requires integration. The laws are needed to be updated timely and enforceable to empower the municipality to fully enforce the law so that it can help people quickly. There should be the revision on the roles, authority, and duties of the agencies and the measures of the law. This is correspondent with the research of Udomsak Sinthipong (2017) revealing that there must be the revision on the power and duties of the agencies and the overlapped legal measures to view the importance of water resource management. The water resource management law should be updated and improved the law to be used as the policy frame and for the implementation of policies in national water resource management. This is correspondent with the interview of the expert on the water law,

"...The government has to empower and transfer the legal authority to the municipalities or local administrative organizations. This includes the amendment of outdated laws to keep up with current events in order to be enforced quickly. There should also be the laws related to the water management..."

This is also correspondent with the interview of Municipality Officer,

"... The municipal authorities must be empowered to enforce the law in relation to water management because municipalities are close to the public. The law should be resolved on some of the laws that are still outdated which should be amended... "

Legal Recommendations

1. There should be an amendment or modification to the law such as the Municipal Act B.E.2496 and amendments (Vol. 13), the Act establishes plans and procedures for decentralization to local administrative organizations, performance of officers and related agencies.

2. There should be special measures to give authority or the power in the decision-making to the municipal authorities in case of urgent problem without asking from the supervisory agency.

3. Some laws related to municipal duties should be amended because some laws are outdated. It is not suitable for the context and change of the rapidly evolving society.

4. Rules and regulations should be helpful or have gap for the officers so that the agencies can fully perform the duties because some regulations still have some limitations.

5. The government shall have specific laws related to water management and may provide agencies involving in law enforcement and water management to be separated.

6. Law enforcement agencies need to integrate in working.
7. The government must review the roles and the authority of the agencies to enforce the law.

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