

LEGAL MEASURES FOR CLAIMS ARISING FROM THE SPREAD OF POLLUTION CAUSED BY E-WASTE

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ABSTRACT

This journal research aims to study the history, definition, concept, and theory of legal measures in claiming compensation arising from the spread of pollution caused by e-waste. Most of them are product waste from expired appliances and electronic products such as mobile phones, batteries, and computers. There will be the problem of being a victim in an environmental case; the problem is that many victims are injured in causing damage in the same issue, the problem of interpretation of the law between the action and the result, the problem regarding the proof of the number of injuries or compensation the plaintiff received, the problem of litigation expenses, and the problem of the environmental fund.

The result of the research found that:

Legal measures are currently being used to deal with pollution problems, whether they are Administrative Measures, Civil Measures based on tort law in the Civil and Commercial Code, the principle of strict liability, Civil Liability according to the National Environmental Quality Promotion and Preservation Act, B.E. 2535, to bring a lawsuit to claim compensation from the spread of pollution, and the use of Criminal Measures, but the use of such measures has limitations in claiming damages from the reach of decay. No law in Thailand directly regulates claims for compensation arising from the reach of pollution caused by e-waste.

Keywords: Compensation; Electronic waste; Environment; Pollution

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1. INTRODUCTION

Environmental problems are considerable problems that affect the well-being of people in each country, including Thailand. Due to the rapid technological growth coupled with the increase in population, the use of electronic devices is increasing, which leads to e-waste generation from e-waste disposal and pollution from e-waste. Currently, the expansion of the use of electronic devices has resulted in the introduction of several chemicals and toxic materials used in the production of electronic devices, which negatively affects the toxic environment, causing changes in the ecosystem and affecting public health (Phatchanit Naovapun & Anusara Chaodorn, 2020).

There is implementing legal measures to manage pollution caused by e-waste, whether Administrative Measures, Civil Penalty based on tortious laws in the Civil and Commercial Code, Strict Liability, or Civil Liability under Section 96 of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535, and the use of Criminal Measures. Nevertheless, such measures are still limited in claiming damages arising from the spread of pollution caused by e-waste because sometimes, during litigation, the damage caused cannot be calculated in the exact amount.

Due to the specific element of pollution cases, as a result, consideration of the damages and ongoing remedies both in the provisions of the law and in the judgments of the courts are still shortcomings that need to be corrected to follow the changing situation and affecting claims for damages arising from the spread of pollution, which has six issues, which are:

1. The problem of being a victim in an environmental case.
2. The problem of many victims are injured in causing damage in the same case.
3. The problem of interpretation of the law between the action and the result.
4. The problem regarding the proof of the number of damages or compensation the plaintiff received.
5. The problem of litigation expenses.
6. The problem of the environmental fund.

Therefore, the damage caused by the spread of pollution is a significant, visible, and unresolved problem. However, several laws support provisions, especially according to The Enhancement and Conservation of National Environmental Quality Act. B.E. 2535, which is regarded as a master law that lays down policies and principles for resolving the overall environment of the country, due to the specific nature of the case caused by pollution, the consideration of damages and remedies as being carried out both in Law provisions and court rulings also have flaws that need to be revised to reflect changing circumstances.

2. OBJECTIVES

1. To study the history, definition, concept, and theory of legal measures in claiming compensation arising from the spread of pollution caused by e-waste.

2. To study legal measures for claiming compensation arising from the spread of pollution caused by e-waste under Thai and foreign laws.

3. To find solutions and have legal measures to claim compensation arising from the spread of pollution caused by e-waste to make law enforcement effective.

3. LITERATURE REVIEW

The researcher has studied and researched related documents, concepts, theories, and research as follows:

Katkanat Chuenwongarun, (2021). “Electronic Waste (e-Waste)” has found “The primary sources of e-waste are: 1) Industrial Waste means e-waste generated from the production process within the factory. Both parts contain chemicals and waste from the production process. Including non-standard products that will be recycled or discarded. 2) Household Waste means e-waste generated from the everyday use of ordinary people. Including waste from companies and shops, which are waste from the use of products until the end of life, discarded because they are obsolete, or damaged to the point that they cannot be used again. 3) Import Waste means e-waste imported from abroad, according to the Hazardous Substances Act, B.E. 2535.”

Pollution Control Department (2021), “Danger from the remains of mobile phones and batteries when disposing of mobile phones and batteries mixed with municipal solid waste. Over time, the shell that covers the phone and battery deteriorates or decays. Internally deteriorated chemicals will flow into the environment. This toxin will enter the ecosystem and food chain through soil, water, and air, causing various dangers as follows:

Lead toxicity is a common component of soldering with tin in circuit boards. It destroys the central nervous and blood systems, kidney function, and reproduction, including the development of children’s brains. It can also accumulate in the atmosphere and have acute or chronic effects on plants, animals, and microorganisms.

Cadmium toxicity, a component of some batteries, can accumulate in the body. Especially the kidneys and it damages the nervous system. Including affecting child development and pregnancy conditions, and may also affect genetics.

Draft of the Management of Waste Electrical Appliances and Electronic Devices Act B.E.... (Pollution Control Department, 2021) This Act was drafted due to the rapid increase in the number of electrical appliances and electronic devices, with most of these products and devices containing many hazardous substances and heavy metals. If the leakage harms public health, it needs to be stored, collected, dismantled, and reused, including proper handling of product debris based on academic principles. Therefore, an efficient management system for electrical and electronic equipment waste based on Extended Producer Responsibility (EPR) is required. It will make manufacturers and importers responsible for product management, from product return, product waste, product collection centers, product dismantling centers, and proper disposal of dismantling waste, in line with the principle of participation of all sectors. It will help promote and maintain the quality of the environment, public health, and public benefits. Such actions will inevitably affect the rights and freedoms of certain individuals, so it is necessary to enact this Act.

This drafted Act consists of 5 categories: Part 1: Electrical and Electronic Equipment Waste Management Committee, Part 2: Product Handling, Part 3: Product Waste Management Responsibility Plan, Part 4: Inspection and Control, and Part 5: Penalties. There are important sections, including Section 14, which specifies the types and kinds of electrical and electronic equipment waste; Sections 15-17, which define the duties of manufacturers and importers regarding registration and responsibility for waste electrical and electronic products; and Sections 20-22 describe the duties that consumers should perform regarding the waste of electrical appliances and electronic devices.

From the draft of the said Act, environmental and health scholars have criticized the Electronic Waste Control Act, asking why Thailand still needs to enforce it even though it passed the parliament in 2019. For example, Dr Sonthi Kochawat (Thansettakij, 2024), an expert in environment and health at the Thai Environmental Academics Club, posted an article on his personal Facebook about the problem of electronic waste, which Thailand still lacks a serious law to control and supervise, even though it was proposed as a draft law since 2019. However, in the end, it could not be passed into law. The most controversial issue is that some sections of the draft law state that manufacturers are responsible for taking back and collecting waste products of the same type, regardless of the manufacturer. For example, if an electrical appliance's origin cannot be traced, other electrical appliance manufacturers must take back waste electrical appliances whose origin cannot be traced for disposal as well. This issue has led some operators to disagree with the idea that buyers will receive disposal or recycling fees included in the purchase price from the waste sender.

4. CONCEPTUAL FRAMEWORK

Enforcement of legal measures to claim compensation arising from the spread of pollution caused by electronic waste, in the case of damage to victims in environmental issues, many problems still occur, such as the nature of liability, being the victim in a lawsuit, judicial procedures, calculation of damages or compensation. These cause law enforcement to be inefficient and unable to achieve the law's intent. As a result, victims in environmental cases do not receive fairness in claiming damages or compensation from those who cause pollution.

5. METHODS

This research is qualitative (documentary research), studying and analyzing documents such as books, articles, theses, and related documents, as well as claims for damages arising from the spread of pollution in environmental cases in both Thai and foreign languages.

6. RESULT

The researcher has summarized issues of legal measures for claims compensation arising from the spread of pollution caused by e-waste into 6 issues as follows:

1. The problem of being a victim in an environmental case

The current version of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 is in force. There is no provision about a specific method of consideration. Therefore, when damage occurs, consider that the injured person has the power to file a lawsuit to claim damages or compensation from the person who caused the injury; the provisions of Section 55 of the Civil Procedure Code must be considered.

Section 55 of the Civil Procedure Code states that “Any person, whose rights or duties under the civil law are involved in a dispute or must be exercised through the medium of a Court, is entitled to submit his case to a civil Court having territorial jurisdiction and competency over it by the provisions of the civil law and of this Code.

Section 55 of the Civil Procedure Code stipulates that the right to prosecute a case belongs to the party whose rights are first contested. A rights dispute arises when one party claims ownership over something that the other party denies or asserts their own rights over. These rights or duties must be legal rights to be considered infringed. In environmental cases, the plaintiff or injured party is considered the party whose rights are contested and thus has the authority to proceed with the case.

2. Problems where multiple victims are damaged in causing damage in the same case

According to Section 96 of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535, in environmental cases, a court’s judgment that the defendant pays damages is binding only on the plaintiff involved in the court proceedings. Other injured parties not involved in the case will not be bound by the judgment. This presents a problem in cases of environmental pollution caused by electronic waste, where there are often many victims of the same event. Each individual lawsuit could lead to numerous court cases, delayed proceedings, and significant litigation costs for the plaintiffs, which may outweigh the damages they receive.

The Enhancement and Conservation of National Environmental Quality Act B.E. 2535 does not require the state to claim damages or compensation for pollution on behalf of private individuals. Victims must file their own lawsuits under the rights of the Civil Procedure Code. Multiple victims can become parties to the same case only by interceding under Section 57 or becoming parties under Section 59 consolidation of the proceedings under Section 28. However, there are obstacles that prevent victims in environmental cases from joint prosecution. To intervene as a party under Section 57, victims must comply with specific legal criteria. In practice, interceding is often impossible because the victim who wishes to join an existing case cannot contradict their rights by setting up a new issue, even though the damage may be different.

3. The problem of interpretation of the law between action and effect

The Enhancement and Conservation of National Environmental Quality Act, B.E. 2535, has provisions regarding civil liability, giving the injured person in an environmental lawsuit an option to sue the victim’s burden of proof on the willful or negligent act negligence of the defendant and in other words, suing for damages under

The Civil and Commercial Code in Section 420 the plaintiff must prove to the court that the defendant acted willfully or negligently. Suppose the plaintiff cannot prove so the defendant is not liable. Still, suppose the plaintiff sues under Section 96 of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535.

The reason why the contributor of pollution damage cannot file a civil lawsuit to enforce compliance with Section 96 comes from the scientific fact that proving the relationship between the leakage or spread of pollution and damage to health or property; is often challenging to do and costs much money. In addition, this problem of scientific complexity will cause more obstacles in prosecuting cases under section 96. Suppose there are multiple sources of pollution causing leakage or emission of pollution. In that case, damaged people may not be able to pinpoint the damage caused by the start of pollution.

4. Problems with proving the damages or compensation the plaintiff receives

From the provisions of the last paragraph of section 96, the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535, has only defined Damages or compensation for which the owner or possessor of the pollution source is responsible. It shall include all expenses the government must pay to eliminate pollution. Nevertheless, it did not specify the details of what the damage or compensation is. Therefore, the principle of claim determination under the Civil and Commercial Code, Section 438 enforced.

Although stipulating the use of damages or compensation, the law gives the court the power to decide how much the person who caused the injury will use; initially, the victim must determine the damages themselves. Moreover, there is also a burden to prove the amount of damage claimed. Moreover, suppose the defendant is the person who causes harm. The damages determined by the plaintiff are too large, or the defendant is unsatisfied. In that case, the defendant must prove to the court that the damage amount does not follow the plaintiff's claim.

Tort law provisions protect the right to life, body, and health, and victims of actions causing damage are protected by law. In pollution cases, actions impacting life, body, and health fall under tort law protection. However, difficulties arise in determining the nature of the damage and what kind of impact is classified as damage. Traditionally, violations often resulted in clear physical consequences such as blindness or disability. However, in modern pollution cases, damage to the body and health may not show noticeable physical effects and may take a long time to manifest or cause psychological consequences.

5. Litigation Cost Issues

Being a civil plaintiff in environmental lawsuits often involves significant litigation costs. Most affected individuals are of poor economic status, such as villagers living near polluted rivers. In contrast, polluters, such as industrial factories or electronic waste disposal owners, often have good economic status and influence. According to Section 96 of the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535, which stipulates strict liability, victims do not have to prove that the defendant acted willfully or negligently. However, they must still prove that the defendant's actions are related to their damage. This can be challenging when there are multiple sources of waste or different types of electronic waste in the area. Proving disease

related to scientific, technological, and medical knowledge often requires costly laboratory testing and expert witnesses. The complexity of some problems means that experts can't always confirm with certainty whether toxicity is the cause of the disease. Therefore, the burden of court and lawyer fees often falls on the victims, who are typically people with poor status.

6. Environmental fund issues

The Enhancement and Conservation of National Environmental Quality Act, B.E. 2535, provides for an environmental fund in sections 22 and 23. The fund, similar to the Superfund, is sourced from the fuel fund, service fees, fines collected under the Act, government subsidies, money or property received from private individuals domestically and internationally, foreign governments or international organizations, and cash from interest and benefits generated from the fund. The fund's spending is primarily focused on investing in wastewater treatment systems, air pollution, and waste disposal systems operated by the government, local government, state enterprises, or private sector. It also provides financial aid and subsidies for activities related to promoting and preserving environmental quality. However, the law does not specify that the environmental fund can compensate damage victims. Therefore, it suggests that the environmental fund needs another part to protect and heal people damaged by environmental pollution without needing to file a lawsuit in court to claim damages from the cause of injury.

7. DISCUSSIONS

From the study, the authors would like to summarize the results regarding:

1. The problem of being a victim in an environmental case

The Enhancement and Conservation of National Environmental Quality Act B.E. 2535, in its current form, is still applicable. It doesn't specify a particular method for consideration. Hence, if any harm is inflicted, it's understood that the victim has the right to initiate a lawsuit seeking damages or compensation from the perpetrator. The stipulations of Section 55 of the Civil Procedure Code should be taken into account in such cases. Thus, the authors found that introducing the criteria for the power to sue under the Civil Procedure Code regarding environmental cases is inappropriate because they cannot protect victims in environmental cases thoroughly and efficiently.

2. Problems where multiple victims are damaged in causing damage in the same case

Section 96 of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 states that a court's ruling on environmental damages applies only to the plaintiff involved in the proceedings. Other affected parties not part of the case are not bound by this ruling. This becomes problematic in situations like electronic waste pollution, where multiple victims are affected by the same incident. Each individual lawsuit could result in numerous court cases, delayed proceedings, and substantial litigation costs for the plaintiffs, potentially exceeding the damages awarded. Multiple victims can join the same case only by interceding under Section 57 or becoming parties under Section 59 consolidation of the proceedings under Section 28. In practice,

interceding is often impossible because a victim wishing to join an existing case cannot contradict their rights by setting up a new issue, even if the damage may differ.

3. The problem of interpretation of the law between action and effect

The Enhancement and Conservation of National Environmental Quality Act, B.E. 2535, provides for civil liability, allowing an injured party in an environmental lawsuit to sue based on the defendant's willful or negligent act. If suing under The Civil and Commercial Code in Section 420, the plaintiff must prove the defendant's willful or negligent action. If they can't, the defendant is not liable. However, if the plaintiff sues under Section 96 of the Act, it becomes challenging due to the scientific complexity of proving the link between pollution leakage/spread and damage to health or property. This complexity is further compounded if there are multiple sources of pollution. The law likely needs revision to address these issues.

4. Problems with proving the damages or compensation the plaintiff receives

The law allows the court to decide the amount of damages or compensation; initially, the victim must determine the damages themselves and bear the burden to prove the claimed amount. If the defendant disputes the claimed amount, they must prove to the court that it doesn't align with the plaintiff's claim. Tort law provisions protect life, body, and health rights, and victims of damaging actions are protected by law. In pollution cases, actions impacting life, body, and health fall under tort law protection. However, difficulties arise in determining damage nature and classification. Traditional violations often result in clear physical consequences like blindness or disability. However, in modern pollution cases, damage to the body and health may not show noticeable physical effects and may take a long time to manifest or cause psychological consequences. These effects are more challenging to diagnose than before. Therefore, the Thai justice system needs to develop knowledge and understanding of pollution if damages are diagnosed based on visible or tactile effects.

5. Litigation Cost Issues

Proofs of disease related to scientific, technological, and medical knowledge often require costly laboratory testing. Some problems are so complex that even expert witnesses or doctors can't confirm with 100% certainty whether the toxicity is the cause of the disease. Furthermore, the process of seeking compensation for damage is often burdensome for victims, especially those of lower socioeconomic status, due to the associated court and lawyer fees. Thus, many victims gave up on claiming compensation.

6. Environmental fund issues

The fund's expenditures are primarily directed toward investing in government-operated wastewater treatment systems, air pollution control, and waste disposal systems. It also provides financial aid for activities related to environmental quality promotion and preservation. However, the law does not stipulate that the environmental fund can be used to compensate victims of environmental damage. This suggests a need for an additional component of the environmental fund dedicated to aiding and healing individuals affected by environmental pollution without necessitating a court lawsuit to claim damages from the injury source.

8. ORIGINALITY AND BODY OF KNOWLEDGE

Gain knowledge on the section for claiming compensation for the distribution of pollution from electronic waste, know the steps to assess damage: process method, and more advantages and disadvantages of the Thai court system regarding environmental problem cases. Studying makes it possible to distinguish which environmental cases are appropriate to use appropriate assessment methods and solve problems directly.

9. RESEARCH RECOMMENDATIONS

1. Implication of the Study

1. Regarding the problem of being a victim in an environmental case, the authors suggest that legislation to ensure victims' rights concerning the environment should be enacted more clearly and comprehensively. According to the theory of environmental rights, it should be based on the principle of being a victim. Therefore, when environmental damage occurs and affects anyone, that person's rights are considered to be violated. It does not have to be someone damaged in a particular case to widely protect the rights of people injured by the toxic environment.

2. Following the problem of many victims being injured in causing damage in the same case, the authors suggest that the law of the country that uses Common Law called "Class Action" should be applied. That is, when one victim sues a lawsuit, he may be entitled to claim compensation from the person who caused damage on behalf of other victims, and the judgment, in that case, will be binding on other victims as well.

3. According to the problem of interpretation of the law between the action and the result, the authors suggest that the National Environmental Quality Promotion and Protection Act, B.E.2535 section 96 should be improved; there shall be a provision stipulating the assumption in favor of the plaintiff about the relationship between the action, and the result that the victim must prove the facts only to show that one or more sources of pollution being sued are the accused causing or being the source of the leakage or spread of pollutants that can cause damage to the plaintiff.

4. In the problem regarding the proof of the number of damages or compensation the plaintiff received, the authors suggest that there should be a specific provision for determining damages or compensation without relying on the Civil and Commercial Code. for the victims to receive fair compensation or compensation more conveniently, this law should expressly provide for this matter. In the current case of health damages related to environmental pollution, punitive damages should be imposed. They were adding to existing damages by adjusting the law according to Section 446 of the Civil and Commercial Code on damages that cannot be calculated in money, together with Section 438 of the Civil and Commercial Code, which requires the court to have the discretion to determine the damages as appropriate to the circumstances and the severity of the violation as damages that are punishable and to amend the law to give the court the power to impose punitive damages directly related to pollution and environmental violations.

5. Regarding the problem of litigation expenses, it is deemed appropriate to enact different laws concerning the power to sue by the public prosecutor, which is a state official who has the ability to take legal action concerning pollution in the environment from e-waste on behalf of the damaged person by having the power to file a lawsuit on behalf of the impaired person. In addition, the cost of litigation will be high because it is a case of capital; the damage and the victims are enormous, so it requires a lot of money. Then, in prosecuting cases, the state should take part in helping people by setting up a particular organization to support them, including refraining from having to charge court fees and expenses in litigation because most environmental cases are cases concerning the public, and the state has to look after the people. Therefore, they should be involved in the damage that people receive.

6. In the problem of the environmental fund, the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 should be enhanced by expanding the scope or objectives of the ecological fund to cover protection and remedy for victims of environmental pollution. The victim does not need to file a lawsuit in court to claim damages from the person who caused the injury. It should make Thailand's Environment Fund complete in managing and restoring the environment and protecting the victims. According to the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 Section 22, additional funding sources for the environmental fund should be extended to include the direct responsibility of the polluter. The source of funds should also come from collecting taxes from entrepreneurs with businesses that cause pollution.

2. Recommendations for Future Research

In the subsequent research, amendments to laws or regulations are announced claims for compensation arising from the spread of pollution caused by electronic waste.

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