

LEGAL MEASURES TO PROTECT FOREIGN WORKERS: A CASE STUDY OF WORKERS IN THE CHANTHABURI FRUIT PROCESSING INDUSTRY

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ABSTRACT

The objectives of this article were 1) To study the background, conditions, and theory of legal measures to protect foreign workers, 2) To study legal measures to protect foreign workers, and 3) To find solutions and have legal measures to protect foreign workers. The research employed the qualitative approach by using documentary research.

The results of the research found that:

The study found that legal measures to protect foreign workers in Thailand, especially in the industrial sector of the Chanthaburi Province, still need to be improved. More legal clarity is also needed regarding how much protection should still be required to ensure effective law enforcement, for instance, illegal foreign workers, and the different treatment of Thai and foreign workers. The approaches to solving these problems are specific legislation that protects foreign workers in the industrial sector to be more clearly and comprehensively enabled to operate, the establishment of agencies that oversee the work of the employer in the case of foreign labor, and extension of the protection of the social insurance program in the event of foreign workers engaged in the occupation. Moreover, a social insurance fund for foreign workers should be established, and the principle of claiming damages for claims or proceedings relating to unemployment should be used to punish an employer who acts intentionally or deliberately against an employee in the event of a foreign worker being a victim.

Keywords: labor; foreign workers; labor shortage; protection of foreign workers; informal workers

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1. INTRODUCTION

Thailand has faced a severe labor shortage in the industrial sector due to rapid economic growth and demand for labor, especially unskilled workers. Also, Thai people do not like hard, dirty work or dishonorable work. The foreign worker is a substitute for any part of the solution. (Namthip Samerchua, 2019). Chanthaburi's continuous economic growth has made Chanthaburi province one of the country's distinguished economic provinces and is a factor conducive to investment from the capital in Thailand or foreign capital. Along with the economic trend in the food and fruit processing market, Chanthaburi province is outstanding in terms of exporting processed fruits. It also leads to the industrial growth of processed fruits. That is one reason foreign workers, both skilled and unskilled, come to work, and the number of them increases yearly. As the times changed, there was more competition in the capitalist world, coupled with the rise of higher populations. There was a high demand in the markets. Merchants and entrepreneurs, therefore, needed to increase their production capacity to meet those markets' demands. Thus, foreign workers in the fruit processing industry play an imperative role in the industry's development and tend to continue expanding in the future. These foreign workers are increasingly playing an essential role in the economy and production of Chanthaburi province. Because of labor shortages, many businesses in the fruit processing industry of Chanthaburi require a large number of unskilled foreign workers nowadays. On the other hand, these laborers are a disadvantaged population in society but are a significant force in small industries. Studying documents and statistics from the Eastern Labor Market Information Administration Center (2021) about labor demand showed that Chanthaburi Province had a labor shortage problem. The labor demands are higher than those who want to work, and many employers need help finding suitable workers with the qualifications they want. As mentioned, when Chanthaburi province has a problem with the labor shortage, especially the work that uses labor and labor, the employer resolved by using foreign workers to replace the lack of Thai workers in order not to cause damage to the employer's business and to allow the company to continue. However, the work status of this group needs to be supervised by various agencies as they should, causing these workers to face many problems, for example, low wages and intermittent work. (Office of Foreign Workers Administration, 2020) The current legal measures do not protect the benefits of foreign worker, formal workers, and unskilled workers. It's because the employer pays less than the law, or the law pays more than the formal workers. Also, employers may fail to comply with legal conditions such as paying salaries, working hours, holidays, vacations, nursing care, or benefits in case of illness due to work, including those relating to occupational safety causing health problems and the tightness of the dormitory, which is the workplace, the occupational safety of foreign workers, as well as other employer regulations that impose and practice these foreign workers. Most of them remain in conditions that disadvantage the out-of-system workers. This type of worker is another informal worker who should receive social protection from official workers.

2. OBJECTIVES

1. To study the background, condition, and theory of legal measures to protect foreign workers.
2. To study legal measures to protect foreign workers.
3. To find solutions and have legal measures to protect foreign workers

3. LITERATURE REVIEW

Sumonrat Chaikarn (2014) studied “The Laws Protecting Informal Foreign Workers: Study of Minimum Wage Payment, Day Off Work Payment, and Nursing Care Payment.” It showed that informal foreign workers cannot access health care in Thailand because registration is more complex than for Thai workers and the high costs employers can’t afford. And that’s why these workers are still privileged and not entitled to what they deserve. The author used documentary research by studying books, thesis, research, theories, and academic paper. The author used documentary research by studying books, research, theories, and academic papers.

Phaksiri Anin (2017) studied “Migrant Workers: Administration and Management in Thailand.” It found that due to changes within Thailand, foreign labor problems are mainly caused by economic conditions, society, and politics. It resulted in the need for much labor, leading to the movement and human trafficking. In addition, the operations of the government sector need to improve in prosecuting and suppressing the problem of illegal foreign workers. As a result, the overall problem-solving lack of unity and efficiency affects national security and social order.

On the one hand, this issue reflects the undeniable importance of migrant workers to the Thai economy. Developed industrialized countries are growing up with foreign workers from other countries to support their economic growth. In other words, foreign workers should not be negatively viewed because migration benefits both the livelihoods of the workers and the economies of the countries of origin and destination. At the end of this article, the author presents a solution to the problem of foreign workers. It pointed out that to manage the entire labor system, the government must plan both short-term and long-term to be consistent in managing and supervise foreign workers who come to work in Thailand at an appropriate level and sufficient for the domestic labor demand, as well as urgently reforming the Thai higher education system to be more connected to the labor market. That will help see the policy’s hidden problems and help create appropriate solutions to migrant workers’ issues.

Pitakphong Kangkarn (2017) studied “The Impact of Foreign Labor Trafficking on National Security in Economics.” This research has the following objectives: 1) To study the characteristics of foreign labor trafficking in Chaiyaphum province, and 2) To study the causal factors of migrant labor trafficking in Chaiyaphum province. This study is a mix of quantitative and qualitative research. The sample used in the research was 100 entrepreneurs and 100 foreign workers. The results of the study revealed that 1) There are four characteristics of foreign labor trafficking: temporary labor sales only, labor sales mixed with covert sex sales, only sex sales, and smuggling illegal immigrants, 2) Causal factors affecting foreign labor trafficking consist of personal factors of foreign workers,

including attitudes, values, and poverty. Employer factors include the need to reduce production costs from outsourcing and cheap labor. Official factors include the need for more government officials working along the border.

4. RESEARCH METHODS

The method uses documentary research by studying textbooks, articles, works, and academic research; furthermore, the related thesis and the laws in Thailand and abroad related to informal workers to study various problems and obstacles. The goal is to provide protection and certification for casual workers through description and analysis, that is, to describe and compare the advantages and disadvantages of standards. Moreover, the disputes in the laws related to the current informal workers in Thailand are compared with different guidelines and legal principles.

5. RESEARCH RESULT

After studying, the authors divided the problems related to legal measures to protect foreign workers in the Chanthaburi fruit processing industry into two issues as follows:

1. Illegal foreign workers

1.1. Meaning of foreign workers

The Working of Aliens Act B.E. 2521 defines “alien” as an “Individual without Thai nationality.” According to the Nationality Act, B.E. 2508, a person acquires Thai nationality by birth in the following cases: 1) A person born of a father or mother of Thai nationality, whether inside or outside the Kingdom of Thailand; 2) A person born outside the kingdom by a mother is Thai; however, neither the legitimate father nor the father is without race; 3) A person born in the Thai monarchy.

1.2. The reasons for the immigration of foreign workers to work in Thailand

Many reasons impact the foreign workers coming into Thailand. Immigrant countries face economic challenges such as poverty, starvation, and overwork due to poor living conditions, high fertility levels, and undemocratic governance. Also, Thailand’s proliferated economy attracts workers from neighboring countries, offering higher wages and easier access to jobs like fishing, rubber tapping, and coal pit mining. Government officials recruit migrant workers for employers in Thailand, as it is a growth center and attracts many foreign workers due to its flexibility and easy access along the border.

1.3. Forms of foreign workers

Foreign workers who immigrate to work in Thailand can be divided into two types, which are:

1) Foreign workers who enter the country legally is a foreign worker who enters Thailand legally according to the Immigration Act B.E. 2522, which is the following foreign workers: an alien is permitted to work for a lifetime, foreigners have received investment promotion work permits, and an alien is allowed to work in a temporary category.

2) Illegal foreign workers are foreign workers who came to Thailand in violation of the Immigration Act B.E. 2522, which is the following aliens: Illegal immigrants who have a work permit for aliens under Section 12 of the Working of Aliens Act, including foreigners who are not allowed to enter the country legally immigration, and illegal migrant workers who enter Thailand illegally from the Immigration Office and the Police Department.

1.4. Legal measures

1) Working of Alien Act B.E. 2551

The substance of the law is as follows: Section 8, subject to the immigration legislation, any person who desires to enable a foreigner to operate in his or her own business in the Kingdom must apply for a license on behalf of the alien to the Director-General or the office where the Director-General or the official works. The Director-General shall be chosen within 30 days of foreigners' admission into the Kingdom, which will explain the assignment to allow foreigners to work under Sections 7, 8, 9, and 12. The Director-General or authorities authorized by the Director-General may impose any conditions on foreigners. In that part of the penalty, there is only a sentence or deportation for a foreigner, and no person is explicitly identified as the perpetrator. The law does not specify the procedure for forcing those into legal labor.

2) Immigration Act B.E. 2522

Section 12 outlines essential characteristics. Aliens who do not have a valid passport or travel document or who do not have a visa stamp from a Royal Thai Embassy or Consulate in a foreign country or the Ministry of Foreign Affairs are not permitted to enter the Kingdom, except in exceptional circumstances. Or entering the Kingdom to make a living as a laborer or to be hired to undertake physical work rather than skilled or technical employment or to conduct other occupations in contravention of alien working legislation;

An alien who is permitted to stay in the Kingdom service must comply with the following: 1) Only participate in vocations or work if authorization has been acquired from the Director-General or authorities designated by the Director-General or if there is legislation governing work aliens; otherwise, that law must be followed, and 2) The Act Governing Foreign Workers The Supreme Court Act will set the grounds for any employment that a foreigner is forbidden from conducting or under what conditions. In 2552 B.E., a royal decree was issued stipulating that 39 types of occupations and professions were forbidden for foreigners to do for commercial purposes or to earn money absolutely in every area of the kingdom, such as labor work, agriculture, animal husbandry, forestry, carpentry or other construction workers, storefront work auction, or providing accounting services.

Except for occasional internal audit work, weaving work, weaving mats, making mulberry paper, making silverware, Thai musical instruments, making bowls, making Buddha statues, broker work, or work as an agent in international trade Jobs in the engineering profession of civil engineering related to design work and calculations, systematization, project planning, testing, construction supervision or advice.

1.5. Problem solving guidelines

Some foreign workers in the industrial sector in Chanthaburi province still are illegal foreign workers smuggling from neighboring countries. Chanthaburi province has channels of entry and exit for foreign workers. Also,

there are always business contacts with Cambodia, especially during the fruit season; employers or entrepreneurs need much labor to harvest the produce as the market demands. The website MGR ONLINE (2020) reported that the Cambodians crossed the Chanthaburi border to work in a fruit garden in the natural canal after the labor deal was legalized. The Royal Thai Government's website (2024) said that entry into the cross-border labor inspection area was illegal in Chanthaburi, Rayong, and Chonburi. In this case, the local labor force needs to be increased because the labor force has gone into the industrial factory. As a result, employers and entrepreneurs have to rely mainly on foreign workers for harvesting. Foreign workers have come to play a significant role in agriculture. After analyzing the above laws, most of them are punishable and only send back the illegal workers to their own countries as stated above, the rules of which should be amended to provide legal provisions to force these people into the system properly.

2. Different treatment between Thai and foreign workers

2.1. The objectives of International Labor Organization (International Cooperation Bureau, 2020)

The International Labor Organization (ILO) was founded in 1999 and was also the National Summit under the Warsaw Treaty. The government, employers, and labor unions must work together to build social justice and well-being worldwide.

The International Labor Organization describes the mission as four strategic objectives.

- 1) Increase understanding of the values and fundamental rights of employees.
- 2) Provide possibilities for women and men to gain good employment and earn money.
- 3) Improve the comprehensive and effective social security coverage.
- 4) Improve the tripartite system and social dialogue.

2.2. Legal measures

1) Constitution of the Kingdom of Thailand B.E. 2560

The Constitution is the law that has the highest force, consisting of various provisions, including provisions on the protection of fundamental human rights as follows:

- 1 Human dignity and the right to freedom of the person are maintained.
- 2 Thai citizens, regardless of gender or religion. The protection of this constitution is always present.
- 3 Individuals are always subject to and protected by the law.
- 4 Individuals have the right to associate and form organizations, or the board.
- 5 The State must form a musical partnership with the United Nations and take primacy in practice.
- 6 The State must guarantee that the legislation protecting the rights of
- 7 The state shall encourage the employment of the working-age population through labor control, especially kid and female labor, as well as labor relations, social security, and compensation.

2) Social Security Act B.E. 2533

Because foreign workers enter Thailand as temporary entry, the methods and procedures of social insurance are complicated due to payments to society, according to Section 33. It will be done by three depart-

ments, namely, the employer, the employee, and the government, with the primary purpose of helping in case of sick employees. Storing social security funds for temporary immigrant employees can lead to medical issues. In the event of a vacancy or future old-age insurance, hiring foreign workers in the long run may be necessary. Entrepreneurs believe that foreign labor should be present in the country.

3) Labor Protection Act B.E. 2541

It is legal to protect both Thai and foreign workers. One of the most interesting categories is Chapter 5: Wage, Overtime Pay, Holiday Pay, and Holiday Overtime Pay. In section 63, it is “Section 63. Whereas an Employer requires an Employee to work overtime on a Holiday, the Employer shall pay Holiday Overtime Pay to the Employee at the rate of not less than three times the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, at not less than three times of the piece rate of Wage of a Working Day for work done.” However, such a provision is not explicitly defined, which makes it possible for some of the employers to agree with the employer themselves to pay the salary for delayed work, the cost of work on holidays, and the amount of work for delays on holiday, instead of spending it in cash. The employer must make a deal with the employee, who has no power to negotiate and eventually admits.

4) Problem solving guidelines

Employers or business owners still misunderstand migrant workers. The business owner understands that foreign workers will not be protected by laws related to employment in Thailand. (Ministry of Labor, 2023) Whether foreign workers enter the city illegally or legally, they should be treated in labor employment under the same labor protection laws as Thai workers. However, studies found that most foreign workers in the industrial sector in Chanthaburi province are treated unequally compared with Thai workers in all aspects, including wage payment, overtime payment, holiday pay, compensation payment, and welfare benefits. According to Provincial Labor Office Chanthaburi (2022), a 2022 report states that 60 surveys have shown nine non-compliance establishments in terms of safety at work. For instance, research on wage payment for foreign workers in Chanthaburi province discovered that most foreign workers are paid according to labor laws. Foreign employees are paid a minimum wage of 300 baht per day at 18 locations, 270 baht per day in one, and 250 baht per day in another. Foreign workers in Thailand get 300 baht per day or 9,000 baht per month, which is considered considerable compared to Thai employees who earn between 7,000 and 8,000 baht monthly. A study of overtime compensation for foreign workers in Chanthaburi province found that nine firms do not pay overtime, two pay less than the legal amount, and two do not allow or demand extra work. However, a large percentage of businesses continue to pay foreign workers overtime. The employer and the foreign worker often agree upon overtime labor. Some employers compensate for overtime, while others do not, or only sometimes. This is due to employees' need for more understanding of labor regulations and increased negotiating leverage among international workers. Foreign workers frequently do not seek extra compensation for fear of upsetting their employers and consequently experiencing harsh living circumstances. Labor Protection Act B.E. 2541 doesn't specify that foreign labor must be included in all its forms. It needs to be clarified whether foreign labor is legitimate under that law; if it has been

given an advantage or unequal remuneration, it can be protected under this law. Including the Social Security Act B.E. 2533, foreign workers can participate in social security, but if the process is harder and more costly than Thai workers, the employers will be reluctant to implement it.

Foreign workers hired as short-term temporary workers if they have the same social security as Thai employees should use other forms of insurance, such as charging premiums separately as a particular case for foreign workers or an amendment to this law;

(1) Section 46 of the Social Security Act, B.E. 2533 (1990): The government may provide funds to the social security fund for informal workers.

(2) According to Section 4 (6), subsection 5, 6, 7, and 8 of the Social Security Act B.E.2533 (1990), the Royal Decree for Employees, the company will prepare payment collection estimates and determine welfare packages based on actuarial insurance according to prescribed conditions. Moreover, a social insurance fund for foreign workers should be established, and the principle of claiming damages for claims or proceedings relating to unemployment should be used to punish an employer who acts intentionally or deliberately against an employee in the event of a foreign worker being a victim.

Regarding wage, overtime pay, holiday pay, and holiday overtime pay, there should be further amendments to the Labor Protection Act B.E. 2541 Section 63/1, as follows: section 63/1 The payment to which the employee is entitled is overtime working pay in section 61, working on the holidays pay in section 62, and overtime working on holiday in section 63. shall not be forbidden to the employer. Prohibit the employer from paying a contract to pay a reward rather than providing the incentive in cash.

6. DISCUSSION

The changing industry trend in Chanthaburi province results in foreign workers expanding and needing more social protection. However, the legal measures to protect such migrant workers in Thailand, especially those in the Chanthaburi industrial sector, are still undeveloped and lack legal clarity on protection as they should be. Thus, revising Thailand's legislation to protect foreign workers in Thailand is quite important. The Labor Protection Act B.E. 2541 has legal provisions to protect employees comprehensively regarding wages, holidays, and delays in Chapter 5. However, these provisions also contain vulnerabilities for various types of foreign workers that the law may be unable to protect. Otherwise, there is no clear reference to foreign workers. The penalty is relatively mild if the employer commits an offense or even if Social Security Act B.E. 2533 is inappropriate for foreign workers and their employers. The process for foreign workers or even Thai employers who employ foreign workers still needs to be simplified. Due to these legal measures, foreign workers are not protected as they are. Thai labor protection laws apply to everyone working in the country, regardless of whether they are Thai nationals. It causes many problems and directly affects industrial workers, including wages, living conditions, health, and other welfare benefits from the government and the current laws. Still, the foreign workers in this Chanthaburi province industry are being exploited, wages are being lower, and labor is being used for more than working hours.

There are no holidays, rest days, or welfare benefits for the medical fee, which guarantees stability and fairness for this group of foreign workers in the Chanthaburi industrial sector. Therefore, legal measures must be issued to protect foreign workers which has the same standards as the concept of human rights that the International Labor Organization, the ILO, has laid down as follows: everyone should be treated equally in their occupations without taking into account differences in race, color, nationality, religion.

7. ORIGINALITY AND BODY OF KNOWLEDGE

1. The author understands why foreign workers choose to work illegally in Thailand.
2. The author is aware that apart from the fruit processing industry, other areas of labor still face various problems.

8. RESEARCH RECOMMENDATIONS

1. Implication of the research

1. There should be specific legislation to protect migrant workers in the industrial sector to achieve precise and more comprehensive equality in work, citing an amendment to the law to protect foreign workers in the industrial sector or issuing a special rule applicable to the protection of equality in the creation of foreign workers in the industrial sector in particular, to set guidelines for practice for employers and foreign workers in the industrial sector regarding equality in the workplace to be appropriate. However, issuing a law that will protect the equality of workers in the case of foreign workers in the workplace must also be in response to the Constitution of the Kingdom of Thailand, 1997, on human rights, following section 29.

2. There should be an agency that supervises the work of employees in the case of foreign workers, expansion of the social security program protection in the case of foreign workers who are employed, and establishment of a social security fund for foreign workers only to be administered separately from the current Social Security Fund.

3. The principle of claiming damages should be used in litigation related to equality in work to punish the employer who commits the act deliberately to the foreign employee who is the victim as a legal measure to prevent or suppress actions that cause inequality in the workplace that will occur to employees of foreign workers in the industrial sector.

Therefore, measures to protect foreign workers should be based on human rights and fairness principles, able to be controlled, and not cause Thai workers to have lousy jobs. They should also be streamlined and actionable.

2. Recommendations for Future Research

1. The agencies involved in these issues, including their roles, actions, and related laws, should be studied in detail.
2. There should be a study of other industries compared with the processed fruit industry to show that illegal foreign workers still don't receive the appropriate rights.

3. A study should be conducted about the demand for foreign workers in the current Thai labor market and the registration period for foreign workers, which should be allocated throughout the year. This will make it easier for workers to enter the system and systematically manage and allocate foreign workers into the labor market. Labor rotation to work throughout the year will also make it easier for workers to escape from the system.

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