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การศึกษาเปรียบเทียบการแก้ปัญหาหนี้อกระบบของ

ผู้มีรายได้น้อยในประเทศไทย และ

ประเทศไทยมาเลเซีย พลิปปินส์ และบังคลาเทศ

A Comparative Study of the Informal Debt Solutions

for Low-Income People in Thailand Compared to

Malaysia, the Philippines and Bangladesh

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บทคัดย่อ

โครงการวิจัยนี้วิเคราะห์และแก้ไขปัญหาหนี้อกระบบของผู้มีรายได้น้อยในประเทศไทย การดำเนินการวิจัยประกอบด้วยการวิจัยเอกสารและการสัมภาษณ์เชิงลึก รวมถึงศึกษาเปรียบเทียบการแก้ปัญหาหนี้อกระบบของประเทศไทยมาเลเซีย ประเทศไทยพลิปปินส์ และประเทศไทยบังคลาเทศ ผลการศึกษาเปรียบเทียบพบว่า ประเทศไทยบังคลาเทศ ประเทศไทยมาเลเซีย ประเทศไทยพลิปปินส์ และประเทศไทย ได้มีการบังคับใช้กฎหมายเพื่อแก้ปัญหาหนี้อกระบบ ประเทศไทยบังคลาเทศบังคับใช้พระราชบัญญัติห้ามเรียกดอกเบี้ยเกินอัตรา ค.ศ. 1918 และพระราชบัญญัติผู้ให้กู้ยืมเงิน ค.ศ. 1940 ประเทศไทยมาเลเซียบังคับใช้พระราชบัญญัติผู้ให้กู้ยืมเงิน ค.ศ. 1951 และกฎหมายอิสลาม ประเทศไทยพลิปปินส์บังคับใช้พระราชบัญญัติฉบับที่ 2655 (กฎหมายห้ามเรียกดอกเบี้ยเกินอัตรา) และ



ประเทศไทยบังคับใช้ประมวลกฎหมายแพ่งและพาณิชย์ และพระราชบัญญัติห้ามเรียกดอกเบี้ยเกินอัตรา พ.ศ.2560 สำนักงานการที่ไม่ใช่กฎหมายสำหรับแก้ปัญหานี้น้อมรับนั้นมีลักษณะที่คล้ายคลึงกัน โดยใช้ระบบการเงินแบบรากฐานประเทศไทยบังคลาเทศได้มีการจัดตั้งธนาคารกรามมีน (Grameen Bank) ซึ่งเป็นธนาคารหมู่บ้านแห่งแรกของโลกเพื่อผู้ยากไร้และเป็นระบบการเงินแบบรากฐานต่อมาก ประเทศไทยมาเลเซีย ประเทศไทยพิลิปปินส์ รวมถึงประเทศไทย ได้นำแบบอย่างของประเทศไทยบังคลาเทศและจัดตั้งธนาคารหรือสถาบันการเงินเพื่อผู้มีรายได้น้อยในประเทศไทยของตนเองเพื่อช่วยแก้ปัญหานี้น้อมรับนั้น

ผลการวิเคราะห์พบว่า กฎหมายที่ใช้บังคับในปัจจุบันของประเทศไทย และประเทศไทยที่ศึกษาเปรียบเทียบ อาจไม่ใช่เครื่องมือที่แก้ปัญหานี้น้อมรับนั้นโดยตรง เพราะปัญหานี้น้อมรับบังคับได้อยู่ในทุกประเทศ กฎหมายไม่ได้แก้ไขปัญหาที่ต้นเหตุซึ่งก็คือความยากจน กฎหมายเป็นเพียงเครื่องมือที่นำผู้กระทำความผิดเรียกดอกเบี้ยเกินอัตรามาลงโทษและเป็นการแก้ปัญหาที่ปลายเหตุ ทั้งนี้ข้อเสนอแนะการแก้ปัญหานี้น้อมรับนั้นสำหรับประเทศไทยคือการแก้ปัญหาที่ต้นเหตุโดยใช้มาตรการอื่นที่ไม่ใช่กฎหมาย เช่น การใช้แนวคิดของปรัชญาเศรษฐกิจพอเพียง การส่งเสริมให้ผู้มีรายได้น้อยมีวินัยทางการเงิน การเพิ่มช่องทางการเข้าถึงแหล่งเงินให้มีมากขึ้น การจัดให้มีการฝึกอบรมวิชาชีพให้แก่ผู้มีรายได้น้อยและให้มีตัวครองรับสินค้าหรือบริการจากผู้มีรายได้น้อย ประการสำคัญคือรัฐบาลควรมีนโยบายและดำเนินการแก้ไขปัญหานี้น้อมรับนั้นอย่างต่อเนื่อง

คำสำคัญ: หนี้น้อมรับนั้น ผู้มีรายได้น้อย การแก้ปัญหา ประเทศไทย

Abstract

This research's main objective was to examine informal debt problems experienced by low-income people in Thailand and propose solutions to the problems. Data was collected from documentaries, in-



depth interviews, and a comparative study of the informal debt solutions in Malaysia, the Philippines, and Bangladesh. The study showed that these selected countries and Thailand have enacted and enforced the laws in order to solve the informal debt problems. Bangladesh has enforced the Usurious Loans Act of 1918 and the Money-Lenders Act of 1940. Malaysia has enforced the Moneylenders Act of 1951 and Islamic Law. The Philippines has enforced Act No. 2655 (Usury Law). Thailand has enforced the Civil and Commercial Code and the Excessive Interest Rate Prohibition Act (B.E. 2560). Moreover, the study showed that microfinancing is a solution to the informal debt problems in those countries and Thailand. Grameen Bank, the first microfinance community bank in the world, was founded in Bangladesh with the aim of alleviating poverty. Malaysia, the Philippines, and Thailand adopted the Grameen Bank model by establishing banks and financial institutions for low-income earners as a solution to informal debt problems.

The research results revealed that the laws in Bangladesh, Malaysia, the Philippines, and Thailand do not possibly play a direct role in solving the informal debt problems. Such problems still remain in these countries. The laws could not solve the problems at their root causes. The laws are merely enforced to punish informal lenders. It can be suggested that the informal debt problems in Thailand should be solved at their root causes by adopting non-legal measures such as applying the concept of the Sufficiency Economy Philosophy and encouraging low-income people to practice financial self-discipline.



Other suggestions for solving the problems would include increasing access to funding sources, organizing vocational training for low-income people, and developing markets where low-income people can sell goods and services. In addition, the government should continue to implement policies or measures to solve the said problems.

Keywords: Informal debt, Low-income people, Solutions, Thailand

1. Introduction

An informal debt is a loan between private parties arising from borrowing money and where the interest rate exceeds the rate specified by the law. A loan from a financial institution is not considered to be an informal loan (Damrongdharma Center, 2017, p. 6). Informal debt problems do not occur only in Thailand but also in ASEAN member countries such as Singapore, Malaysia, Laos and Vietnam.

In Thailand, the Civil and Commercial Code and the Excessive Interest Rate Prohibition Act B.E.2560 are applicable to cases related to informal debt. Section 654 of the Civil and Commercial Code prohibits lenders from charging borrowers an interest rate higher than 15 percent per annum. If the interest charged is more than 15 percent per annum, the interest shall be unlawful and completely void (Phorphon, 2015, p. 49). The Excessive Interest Rate Prohibition Act B.E.2560 is enforced to penalize lenders who demand an interest rate higher than the rate specified by law or obtain any benefits other than interest, either monetary or non-monetary, or by any means the



benefit of which obtained exceeds the appropriate proportion under the terms of loan. This Act was enacted to repeal the Excessive Interest Rate Prohibition Act B.E.2475 because the original Act, which had been in force for a long time, was inappropriate and inconsistent with the current situation. Besides, there are still a lot of cases where money is lent against excessive interest rates or where non-interest benefits are demanded.

No one has conducted research on the Excessive Interest Rate Prohibition Act B.E.2560 (Atthavoradej et al., 2011). This research project therefore aimed at obtaining an up-to-date analysis. The objectives were to study and analyze the laws and non-legal measures related to informal debt in Thailand. These objectives included a comparative study of informal debt solutions in Malaysia, the Philippines and Bangladesh as well as proposing solutions to the informal debt problems of low-income people in Thailand.

2. Methods

Documentary research was applied to this research project. The laws and non-legal measures related to informal debt in Thailand were analyzed and then compared with the laws and non-legal measures applied in Malaysia, the Philippines and Bangladesh. In addition, in-depth interviews were conducted with informal debtors, law enforcement officers and experts in Ubon Ratchathani Province. The informal debt problems in Ubon Ratchathani Province acted as a case study for this research project. Low-income people are defined as



those whose income falls below the poverty line (OECD, 2014, p. 66). The ethical approval for this research project was granted by Kasetsart University (COE No. COE62/011 for Research Program Code No. KUREC-SS61/059). Personal data of the interviewees were not disclosed.

3. Results and Discussion

The laws and non-legal measures used to solve the informal debt problems in Thailand were analyzed and compared with the laws and non-legal measures in Malaysia, the Philippines and Bangladesh. The results of the study are revealed below.

3.1 Solutions to the informal debt problems of Thailand

This section discusses the legal and non-legal measures applied in Thailand to solve the country's informal debt problems.

1) Legal measures

It can be pointed out that the Civil and Commercial Code and the Excessive Interest Rate Prohibition Act B.E.2560 are applicable to informal debt cases. Section 654 of the Civil and Commercial Code states that an interest rate on a loan shall not exceed 15 percent per year. This provision does not apply to financial institutions since the Interest Rate of Financial Institution Act B. E. 2523 allows financial institutions to obtain loan interest rates over 15 percent per year (Suwanprasert, 2017, p. 61). If private lenders charge a loan interest higher than 15 percent per year, the interest shall become void. The lenders in such cases cannot claim the interest but can still enforce the principal under the loan agreement (Supreme Court Judgment No.



4372/2545). According to the Excessive Interest Rate Prohibition Act B.E.2560, any person who loans money to other persons and demands interest at a rate higher than the rate specified by law, specifies false information to conceal the demand of interest at a rate of higher than the rate specified by law, or specifies to obtain any benefit other than interest that exceeds the appropriate proportion under the term of loan shall be punished with imprisonment for a term not exceeding two years or a fine not exceeding 200,000 Baht or both.

The rationale behind section 654 of the Civil and Commercial Code and the Excessive Interest Rate Prohibition Act B.E.2560 is to promote the national economy. Under these legislation, people can borrow money to invest in economically productive activities and pay a reasonable rate of interest while lenders receive the interest as a reward for lending money. This would lead to individual gains and a progressive economy. Lending money at an unduly high interest rate could undermine these benefits and negatively affect society and the economy of the country.

2) Non-legal measures

Apart from enforcing the laws, Thailand implements non-legal measures to solve the informal debt problems. One of the measures adopted is to finance low-income earners by using a microfinance system. A microfinance system has been used in many countries around the world and it could successfully solve the problems of low-income people having limited access to the capital (Weerakuldhewan, 2016, p. 4). Another measure in solving the informal



debt problems is the application of the Sufficiency Economy Philosophy of His Majesty King Bhumibol Adulyadej (King Rama IX).

The Government has issued microfinance policies and carried out many microfinance projects. The microfinance system appears in Thailand's policies or strategic plans such as the National Economic and Social Development Plan No.12 (2017-2021) issued by the Office of the National Economic and Social Development Council. The third strategy under the Plan No.12 (2017-2021) aims to strengthen the microfinance institutions, provide financial services for grassroots and smallholder farmers, expand access to financial services and build a comprehensive network of financial institutions, be they private financial institutions, specialized financial institutions or microfinance institutions. When successfully implemented, these measures would enable all groups of people to have access to financial services at reasonable costs. When low-income people can access the capital from formal financial institutions, they would not need to borrow money from informal lenders. This could reduce the informal debt problems.

Furthermore, the Government has founded the Village Fund, which was one of the microfinance programs. Each village received money from the Government and managed the fund. The fund was a source of capital for people in the village. Villagers could borrow money from the fund and spend money on income generating activities. Similarly, the Ministry of Agriculture and Cooperatives through the Bank for Agriculture and Agricultural Cooperatives



provided a source of loans for farmers. Moreover, the Ministry of Finance supported the establishment of microfinance institutions. The Ministry of Finance issued the Ministry of Finance's Notification allowing for setting up Nano Finance and Pico Finance businesses with a brief to increase access to capital for people. Nano Finance and Pico Finance loans are offered for low-income earners. Collateral securities or personal guarantees are not required for the loans. Nano Finance loans are meant to be used for occupational purposes (Notification of the Ministry of Finance on the Microfinance for Occupation under the Supervision, 2014) while Pico Finance loans can be used for multi-purpose spending or emergencies (Notification of the Ministry of Finance on the Provincial Level Microfinance under Supervision, 2019). The lenders receive a return on the interest including fines, service charges and fees paid by borrowers. Nano finance and Pico finance have higher interest rate ceilings because both types of loans carry a higher risk of default and the lenders have no chance of recovering the loans from property collateral or a guarantor.

Another measure for solving the informal debt problems is the application of the Sufficiency Economy Philosophy. His Majesty King Bhumibol Adulyadej in a royal speech to graduates at Kasetsart University on 15 July 1974, argued that “Economic development must be done step by step. It should begin with the strengthening of our economic foundation, by assuring that the majority of our population has enough to live on. Once reasonable progress has been achieved, we should then embark on the next steps, by pursuing more advanced



levels of economic development" (Office of the Royal Development Projects Board, 2017, p. 3). "Sufficiency economy" is a philosophy that stresses the middle path as the overriding principle for appropriate conduct and way of life of the entire populace (Office of the Royal Development Projects Board, 2017, p. 7). The goal of implementing the Sufficiency Economy Philosophy is to create a balance and stable development, at all levels, from individual, family and community to society at large by developing the ability to cope appropriately with the critical challenges arising from extensive and rapid changes in the material, social, environmental, and cultural conditions of the world (Sirikitsathien & Jangmo, 2015, p. 5).

The Sufficiency Economy Philosophy was incorporated into the National Economic and Social Development Plan No. 12. The principle of the Sufficiency Economy Philosophy has continued to be a vital element for development as it underpins the promotion of moderation, reasonableness and resilience. The principle has significantly contributed to balanced and sustainable development in Thailand. The Plan No. 12 states that the public sector is responsible for providing financial knowledge and information about savings, investment, risk management, personal financial planning, preparation of income and expenditure accounts, and the risks of borrowing money outside the banking system so that problems of over-indebtedness can be prevented and resolved.

In 2014, the Government of General Prayut Chan-ocha made a serious effort to solve the informal debt by issuing a special



integrated measure (Cabinet Resolution No. 388/2559). The measure focused on the cooperation of all relevant parties. All parties were required to solve the problems together in an integrated and sustainable manner. The special integrated measure allowed communities and community financial institutions to play a role in solving the informal debt problems. It also established a mechanism for debt settlement negotiations between debtors and creditors and a mechanism for debt restructuring and rehabilitation so that debtors had the potential to earn more income and prevent them from returning to informal debt again. Every province implemented such special integrated measure to solve the informal debt in its province. Ubon Ratchathani Province was selected to be a case study for this research project. Relevant government agencies in Ubon Ratchathani Province closely worked to solve the problems together. Those government agencies included the Region Provincial Police Bureau, National Village and Urban Community Fund Office, Government Savings Bank, Damrongdhama Center, Bank for Agriculture and Agricultural Cooperatives and Provincial Justice Office. Briefly speaking, people having informal debt problems could report their problems to and register themselves as informal debtors at Damrongdhama Center of the Ministry of Interior. Damrongdhama Center would find suitable solutions for the registered informal debtors, for example, helping them to have access to the capital from formal financial institutions (Damrongdhama Center, 2014, p. 8). The Center for Prevention and Suppression of Property Fraud was established by the Royal Thai Police



to take a legal action against informal lenders. The Provincial Justice Office of the Ministry of Justice also played a role in solving the informal debt by disseminating legal knowledge relating to loan agreements, acting as a mediator to settle loan's debt between informal borrowers and lenders, and reporting to the Department of Special Investigation of the Ministry of Justice to take legal action against informal lenders (The representative of Ubon Ratchathani Provincial Justice Office of the Ministry of Justice, Interview, March 13, 2019).

3.2 Solutions to the informal debt problems of Malaysia, the Philippines and Bangladesh

This section explains legal measures and non-legal measures applied in Malaysia, the Philippines and Bangladesh to solve their informal debt problems for low-income people.

1) Malaysia

The Money Lenders Act 1951 prohibits any person from conducting a money lending business unless he or she is licensed under this Act. Any person who carries on a money lending business without a valid licence shall be fined from 250,000 to 1,000,000 Ringgit or imprisonment for up to five years or both (Money Lenders Act 1951, s 5). Money lenders can charge an interest up to 12 percent per year for secured loans and not more than 18 percent per year for unsecured loans. It is noted that this Act does not apply to financial institutions (Money Lenders Act 1951, s 17A).



Islamic law is also an applicable law in Malaysia. Under the Islamic law, it is forbidden to charge the interest (riba) on a loan. Interest-free lending to provide assistance to people in need is permissible and recognized as a commendable and honorable act (Saleem, 2013, p. 81).

In addition, Malaysia has taken measures to solve the informal debt problems by using the microfinance system. Malaysia took the Bangladesh Grameen Bank system as a model. The microfinance system in Malaysia was established in 1987 and it was one of the country's strategies to eliminate poverty. There are several microfinance institutions such as Amanah Ikhtiar Malaysia (AIM), Yayasan Usaha Maju (YUM), Economic Fund for National Entrepreneurs Group (TEKUN), and People's Credit Cooperation (KKR) (Mokhtar, 2011, p. 35).

2) The Philippines

The Act Fixing Rates of Interest upon Loans and Declaring the Effect of Receiving or Taking Usurious Rates and for Other Purposes (Act No. 2655) or the so-called Usury Law stipulates that no person or corporation shall directly or indirectly take or receive money or other property, real or personal, or chooses in action, a higher rate of interest or greater sum or value, including commissions, premiums, fines and penalties, for the loan or renewal thereof or forbearance of money, goods, or credits, where such loan or renewal or forbearance is secured in whole or in part by a mortgage upon real estate the title to which is duly registered, or by any document conveying such real estate or



an interest therein, than 12 percent per annum or the maximum rate prescribed by the Monetary Board and in force at the time the loan or renewal thereof or forbearance is granted, provided that the rate of interest under this section or the maximum rate of interest that may be prescribed by the Monetary Board under this section may likewise apply to loans secured by other types of security as may be specified by the Monetary Board (Act No.2655, s 2).

No person or corporation shall directly or indirectly demand, take, receive or agree to charge money or other property, real or personal, a higher rate or greater sum or value for the loan or forbearance of money, goods, or credits where such loan or forbearance is not secured than 14 percent per annum or the maximum rate or rates prescribed by the Monetary Board and in force at the time the loan or forbearance is granted (Act No.2655, s 3).

If lenders demand an interest at a rate higher than the rate specified by law, they can be prosecuted for a civil and criminal case. The law imposes a fine of not less than 50 Pesos but not more than 500 Pesos or imprisonment of 30 days but not more than one year or both. Offenders under this law must also return the interest to the victims (Act No.2655, s 10).

In addition, the Philippines solves the informal debt problems by using the microfinance system. The Government provides a source of capital for low-income earners and small entrepreneurs. Several microfinance institutions have been set up to help solving



poverty and peoples' debt problems by taking direction from the concept of Bangladesh's Grameen Bank (Habaradas & Umali, 2013, p. 2).

The Philippines also has strict measures and enforcement. During his term, President Rodrigo Duterte issued an order to eliminate and crack down on informal lending. It brought numerous prosecutions against unlawful money lenders who charged the interest higher than the rate prescribed by law (Gonzales, 2017).

3) Bangladesh

Under the Usurious Loans Act 1981, when the Court has reason to believe that the interest is excessive and the transaction was substantially unfair, the Court may exercise all or any of the following powers, namely,

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the



debtor in such manner and to such extent as it may deem just (Usurious Loans Act 1981, s 3).

Another applicable legislation is the Money-Lenders Act of 1940. It sets forth the rights and obligations of lenders and borrowers. Its objective is to control the money lending business. This law prohibits money lenders from conducting loan business unless they hold effective licence (Money-Lenders Act 1940, s 8). The Act sets an interest rate ceiling of 10 percent for unsecured loans and eight percent for secured loans (Money-Lenders Act 1940, s 30(1)(c)).

Apart from enforcing the law, a non-legal measure to solve the informal debt problems is the establishment of Grameen Bank which is regarded as the world's first bank for the poor. Professor Dr. Muhammad Yunas applied the concept of a microfinance and then founded Grameen Bank. He was awarded the Noble Prize in 1996. The Grameen Bank expands its banking services to the poor to solve their informal debt problems and create opportunities for the unemployed to earn a living or create jobs in rural Bangladesh (Grameen Bank, 2008).

3.3 Comparative study on solving the informal debt problems in Thailand, Malaysia, the Philippines and Bangladesh

A systematic comparison of the informal debt solutions for low-income people applied in Thailand, Malaysia, the Philippines and Bangladesh reveals the following:

1) Law enforcement to solve the informal debt problems

Thailand, Malaysia, the Philippines and Bangladesh have enacted and enforced the laws to solve their informal debt problems.



Thailand has enforced the Civil and Commercial Code and the Excessive Interest Rate Prohibition Act B.E.2560. Malaysia has enforced the Money Lenders Act 1951 and Islamic law. The Philippines has enforced Act No. 2655 while Bangladesh has enforced the Usurious Loans Act 1981 and the Lenders Act 1940. These laws are very similar in each country.

2) Interest rate

Generally, the laws in each country under this research project set an interest rate ceiling on a loan. Malaysia has the highest interest rate ceiling of no more than 18 percent per annum on an unsecured loan. Meanwhile, Bangladesh has the lowest interest rate ceiling of no more than eight percent per annum for a secured loan. Interestingly, the Philippine law imposes an interest rate ceiling but the Monetary Committee of the Central Bank of the Philippines may set an interest rate ceiling higher than the rate prescribed by the law.

3) Criminal offences

Thailand, Malaysia and the Philippines have imposed criminal penalties on those who demand excessive interest with fines or imprisonment or both. Thailand imposes criminal penalties under the Excessive Interest Rate Prohibition Act B.E.2560. Malaysia imposes criminal penalties under the Money Lenders Act 1951. The Philippines imposes criminal penalties under the Act No. 2655. Bangladesh does not impose criminal penalties, neither under the Usurious Loans Act 1981, nor under the Lenders Act 1940 (European Asylum Support Office, 2018, pp. 2-3).



(4) Non-legal measures to solve the informal debt problems

Thailand, Malaysia, the Philippines and Bangladesh have all established microfinance institutions to solve their informal debt problems. Grameen Bank in Bangladesh is a model for solving informal debt problems for other countries. Malaysia has microfinance institutions such as Amanah Ikhtiar Malaysia (AIM), Yayasan Usaha Maju (YUM), Economic Fund for National Entrepreneurs Group (TEKUN) and People's Credit Cooperation (KKR). Similarly, the Philippines has several microfinance institutions to help solving peoples' poverty and debt problems. Thailand has established Pico Finance and Nano Finance lending businesses to help solving the informal debt problems. In addition, the Philippines and Thailand have strictly enforced the law. President Rodrigo Duterte of the Philippines issued an order to eliminate and crack down on informal lending. General Prayut Chan-o-cha, the Prime Minister of Thailand during the coup, strictly enforced the law and took serious action on the informal debt problems.

In conclusion, the results of a comparative study of the laws found that Thailand, Malaysia, the Philippines and Bangladesh have enforced the laws on informal debt cases as a mean to solve the problems. The principle of the laws in each country is similar in that the interest rate ceiling is set forth by the laws. Interestingly, although the Philippine law sets the interest rate ceiling, the Monetary Board has the power to prescribe the interest rate higher than the rate stipulated by the law. Criminal penalties are imposed in Thailand,



Malaysia and the Philippines for those who demand interest over the rate stipulated by the legislation. Furthermore, the concept of the microfinance has been adopted in all of these countries.

3.4 Analysis of Thailand's informal debt solutions

This research project examined five issues related to informal debt. Those issues were interest rate ceilings, criminal penalties against informal lenders, criminal prosecution by borrowers, access to justice, and legal measure as a solution for the problems.

1) Interest rate ceiling

Thailand's Civil and Commercial Code sets a maximum interest rate of 15 percent per year for a loan. The study showed that the interest rate ceiling has positive impacts on the economy and society. First, the interest rate cap can prevent borrowers from being charged with unreasonably high rates so that lenders cannot take advantage of borrowers. Second, it can keep the cost in the private sector low. When borrowers take loans and pay interest below 15 percent per year, the cost would be lower and generate better returns. If excessive interest rates are charged, the cost would be higher and entrepreneurs would set higher prices and pass the burden to consumers. It may be one of the factors to cause inflation. Third, it may help reduce economic inequality. The law imposes the interest rate ceiling so that lenders receive less interest from borrowers. If there would be no interest rate ceiling, lenders could demand higher loan interest rates. Lenders would earn more money but borrowers would lose their savings. As a result, there would be the economic inequality



between the rich and the poor. Fourth, it would help stimulate investment. The interest rate cap would be cheaper than the informal loan interest rate. Low-income people would take advantage of lower interest rates to finance their investments.

On the other hand, the interest rate ceiling could have negative impacts on the society. First, there could be a reverse effect on lenders even though the interest rate ceiling stipulated by law intends to protect borrowers from excessive interest rates. When there are few informal lenders, they would have greater bargaining power over borrowers. Low-income borrowers who cannot access finance from financial institutions are likely to borrow money from such lenders with unreasonably high interest rates. This would cause the low-income borrowers to bear a higher financial burden. Second, the real interest rate on a loan may be higher than the ceiling interest rate prompting lenders to demand other forms of benefits from low-income borrowers to compensate for their loss. This argument is consistent with information obtained from field research in Ubon Ratchathani Province. Here, lenders charged front money from low-income borrowers. The borrowers had to pay the front money before receiving the loan money.

2) Criminal penalty against informal lenders

This research project analyzed the theories of punishments in conjunction with the criminal penalties for informal lenders under the Excessive Interest Rate Prohibition Act B.E.2560. The finding showed that the criminal penalty under this Act is unlikely to



meet the objective of the deterrence theory of punishment. The penalty is rather light and not suitable for the offence of usury. Compared with the Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527, the penalty under the Excessive Interest Rate Prohibition Act B.E.2560 is much lighter than the penalty under the Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 although both legislations relate to a financial crime. A person found guilty of committing the offence of usury under the Act shall be punished with imprisonment for a term not exceeding two years or a fine not exceeding 200,000 Baht or both while a person found guilty of committing the offence of obtaining loans amounting to public cheating and fraud under the Decree shall be punished with imprisonment of five years to 10 years and a fine from 500,000 Baht to 1,000,000 Baht and the further fine not exceeding 10,000 Baht per day throughout the period of violation.

3) Criminal prosecution by borrowers

Another issue investigated in this research is whether borrowers can prosecute for the offence of usury. The analysis results revealed that borrowers themselves cannot be considered as *de jure* injured persons because they involve and cause the offence to occur, meaning they have no right to prosecute a criminal case. Although section 2(4) of the Criminal Procedure Code states that injured person means a person who has received injury through the commission off any offence, the court decision ruled that injured persons who have the right to prosecute the criminal case must be *de jure* injured



persons. They must not participate in the commission of an offence. When the borrowers agree to borrow money with an interest rate higher than the interest rate ceiling, they are therefore involved in an offence under the Excessive Interest Rate Prohibition Act B.E.2560.

4) Access to justice

Past research revealed that borrowers could not access justice (Suwanprasert, 2012, p. 131). A question is whether the problems of access to justice still exists. The findings showed that there are still the same obstacles preventing low-income borrowers from seeking justice. For example, low-income borrowers taking a usurious loan would not be recognized as de jure injured persons and therefore they themselves have no right to prosecute for the offence of usury. Another obstacle is that low-income people seem to lack knowledge and do not know how to take legal actions against informal lenders. The interviews pointed out that people did not know the maximum loan interest rate stipulated by law (Sornsak [pseudonym], Interview, April 11, 2019) and lacked understanding of the law (The representative of the Ubon Ratchathani Provincial Court, Interview, March 14 – 15, 2019). Moreover, low-income borrowers cannot afford to hire a lawyer to take any action against the informal lenders. Some people had monthly income of 5,000 – 6,000 Baht (Chaisit [pseudonym] , Interview, April 11, 2019; Wanchai [pseudonym] , Interview, June 30, 2019; Wissawut [pseudonym], Interview, June 30, 2019). Such income is considered very low and usually fully needed for household use.



5) Legal measures as a solution for the problems

It can be argued that legislation alone cannot be a sufficient tool to solve the problems of informal debt. Legal measures including the Excessive Interest Rate Prohibition Act B.E.2560 can play a role in the last stage by penalizing informal lenders. Legal measures cannot be used to solve the problems at the root causes. The in-depth interview data supports this argument. The representatives from Ubon Ratchathani Provincial Labor Office (Interview, March 15, 2019) and from the Center for Prevention and Suppression of Property Fraud, Ubon Ratchathani Provincial Police Division (Interview, March 13, 2019) commented that law enforcement was merely a preliminary solution to the informal debt problems. The law could not completely solve the problems.

Furthermore, it can be argued that Nano Finance and Pico Finance could simply alleviate the informal loan problems by providing easier access to capital for a certain group of low-income people. The in-depth interview, however, suggested that the loan application process was complicated so that some people could not take out a loan. Moreover, although the Government offers loans for low-income people to help them access capital, some people could not access the finance because of the loan application requirements. For example, some applicants have no assets as collateral or have a poor credit history. (Chaisit [pseudonym], Interview, April 11, 2019; Wanchai [pseudonym], Interview, June 30, 2019; Wissawut [pseudonym], Interview, June 30, 2019).



Therefore, it can be suggested that the informal debt problems should be solved at the root causes by applying non-legal measures. An application of the concept of the Sufficiency Economy Philosophy could be one of the solutions to the informal debts.

4. Conclusion and Recommendations

The comparative study showed that laws related to informal debt in Thailand, Malaysia, the Philippines, and Bangladesh are very similar. The laws themselves have not been able to solve the informal debt problems but they could be supporting tools. The concept of microfinance system is also applied in these countries to solve the informal debt problems. It can be concluded that it is unnecessary for Thailand to use these countries' measure as a model to solve the informal debt problems in Thailand except the Act No.2655 of the Philippines.

It is noted that the informal debt problems still exist and cannot be completely solved, even though Thailand has taken various measures to solve the problems. Those measures merely alleviate the problems. An interviewee commented that informal debt may not be eliminated from and would continue to exist in the Thai society because there is still a demand from people who need money but cannot access capital through formal channels.

With regard to the existing legislation in Thailand, the following recommendations can be made.



1) Section 654 of the Thai Civil and Commercial Code should be amended from “the interest rate shall not exceed 15 percent per year” to “the interest rate shall not exceed 15 percent per year or the maximum rate prescribed by the Royal Decree”. This proposed amendment adopts the principle of flexibility under the Act No.2655 of the Philippines which sets an interest rate ceiling but allows the Monetary Board to prescribe a different maximum rate. The main reason for this proposed amendment is that it allows the interest rate to be adjusted to fit changes in the economic situation in the future.

2) The penalty under the Excessive Interest Rate Prohibition Act B.E.2560 should be increased to fit and deter the crime. The Excessive Interest Rate Prohibition Act B.E.2560 and the Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 could be categorized into the same area of law. These two pieces of legislation relate to financial crime which could have an adverse impact on the economy. The penalty under the Excessive Interest Rate Prohibition Act B.E.2560 is much lighter than the penalty under the Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527. Therefore, it can be suggested that the imprisonment and fine prescribed by the Excessive Interest Rate Prohibition Act B.E.2560 should be amended from “imprisonment for a term not exceeding two years or a fine not exceeding 200,000 Baht or both” to “imprisonment for a term of five to 10 years and a fine from 500,000 Baht to 1,000,000 Baht.”



3) Borrowers are de facto injured persons not de jure injured persons and they themselves cannot prosecute the offence under the Excessive Interest Rate Prohibition Act B.E.2560. However, it can be advised that the inquiry official and public prosecutors could play an important role in prosecution of the offence. According to section 121 of the Criminal Procedure Code, the inquiry official could initiate an inquiry of the criminal case under the Excessive Interest Rate Prohibition Act B. E. 2560. The offence under this Act is non-compoundable which requires no complaint. After the inquisition has been made, the public prosecutor could enter an action on court against the informal lender.

As mentioned earlier, it can be argued the informal debt problems could be more effectively solved at the root causes by applying non-legal measures rather than legal measures. The root causes of the informal debt problems are prodigal habits. One of the suggestions would be to apply the concept of the Sufficiency Economy Philosophy to change the prodigal habit. According to this Philosophy, sufficiency means to lead a reasonably comfortable life, without excess, or overindulgence in luxury, but enough (Office of the Royal Development Projects Board, 2017, p. 13) and therefore one should economize by cutting down expenses in all aspects and should not overspend their means. Additionally, the Philosophy of Sufficiency Economy does not deny the concept of debt and loan. But it stresses risk management, that is, if one takes on loan for investing in the



business, it should not be too risky (Office of the Royal Development Projects Board, 2017, p. 30).

As to the in- / depth interview data, the interviewees commented that the Sufficiency Economy Philosophy could be used to solve the informal debt problems at the root causes. This comment was provided by the economic expert and the representatives from the Center for Prevention and Suppression of Property Fraud under Ubon Ratchathani Provincial Police Division, the Internal Security Operations Command, Ubon Ratchathani Provincial Justice Office, Ubon Ratchathani Provincial Labor Office, Bank for Agriculture and Agricultural Cooperatives, Government Savings Bank and National Village and Urban Community Fund Office.

Apart from applying the concept of the Sufficiency Economy Philosophy, the Government should actively educate people to practice financial discipline, expand formal access to capital, provide skill development training programs for low- income people and continue to implement policies to solve the informal debt problems.

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