



Special investigations in cases of encroachment on natural tourism resources and the environment in the forests and public areas of Southern Thailand

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Abstract

This investigation aims to identify a model of official inquiry for encroachment on the natural tourism resources and environment of forests and public areas in Southern Thailand. This qualitative research used in-depth interview methods for data collection. Key informants consisted of seven groups, namely: 1) experts on criminology; 2) experts on criminal law enforcement; 3) experts on the process of investigation for criminal cases or cases related to the natural resources and environment of forests and public areas; 4) experts on the natural resources and environment of forests, public areas and national parks; 5) experts on land and public area management; 6) experts on agricultural and cooperative land reform; and 7) army experts and co-investigators in natural resource and environmental cases falling under the current special law. According to the Strategic Plan of Protection and Suppression of Violations Concerning Natural Resources and the Environment, Royal Thai Police Headquarters, 2014, there is still severe and continuous forest and public area encroachment in six southern Thai provinces, namely Ranong, Surat Thani, Phangnga, Krabi, Phuket and Trang. The researchers searched for the best model of inquiry in order to amend and improve inquiry cases for legislative measures relating to the environment and natural resources in forests and public areas. The model was deemed appropriate and effective in terms of taking legal measures to preserve environmental sustainability in Thailand.

Keywords: Inquiry model, environment, natural resources, forests, public areas, encroachment.

Introduction

Significant environmental changes, such as seasonal weather patterns, redirection of water sources, air pollution and global warming, all affect the livelihood of local people. This is especially true in areas where natural resources form a central pillar of community income, yet are used for economic development without consideration for maintaining the natural equilibrium. Human beings use nature to meet their needs and have historically done so without contemplating the impact upon future generations. Thailand is a member of the United Nations (UN) and has used UN principles of environmental management to set national policies and legal measures to manage the country's environment under the constitution of the Kingdom of Thailand. These regulations are used to administer the abundant and valuable natural resources within the country, which attract millions of visitors on an annual basis. Government authorities have been established in order to authorize law enforcement and legal measures. Some of the numerous institutions performing important roles in environmental management within Thailand are The

Ministry of Natural Resources and Environment, The National Park, Wildlife and Plant Conservation Department, The Department of Marine and Coastal Resources, The Pollution Control Department, The Department of Environmental Quality Promotion, The Department of Land, The Ministry of the Interior and The Royal Thai Police. Nevertheless, legal violations affecting the management of natural tourism resources and the environment within Thailand still continue.

Economic crops, such as oil palm and rubber, are grown on vast plots of land. Huge areas of forest and public areas are invaded in order to grow these crops and some areas in the deep forest are even invaded so as to be used to grow opium. The situation is particularly prevalent in six southern Thai provinces, Ranong, Surat Thani, Phang Nga, Krabi, Phuket and Trang (Figure 1). Moreover, developers encroach on land in the forests and public areas of these provinces in order to build resorts, hotels and accommodation. The consequence is a systematic reduction of forest area across Southern Thailand. Major and severe violations are committed by business people seeking an increased profit. These individuals provide incentives to government officers to illegally issue official documents and permits. The result is invaluable economic loss of ecological systems, environmental imbalance and unfair distribution of benefits from common resources. The researchers were therefore interested in improving the special case inquiry model for environment and natural resource violations to ensure legislative measures are more specific, appropriate and effective in enforcing the sustainable management of Thailand's natural tourism resources.

Figure 1. Provinces with severe and continuous forest and public area encroachment in Thailand, according to the Strategic Plan of Protection and Suppression of Violations Concerning Natural Resources and the Environment, Royal Thai Police Headquarters, 2014.



Research Objectives

The objective of this investigation was to identify a model of official inquiry for encroachment on the natural resources and environment of forests and public areas in Southern Thailand. The hope is that such a model will enable effective inquiry from authorities and facilitate the evaluation of economic loss of ecological systems caused by offences in order to set penalties and reparations



towards the occurred damages. This will ensure that common natural tourism resources are used fairly by all people in society and that they are sustainably managed.

Literature Review

Tourism and environmental management

Thailand is rich with a diverse variety of natural capital that attracts millions of tourists each year. Foreign visitors flock to admire the beaches, forests, mountains and seascapes of the Indochinese Peninsula. Indeed in 2018, 5,578,632 international tourists arrived in Thailand (Association of Thai Travel Agents, 2019). In 1982, Krippendorf (1982) predicted that “unrestricted tourism growth could lead to the positive economic effects of tourism being outweighed by significant social and environmental disadvantages, which could in turn translate the economic benefits into disadvantages”.

This negative premonition has indeed proven prophetic regarding the state of Thailand’s natural resources, and in 2018 the world renowned Maya Bay on the Phi Phi islands was closed to allow the environment to recover from the pressures of overpopulation and overcrowding.

However, tourism has proven to be a successful instigator of change in natural tourist attractions in Thailand. While undoubtedly bearing much of the responsibility for the pollution of Maya Bay, international tourism brought the site into sharper focus (Koh and Fakfare, 2019). It is indeed arguable that domestic and Asian tourism caused the high levels of pollution but the reaction of Western tourists prompted the subsequent cleanup and conservation efforts. A perfect example of how tourism is affected by positive changes in environmental management is the case study of Koh Pitak.

In the late 1980s and 1990s, there started to be increasing fishing pressure, especially from commercial trawlers from elsewhere coming close to the island, and fishing became increasingly uncertain. Leadership was instrumental in developing the Koh Pitak tourism initiative. Tourism started with a total service charge of 100 Thai baht (THB) per night, including boat transport, accommodation and food. The tourism initiative that now forms important supplementary economic support for the village was really an outgrowth from the efforts to improve environmental management in the village in general, and specifically regarding enhancement and protection of fishery resources and development of more effective waste management systems. (Dearden, Emphandhu and Songpornwanich, 2017).

Yet these success stories are too few and far between. Often there is a discrepancy between the interests of local policy makers and tourist business operatives. A sustainable tourism policy framework needs to be designed to ensure that the environment and local natural resources are managed effectively and responsibly (Lopez and Bhaktikul, 2018). This is also true for the national parks and forest reserves throughout Thailand, which have suffered from unrestricted encroachment for a number of years. Khowinthawong and Emphandhu found encroachment to be a major concern for locals whose livelihoods depend on the sustainability of the Khao Yai forest park (2016).

As tourist destinations boom from the increasing numbers of visitors, businesses tiptoe further and further into common areas. They often put pressure on government officials or provide incentives to illegally secure construction permits and licences (Tan-Mullins, 2007). A stronger legal model is required to manage Thailand’s natural assets and ensure its tourist destinations remain both sustainable and beneficial to the community as a whole.



Thai criminal law and legal reform

Araya Hoontanasaeevee (1995) studied the importance of legal and administrative management of national parks. The study found that laws and government operations in Thailand lack effectiveness and problems that happen in national parks cannot be solved. Hoontanasaeevee concluded that measures for legal and administrative management should be enhanced and there should be further analysis of law enforcement in the future. In fact, multiple studies have concluded that laws and government operations concerning the protection of common land from encroachment in Thailand lack effectiveness.

Problems that occur within national parks cannot be solved and it is widely recognised that measures of legal and administrative management should be enhanced. The state policy is a factor in land encroachment. Some policies do not encourage law enforcement to combat trespassers on state land. There are overlapping jurisdictions of government agencies, which result in the negligence of the officers who maintain the state land. Criminal measures, measures related to civil responsibility, administrative measures and remedial measures are not uniformly standardised, meaning that offenders are not afraid of law enforcement.

Social and economic factors contribute to this growing problem. Population increase, poverty, lack of workplace and dwelling, immigration, tyranny, capitalism and politics are some of the reasons for encroachment. The trespassing also causes conflict between government agencies and the private sector, as well as between private citizens.

Two measures have been suggested to effectively solve the case of public domain encroachment. Firstly, an urgent step required for improvement is to amend government policy related to the public domain and solving encroachment. Criminal measures, measures related to civil responsibility, administrative measures and remedial measures must be improved and changed to be in the same standard. Public domain issues require better definition in order to avoid duplication of responsibilities among government organizations. In addition, amendments are required to the authorization of personnel in charge of public areas. Secondly, a long term measure is the creation of a national law code to collect the various related laws for the government and private sector. The government sector is the only party with the authority to manage and enforce land protection measures and public domain amendment measures. These require further and deeper investigation and analysis.

The administrative court accepts and uses class action to decide administrative affairs concerning the environment. However, the practice cannot solve the management of environmental cases when there are many injured parties. Moreover, acceptance of the idea of class action exists only among some administrative judges. Not having a single law specifying class action clearly reduces the effectiveness of judges when dealing with environmental proceedings, despite the fact that administrative trials accept judicial procedures of class action. Therefore, laws concerning class action for environment cases should be specified in judicial procedures by preparing regulations in the supreme court. Thai law is a civil law system based primarily on written law. Nevertheless, the model of class action in the United States of America should be adapted and used as law within Thailand because administrative affairs concerning Thai environmental issues are very similar to class action lawsuits in the United States. Nonetheless, it should only be applied to environmental affairs.

Besides effective crime control and strong rehabilitation and reintegration policies, good criminal justice systems must also contain measures that provide protection to the rights and freedoms of individuals (Panyawatlikid, 2009). Boonchu Na Pompetch (2009) compared community right to manage resources in Thailand with the rights enjoyed by citizens of foreign nations. The study found that the rights of communities in foreign countries is legally guaranteed, both internationally and domestically, including in court judgments. This plays a great role in setting legal principles concerning the guarantee of rights for communities according to their original traditions.



As for Thailand, even though a guarantee of community rights was enacted in the 1997 constitution and the 2007 constitution, secondary laws to guarantee rights concerning community forests have not yet been enacted. Thus, to guarantee community rights in Thailand, secondary laws must be enacted in order to expand the legal content and scope. Court trials must also be widened to accept community traditions, without having to adhere to written law and techniques that will eventually support and facilitate the further development of community rights guarantees. The effectiveness or success of the justice system inevitably depends on coordinating major principles to protect the basic rights of the people.

Arun Kunsirawit (2012) conducted an investigation into the potential reform of investigation procedures in Thailand. Results revealed that the primary emphasis of any reform should be upon the professionalism of inquiry officials. This was followed in order of importance by verification procedures, the freedom of state organizations exercising investigative authority and the unity of investigation and prosecution departments.

Methodology

This research on the study of a model of official inquiry for encroachment on the natural resources and environment of forests and public areas in Southern Thailand was a qualitative investigation. Data was gathered from related scholarly documents and field research. The research area for this investigation was purposively selected as the six Southern Thai provinces with severe and continuous forest and public area encroachment, as concluded by the Strategic Plan of Protection and Suppression of Violations Concerning Natural Resources and the Environment, Royal Thai Police Headquarters, 2014.

The provinces were Ranong, Surat Thani, Phangnga, Krabi, Phuket and Trang. Thirty individuals were purposively selected to compose the sample group for this investigation. These key informants were divided into seven categories: 1) experts on criminology (n=3); 2) experts on criminal law enforcement (n=9; 3 government workers at the Ministry of Justice, 3 attorneys and 3 lawyers); 3) experts on the process of investigation for criminal cases or cases related to the natural resources and environment of forests and public areas (n=6; 3 policy-makers and 3 administrative officers); 4) experts on the natural resources and environment of forests, public areas and national parks (n=3); 5) experts on land and public area management (n=3); 6) experts on agricultural and cooperative land reform (n=3); and 7) army experts and co-investigators in natural resource and environmental cases falling under the current special law (n=3). The primary method of data collection was in-depth interview. Results were validated using a triangulation method, categorised according to the aims of the investigation and analysed by a process of inductive analysis. The findings are presented here as a descriptive analysis.

Results

The Royal Thai Police is a government sector organisation authorized to protect, suppress, investigate and interrogate every kind of law violation, including violations related to natural resources and the environment across the Kingdom of Thailand. They conduct official inquiries under the administration of the provincial governor, sheriff, and deputy district chief, who operate according to the regulations of the Ministry of the Interior, 2523, Article 12. The government separated the "Police Department" from the Ministry of Interior and established it as the "Royal Thai Police" in 2004 to enforce personnel management.

The authority of the commissioner-general was set in order to manage and issue regulations to facilitate justice. Subsequently, the Commissioner-General issued Royal Thai Police Order No. 419/2556 regarding justice in criminal cases, recording and controlling investigations, and inspection measures for criminal cases, which was enforced from 15 July 2013. This resulted in the cessation of regulatory measures applied to chief inquiry officials overseeing investigations concerned with the violation of natural resources and the environment.



From this order, administrative inquiry officials like provincial governors, district chiefs and deputy district chiefs could no longer control the investigation procedure. The Ministry of the Interior and Royal Thai Police disputed over the investigative authority for the mentioned cases. Furthermore, Thailand's administration changed from a civilian government to a military government through the coup d'état of 22nd May 2014. General Prayuth Chanocha became chief of the newly established National Council for Peace and Order (NCPO) and Prime Minister. He issued an order, Chief of National Council for Peace and Order No 3/2558, concerning national peace and security maintenance, which was enforced from 2nd April 2015 to give authority to military officers and commissioned officers at every level of the force to be "peace maintenance officers". They were tasked with managing investigations into all legal violations, including contravention of NCPO orders concerning violations of natural resources and the environment. With this, military officers were authorized to search, seize, control, investigate and interrogate.

All official inquiries had to follow the instructions of a military officer and it was deemed to be a serious criminal and disciplinary offence should investigations be conducted outside the authority of military personnel. According to the Strategic Plan of Protection and Suppression of Violations Concerning Natural Resources and the Environment, Royal Thai Police Headquarters, 2014, the Thai economy has benefited from these developments.

The results from in-depth interviews with thirty experts were set as guidelines for the model of special inquiry pertaining to encroachment in public areas that impinge upon the environment and natural tourism resources. The four main conclusions are: 1) the organisational model of inquiry belongs to the Royal Thai Police; 2) inquiries concerning violations of encroachment laws pertaining to the environment and natural resources within public areas and forests are to be separated as special cases from other criminal inquiries; 3) there must be integration between the experts of various groups participating in the inquiry process; 4) the police department is the head for official inquiries.

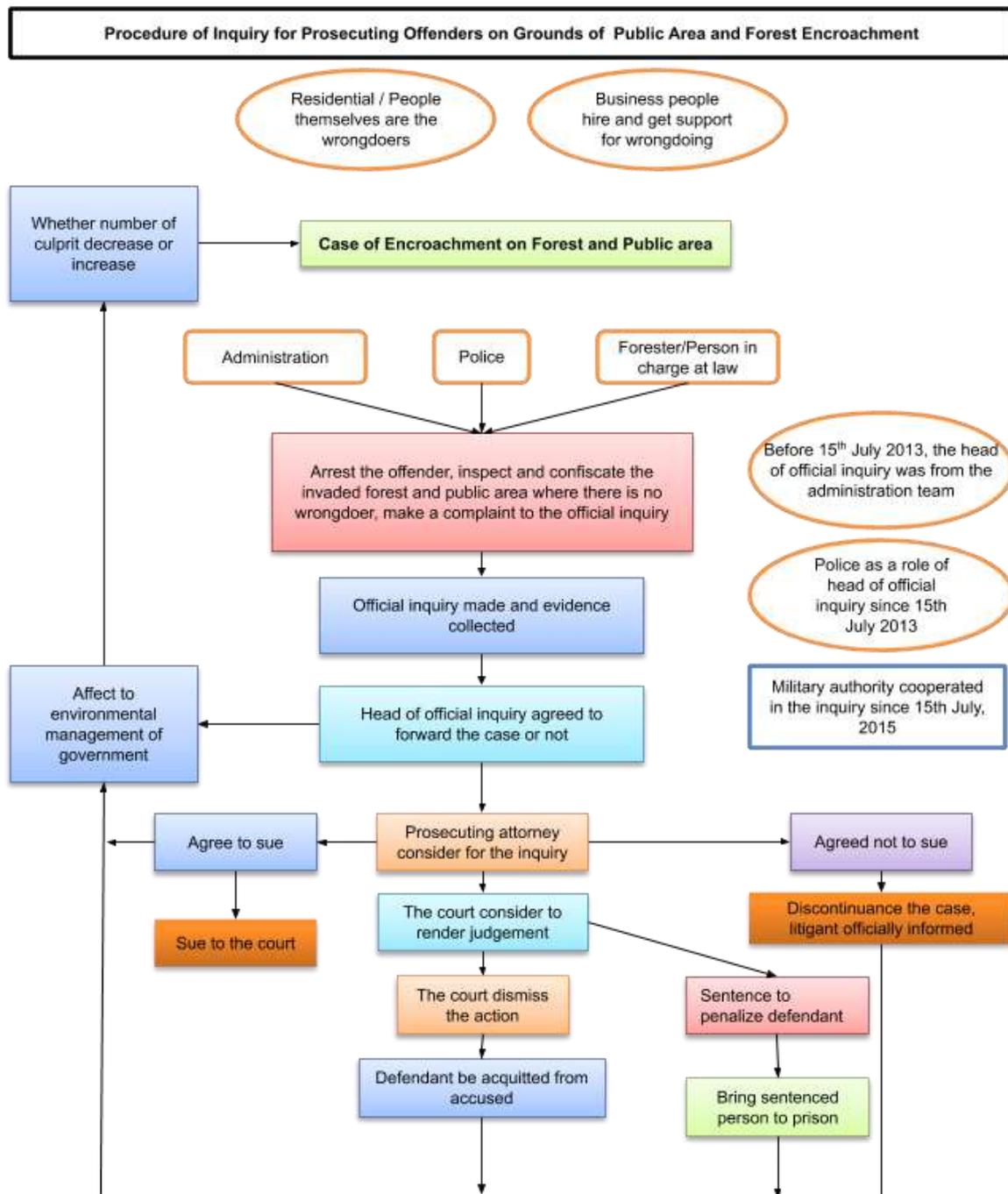
The researchers searched for the best model of inquiry in order to amend and improve inquiry cases for legislative measures relating to the environment and natural resources in forests and public areas. The model (Figure 2) was deemed appropriate and effective in terms of taking legal measures to preserve environmental sustainability in Thailand. Various destinations today state that in order to build their competitiveness on the latent possibilities of their natural endowments, these need to be protected from encroachment. This is the wise thing to do and it is important for sustainability. Planina (1997) asserts that there are significant effects of environmental resources on tourism and he pragmatically considered these to be a primary tourism supply and thus, they are in need of preservation.

If Thailand wishes to generate an image of itself as a green destination, the destination itself is clearly not exploiting nature as well as it should. Aggressive farming and sociocultural components related to these can certainly dampen customer satisfaction. Improvements in the tourism offerings must consider the cases of encroachment on natural tourism resources and the environment in the forests and public areas of Southern Thailand very carefully. This is vital if Thailand wishes to meet both local tourists' "greener" expectations.

There must be greater investment in supporting tourism-created resources, including natural forests. This will help promote natural resources more to the vast potential of foreign tourists who enjoy forest walks etc. and will enhance their overall satisfaction and also bolster destination performance. Many Tourism practitioners and tourists believe that natural and cultural resources are the most promising characteristics for destination competitiveness, and tourism has increasingly impacted upon the way, and they degree to which resources are managed and utilised, thus they are identified as a key factor effecting the resource sector (Harrison, 2006). There are even suppliers who tend to regard this aspect as significantly more important than tourists (Bahar & Kozak, 2007). There are too many destinations that are deficient in

good general infrastructure and need to carefully develop it to empower tourism development and competitiveness (Khadaroo and Seetana 2008; Prideaux 2000).

Figure 2. Prosecution procedure for encroachment on environment and natural resources in forests and public areas.



Conclusion

Future investigations in cases of encroachment on natural tourism resources and the environment in the forests and public areas of Southern Thailand should contain the following elements: 1) the inquiring organization must also be affiliated with the National Police Agency; 2) investigations of



encroachment on natural resources and the environment in forests and public spaces should be considered as special case investigations, different from other types of criminal examination; 3) natural resource and environmental experts, state land management experts and cartography experts in state land management must participate as part of the investigation committee; 4) the police officers should be the chief investigators. This will cause the investigation to be governed well and with freedom, fairness and effectiveness. These guidelines will help to control and prosecute individuals for committing offenses in forests and public areas. This will also enable assessment of economic losses to the ecological system and maintain the balance of natural resources and environmental conditions in forests and public areas. These measures will hopefully serve to help punish offenders, impose penalties for damages and ensure fair distribution of community benefits gained from natural tourism resources and the environment.

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