



Dialogue on Implementing the Local Government Provisions of the New Constitution in Thailand

**Organized by
the King Prajadhipok's Institute (KPI),
Bangkok, Thailand,
and World Bank Institute and sponsored by
the Government of Japan**

December 11-13, 2007

Chaophya Park Hotel, Bangkok, Thailand

**Dialogue on Implementing
the Local Government Provisions of the New Constitution in Thailand**

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Principle, Objectives and Agenda

**Dialogue on Implementing
the Local Government Provisions
of the New Constitution in Thailand**

**December 11-13, 2007
Chaophya Park Hotel, Bangkok, Thailand**

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Organized by the King Prajadhipok's Institute (KPI), Bangkok, Thailand,

and World Bank Institute and sponsored by the Government of Japan

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P Principle and Rationale

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) carries provisions in several sections that concern with and promote efficiency and operations of local administrative organization, such as Section 7 under Chapter 5 Fundamental State Policies and Section 281-290 under Chapter 14 Local Government. Essentially, these provisions induce various aspects of changes, adjustment, and development of local government organization, particularly Section 283, 288, and 303. To mandate collection of taxes and other types of revenue, Section 283, Paragraph 3 under Chapter 14 Local Government stipulates categorization of powers and duties and revenue allocation between central and regional authorities and local government organization, and among local government organizations themselves. In addition, Section 288 concerning local personnel administration also carries a provision which deviates from the original provision, rendering improvement of local personnel administration laws for needed consistency. Concurrently, Section 303 (5) also prescribes that the first agenda upon forming of a cabinet after the first general election held under this Constitution is to engage in preparation or improvement of the law concerning prescriptive plan and procedure of decentralization to local government organization, local revenue law, law concerning establishment of local government organization, local official law, and other laws as stipulated under Chapter 14 Local Government. Such undertakings are required to fulfill such constitutional provisions within two years after the date of parliamentary policy address, as stipulated in Section 176. Accordingly, a local code can be arranged.

Under such circumstance, the College of Local Government Development of the King Prajadhipok's Institute and World Bank will jointly organize the symposium titled **"Dialogue on Implementing the Local Government Provisions of the New Constitution in**

Thailand.” The objective is to exchange domestic and overseas experiences on these issues which may lead to some approach for disposition or improvement of decentralization and local government laws in Thailand in accordance with new constitutional provisions and the intent of the new constitution, and essentially contributing to efficiency and enhancement of the provision of mandated public services which is truly consistent with the administrative system of local government organization.

Objectives

1. To expedite learning of various issues surrounding the new constitution and overall repercussion on local government in Thailand;
2. To reach conclusions on the issues concerning improvement of decentralization and local government laws, thus fulfilling the intent of provisions in the new constitution;
3. To utilize findings from the symposium for formulation of recommendations for concerned agencies so that authorities can further use them as guidelines for improvement of decentralization and local government laws;
4. To facilitate exchange of domestic and overseas experiences on constitutional issues regarding local administration, rendering suitable application of appropriate models;

Date and Time

11 December 2007	09.00 - 15.30 hrs.
12 December 2007	09.00 - 17.15 hrs.
13 December 2007	09.00 – 13.15 hrs.

Venue

Grand Ratchada Ballroom, 5th Floor, Than Thip Building, Chao Phya Park Hotel, Ratchadapisek Rd., Bangkok, Thailand

Number of Participants

80 attendees

Host organizations

1. King Prajadhipok's Institute
2. World Bank Institute



Day 1: Tuesday, December 11, 2007

09:30am – 10:00am Registration

10:00am – 10:15am **Welcome Remarks** by

- ❑ Mr. Zhi Liu
(Infrastructure Sector Coordinator, World Bank Office in Bangkok)
- ❑ Assoc. Prof. Woothisarn Tanchai
(Deputy Secretary, King Prajadhipok's Institute)

Opening Remarks by

- ❑ H.E.Mr. Hideaki Kobayashi
(Embassador of Japan)

10:15am – 10:30am **Overview** by

- ❑ Assist.Prof.Dr.Orathai Kokpol
(Director of College of Local Government Development,
King Prajadhipok's Institute)

10:30am – 11:00am **Directions of Local Government under the Constitution of the Kingdom of Thailand B.E. 2550 (2007)**

- ❑ Assoc.Prof.Woothisarn Tanchai
(Deputy Secretary, King Prajadhipok's Institute)

Local Governance in a Comparative Perspective

- ❑ Dr. Anwar Shah
(Lead Economist and Program Leader, World Bank Institute,
Washington D.C)

11:00am – 11:15am Coffee Break

11:15am – 12.45am **Local Authorities Revenue Act : New Challenges**

Panel Chair

- ❑ Prof.Dr.Charas Suwanmala
(Dean of Political Science Faculty, Chulalongkorn University)

Key Speaker

- ❑ Prof.Dr.Somchai Richupan
(President of Siam Development Institute)

12.45am – 2:00pm Lunch Break

2:00pm – 3:30pm **Local Authorities Revenue Act** (Continue)
Round Tables Discussions

Day 2 Wednesday December 12, 2007

08:30am – 09:30am Registration

09:30am – 11:00am **Decentralization Act : Possible Amendments**

Panel Chair

- ❑ Mr.Jadul Apichatabutr
(Deputy Secretary, the Prime Minister's Office)

Key Speaker

- ❑ Prof.Dr.Chatchai Na Chiangmai
(Director of Institute for Good Governance Promotion)

11.00am – 11.15am Coffee Break

11.15am – 12.45am **Decentralization Act** (Continue)
Round Tables Discussions

12:45am – 2:00pm Lunch Break

2.00pm – 3.30pm **Code of Local Government Organization: New Challenges**

Panel Chair

- ❑ Assoc. Prof. Woothisarn Tanchai,
(Deputy Secretary, King Prajadhipok's Institute)

Key Speaker

- ❑ Prof.Dr.Somkid Lerdpaitoon
(Dean of Law Faculty, Thammasat University)

3.30pm – 3.45pm Coffee Break

3.45pm – 5.15pm **Code of Local Government Organization** (Continue)
Round Tables Discussions

Day 3 Thursday December 13, 2007

09.30am – 11:00am **Local Public Participation Laws : Possible Amendments**

Panel Chair

- ❑ Assoc.Prof.Dr.Chaiwat Khamchoo
(Director of College of Politics and Governance,
King Prajadhipok's Institute)

Key Speaker

- ❑ Assist.Prof.Dr.Orathai Kokpol
(Director of College of Local Government Development,
King Prajadhipok's Institute)

11.00am – 11.15am Coffee Break

11.15am – 12.45am **Local Public Participation Laws** (Continue)
Round Tables Discussions

12.45am – 1.15pm **Concluding Remarks** by

- ❑ Assoc. Prof. Woothisarn Tanchai
(Deputy Secretary, King Prajadhipok's Institute)

1.15pm – 2.15pm Lunch Break





Welcome Remarks and Opening Remarks

**At the Dialogue on
Implementing the Local Government
Provisions of the New Constitution of Thailand**

Chaophya Park Hotel, Bangkok,
December 11, 2007



**Welcome Remarks on behalf of the World Bank
by Mr. Zhi Liu, Infrastructure Sector Coordinator,
World Bank Office in Bangkok**

**His Excellency Ambassador of Japan Mr. Kobayashi
Distinguished participants,
Ladies and gentlemen,**

On behalf of the World Bank, let me warmly welcome you to this important event, which aims at translating the vision of the New Thailand Constitution of August 2007 into reality. The New Constitution has presented decentralized local governance as a cornerstone of its new vision of a responsive, responsible, equitable and accountable public sector governance in Thailand. To translate this vision into reality, the government must prepare and present to the Parliament for approval either amendments to the existing legislation or develop proposals to enact new laws on decentralization, local government organization, local revenues, and local participation. This monumental task represents a great challenge as well as a historic opportunity to create local governments that work and serve their citizens by improving social and economic outcomes especially for those segments of the society who are left behind by the economic advancement of our times.

Thailand is not alone in facing such a challenge. Globalization and the information revolution are motivating a large and growing number of countries around the globe to reexamine the roles of various orders (levels) of government and their partnership with the private sector and civil society. World Bank is engaged with more than 50 client countries in discussing decentralization reforms. These reforms typically involve shifting responsibilities to local governments and beyond government providers, with the objectives of strengthening local governance and introducing competition in local service delivery. This movement has generated a large interest in learning from the history of nations as well as from current practices across countries on local government organization and finance. In this context, lessons from experiences in countries which have undertaken similar reforms in recent years such as China, Indonesia, Japan, Korea and Pakistan would be particularly instructive in learning how to build consensus and momentum for reforms and how to sustain such momentum while implementing such reforms. We can learn both from the successes and failures of these countries in implementing decentralization reforms. This dialogue caters to this interest by having international experts participate in your national dialogue and provide you with first hand observations from their own experiences to the problems you are trying to address in Thailand. This exchange of learning from experiences could assist you in making more informed choices for Thailand. Of course, as the saying goes, while we think globally, we must act locally to design specific solutions to meet the specific needs and aspirations of the people of Thailand.

Ladies and gentlemen,

The World Bank is pleased to be of assistance in this important dialogue and we are grateful to the Government of Japan through their PHRD program to facilitate our partnership with the KPI to advance learning from international practices.

I hope you have a very productive and successful dialogue over the next three days. Thank you.





**Welcome Remarks on behalf of the
King Prajadhipok's Institute (KPI)**

**By Assoc. Prof. Woothisarn Tanchai
Deputy Secretary, King Prajadhipok's Institute**

**His Excellency, Dr. Anwar Shah ,
Distinguished guests, Ladies and Gentlemen,**

On behalf of the King Prajadhipok's Institute, the World Bank Institute, and all distinguished participants, I would like to express my appreciation for the honor of your presence here to open this dialogue on Implementing the Local Government Provisions of the New Constitution in Thailand

WBI and KPI are aware of the importance of the development in local government and decentralization and look forward to seeing well-prepared practices applied in Thailand. The dialogue aims to share knowledge and experiences from both Thailand and other countries, with the goal of improving decentralization law and regarding laws and, as a consequence, contributing to sustainable local government development as a whole.

We are pleased to welcome participants from United State, Indonesia, Korea, China, Japan and Thailand to this dialogue. In keeping with the theme of Implementing the Local Government Provisions of the New Constitution in Thailand, we are glad to see that

academics and local representatives have been able to come and represent their respective experience. I hope that all participants find the dialogue valuable.

The dialogue will take place on December 11th to 13th. I would like to thank all the speakers, lecturers and the moderator, and all the participants taking part and contributing their experience and expertise to this program. I would also like to extend my deepest thanks to KPI and WBI for making the dialogue possible.

Now, it is a good time for me to invite the ambassador of Japan to open this dialogue on **“Implementing the Local Government Provisions of the New Constitution in Thailand.”**

Welcome, His Excellency Mr. Hideaki Kobayashi.



**Opening Remarks
by H.E. Mr. Hideaki Kobayashi
Ambassador of Japan**

**Distinguished Guests,
Ladies and Gentlemen,**

I am delighted to be invited to the Dialogue on Implementing the Local Government Provisions of the New Constitution in Thailand.

At this time, when Thailand is equipped with a new Constitution and is expected to have a new Government based on the General Election, it is quite timely to discuss about how to put into practice the local government provisions, which I believe is one of the most important elements in the new Constitution from the viewpoint of ensuring democratic and efficient governance in Thailand.

As a matter of fact, in my own country, how to reform our local-government-related systems and regulations has been one of the most hotly discussed and most challenging issues since a decade ago.

Before going into some details of such discussions, let me introduce to you the local-government-related provisions of Japan's Constitution, in which one chapter, Chapter 8 is devoted to local self-government. It is a rather concise Chapter, having only four provisions. First, the organization and management of local administration shall be regulated by law, which shall be based on the principle of local self-government. Second, the head of local administration and members of local legislative

bodies shall be elected by people. Third, local administration shall have power to manage their assets, carry out their administrative tasks and make bylaws within the limits set by national laws. Forth, a national law that applies only to a particular local area can be legislated only with the consent of the local people to be confirmed through local referendum.

Although, constitutional provisions are few, local governments play very important roles in Japan, particularly in meeting daily needs of the people. Such basic services such as primary and secondary education, public-health and healthcare, police works including traffic control, social welfare, road transportation in local highways etc. are provided entirely or partly by local government.

Now what are the current issues in Japan? First is the source of income for local administration. This matter is important because if a local government is dependent on the central government in terms of its revenue, the autonomy of local administration will be just in name. Up until recent years, the local government had had sources of tax that covers only about 30% of their spending. The rest had to be covered by subsidies in one form or another from the central government. This meant that administrative discretion of the local government has been restricted to a large extent. Under the reform introduced by Prime Minister Koizumi's Cabinet in 2005, certain sources of tax have been transferred from the central government to local administration, while some subsidies from the central government were reduced. There still are arguments whether the reduction of government subsidies was excessive or not, and also whether right kinds of tax sources have been transferred or not.

The second issue is the optimum size of local administrative entities. There seems to be a trade off regarding the size of local entities. The smaller a local entity is, the easier to provide services that meets local people's needs more correctly, but more expensive in terms of cost of maintaining local government. In Japan, in 1999, there were about 3200 second-level entities (cities, towns and villages), as well as 47 first-level entities (prefectures). The costs of maintaining government particularly in the second-level entities have become so heavy that many of them have merged among themselves. Presently, the number of second-level entities has been reduced to 1800, a reduction of 44% compared with 8 years ago. Now, the question is whether or not first-level entities or prefectures have to be merged together. On one hand, there is a need for larger first-level entity not only for reducing administrative costs but also for carrying out administrative tasks more efficiently. For example, highway construction can be done more efficiently if it is planned and implemented in a scale larger than each prefecture. But such merger has many difficulties including the fear that historically established identities of people in each entity may be jeopardized. So this discussion is expected to go on for quite some time.

I hope that such information on the current debate on local government in Japan may be of some use for the discussions in this dialogue from now. In concluding I wish to reiterate the high relevance of the topic of this dialogue for the democratic and efficient governance of both Japan and Thailand, and to express my sincere hope for very productive discussions in the coming sessions.



Articles and Conclusions of Seminar

SECTION 1

Introduction

SECTION 2

Local Authorities Revenue Act : New Challenges

SECTION 3

Decentralization Act : Possible Amendments

SECTION 4

Code of Local Government Organization: New Challenges

SECTION 5

Local Public Participation Laws: Possible Amendments

SECTION 6

Seminar Conclusion



SECTION 1

INTRODUCTION

- ❑ **Directions of Local Government under the Constitution of the Kingdom of Thailand B.E. 2550 (2007)**
Assoc.Prof. Woothisarn Tanchai
Deputy Secretary-General, King Prajadhipok's Institute and
Former Member of the 2007 Constitution Drafting Committee
- ❑ **Local Governance in a Comparative Perspective**
Dr. Anwar Shah
Lead Economist and Program Leader, World Bank Institute



Directions of Local Government under the Constitution of the Kingdom of Thailand B.E. 2550 (2007)

Assoc.Prof. Woothisarn Tanchai*



Essentially, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) evolves around four major directions, that is, firstly, protection, promotion, and extension of civil rights and liberties; secondly, curtailment of the state's monopolistic power, extension of civil power, and enhancement of decentralization; thirdly, implanting transparency, integrity, and ethics in politics; and fourthly, ensuring that oversight bodies are autonomous and robust so they can function efficiently.

The provisions concerning local government and decentralization to local government organization appear in two essential chapters, that is; Chapter 5 Directive Principles of Fundamental State Policies; Part 3 Directive Principles of State Administration Policies (Section 78); Part 4 Directive Principles of Religion, Social, Public Health, Education, and Culture Policies (Section 80); as well as Chapter 14 Local Government (Section 281-290).

The essence of local government in the Constitution is divided into four vital parts, that is, firstly, extension of local government organization's duties and powers to be more explicit and comprehensive; secondly, striking

* Deputy Secretary-General, King Prajadhipok's Institute, Former Member of the 2007 Constitution Drafting Committee

balance between supervision of local government organization and its independence; thirdly, development of operational and administrative systems for local government organization; and fourthly, providing public space for people, community, and civil society so they can jointly participate in local administration with local government organization; fifthly, implanting transparency in local politics. Details are as follows:

Firstly,

extension of local government organization's duties and powers, thus making their roles more pronounced and broader in perspectives. Notably, Section 78¹ constitutes a guarantee that the state will modify administrative and relationship system between central, regional, and local authorities so that their duties and powers are clear-cut. Moreover, local government organization must be encouraged to perform its roles and fulfill its duties in provision of various public services to local people. Additionally, this section also prescribes that the state sector's administrative system must be geared towards development of quality, integrity, and ethics of public officials and the administrative system, thus enhancing its operational efficiency. Furthermore, the state shall focus on adherence to good governance principles. It is also further elaborated that the state shall provide public services to people in speedily, efficiently, and transparently and such services must be subjected to examination and public participation, entailing fast, quality, and transparent public services which are jointly engaged by people. To ensure that directive principles of fundamental state policies meet stipulated targets, several detailed aspects are prescribed to establish administrative guidelines for state agencies and local government organization, for example, administrative guidelines for the state's religious, social, public health, educational, and cultural affairs².

Furthermore, Chapter 14 Local Government also stipulates that local government organization is a principal body that provides public services and partakes in decision-making process to resolve local issues³. Such distinct prescription constitutes a guarantee that the state shall promote and support local government organization as a principal body through decentralization which constitutes a vital mechanism. To achieve concrete results, Section 283⁴ was stipulated thereby contains a provision to specify that local government organization is responsible for supervision and provision of public services and empowered to autonomously determine its administrative, public service, and personnel management as well as financial and fiscal policies. Moreover, local government organization should be nurtured and supported to strengthen its independent administrative capacities and develop its fiscal system to accommodate comprehensive public services, thus enabling it to establish by itself or jointly establish a mandated public service organization. Furthermore, the constitutional provision also stipulates the advent of a decentralization law in order to specify division of duties and powers and allocation of revenue from central, regional, and local authorities as well as

¹ Constitution of the Kingdom of Thailand B.E. 2550, Section 78

² Constitution of the Kingdom of Thailand B.E. 2550, Section 80

³ Constitution of the Kingdom of Thailand B.E. 2550, Section 281

⁴ Constitution of the Kingdom of Thailand B.E. 2550, Section 283

allocation among local government organizations by reckoning increased decentralization according to respective capacities of each form of local government organization. To secure and sustain revenue stream, it is stipulated that local revenue law be implemented to increase sufficient local government organization's revenue for provision of public services. Lastly, this section also designates duties and powers and revenue allocation of local government organization, stipulating that a committee is to be set up to review such matter periodically no more than five years, and essentially increased decentralization of local government organization will be scrutinized in such review.

As mentioned above, specific roles of local government organization⁵ are prescribed, encompassing duties and powers pertaining to preservation of valuable local arts, tradition, wisdom, or culture; the rights to administer education and vocational training as deemed appropriate and consistent with the needs in locality; participation in administration of educational and training programs of local government organization; as well as participation in administration of the state's educational and training programs by pursuing conformity with the national educational system and standards.

Essentially, local government organization still retains its mandate on promotion and preservation of environmental quality⁶, whether it be management, maintenance, and utilization of natural resources and environment in localities; participation in conservation of natural resources and environment in surrounding area of localities, especially incidents which may affect local people's sustenance; as well as participation in deliberation on any project and program initiative outside locality which may adversely affect environmental quality or general health of local people in the area. This signifies participation of local community.

Furthermore, to encourage local government movements, especially for decentralization, it is stipulated that two local government laws be drafted, that is, the law stipulating decentralization plan and steps which encompass three vital issues, including separation of powers and duties between central, regional, and local authorities; revenue allocation between central, regional, and local authorities as well as among local government organizations; and monitoring, examination, and evaluation of decentralization to local government organization⁷; as well as local revenue law which is a new law applicable to local government affairs in Thailand. Such local revenue law prescribes duties and powers pertaining to collection of tax revenue and other types of revenue of local government organization. Essentially, local government organization must collect sufficient revenue to cover expenditure incurred from the exercise local government organization's mandate⁸. In terms of details regarding deliberation of both laws, it is stipulated that a review will take place periodically no more than five years to determine suitability of duties and powers and revenue allocation by principally contemplating on extended decentralization for local government organization⁹.

⁵ Constitution of the Kingdom of Thailand B.E. 2550, Section 289

⁶ Constitution of the Kingdom of Thailand B.E. 2550, Section 290

⁷ Constitution of the Kingdom of Thailand B.E. 2550, Section 283, Paragraph 3

⁸ Constitution of the Kingdom of Thailand B.E. 2550, Section 283, Paragraph 4

⁹ Constitution of the Kingdom of Thailand B.E. 2550, Section 283, Paragraph 5

It can be discerned that the 2007 Constitution places emphasis on surveillance and strict enforcement of various constitutional provisions. Therefore, to ensure that local government laws will be put into effect, Section 303 (5)¹⁰ of the 2007 Constitution stipulates that relevant laws concerning stipulation of implementation plan and steps for decentralization to local government organization, local government organization establishment law, and local official law and other laws shall be drafted or revised within two years after promulgation of the 2007 Constitution. Moreover, stipulation of these provisions under the transitory provisions constitutes a guarantee and catalyst to impel other concerned authorities to expedite improvement, amendment, disposition, and development of relevant laws. Such changes will push forward decentralization and make it more active than in the past.

Secondly,

in the 2007 Constitution, there were efforts to resolve problems stemming from a lack of balance between supervision and independence of local government organization. Consequently, it is clearly stipulated that supervision is conducted as deemed necessary by applying distinct criteria, methods, and conditions conforming and suitable with forms of local government organization¹¹; disposition of various standard options for local government organization to choose from; as well as different approaches, methods, and strictness of supervision, depending on types of local government organization and robustness of the civil sector.

Besides, there are additional provisions on an organization designated to perform supervisory roles by extending the roles of the civil sector in the oversight of local government organization's operations. In this regard, Section 282 adds new organizations designated to perform supervision, that is, **"people."** The state must provide oversight mechanism to examine local government organization's affairs by the people, meaning from now on local government organization must operate under surveillance, oversight, and supervision by three principal bodies, that is, central authorities, regional authorities, and people¹².

Thirdly,

this concerns development of operational and administrative systems of local government organization that ensures alignment between missions covering added responsibilities for local government organization and various changing trends. Principally, local government organization must operate independently, whether it be independence in determining its policies, administration, provision of public services, and personnel management as well as financial and fiscal management¹³. Essentially,

¹⁰ Constitution of the Kingdom of Thailand B.E. 2550, Section 303 (5)

¹¹ Constitution of the Kingdom of Thailand B.E. 2550, Section 282, Paragraph 1

¹² Constitution of the Kingdom of Thailand B.E. 2550, Section 282, Paragraph 2

¹³ Constitution of the Kingdom of Thailand B.E. 2550, Section 283, Paragraph 1

personnel management approach of local government organization must have aligned standards and it is also stipulated that local officials may be developed together or rotated among local government organizations¹⁴. Also, central personnel management for local government organization will be set up to conduct local personnel management and create a system to safeguard integrity and ethics in local personnel management. In addition, an organization will be set up to safeguard the integrity system of local officials¹⁵.

The development of the fiscal system is crucial for the advancement of local government organization. Therefore, local government organization is offered an opportunity to develop a local fiscal system so that they can administer public services efficiently and fully as mandated. Aside from development of such fiscal system, they also have an opportunity to institute or jointly establish an organization responsible for provision public services or so-called **“multi-disciplinary.”**¹⁶

The 2007 Constitution allows local government organization to develop an internal administrative system by stipulating that local government organization is composed of two branches i.e. local council and executive for the general form of local government organization. Furthermore, it also permits a special form of local government organization to have an internal administrative structure which is different from that of the general form of local government organization¹⁷. Such stipulation can expedite and streamline development programs for local people and areas in accordance with the **“special form of local government organization”** which is set up with specific objectives.

Fourthly,

this concerns opening up public space for engagement of people, communities, and civil society in joint management of a locality with local government organization. Essentially, eligible voters in a locality can exercise their voting rights by signing a petition to impeach a local council member or executive board¹⁸. To propose a local ordinance, similarly eligible voters can sign up to submit a local ordinance for deliberation. The prescription of such provision is similar to Section 285, that is, there is no prescription of a required number or proportion of people in the Constitution but the requirement will be further prescribed in additional laws¹⁹.

¹⁴ Constitution of the Kingdom of Thailand B.E. 2550, Section 288, Paragraph 1

¹⁵ Constitution of the Kingdom of Thailand B.E. 2550, Section 288, Paragraph 2

¹⁶ Constitution of the Kingdom of Thailand B.E. 2550, Section 283

¹⁷ Constitution of the Kingdom of Thailand B.E. 2550, Section 284

¹⁸ Constitution of the Kingdom of Thailand B.E. 2550, Section 285

¹⁹ Constitution of the Kingdom of Thailand B.E. 2550, Section 286

Besides, the Constitution also grants people the rights to participate in management of local affairs which are conducted by local government organization and means of public participation must be defined. Section 287, Paragraph 1 stipulates that local people have the rights to participate in management of local affairs conducted by local government organization. Essentially, local government organization must provide a mean for public participation in such manner. Such prescription impels local government organization to provide people with an opportunity to participate, ranging from problem definition, determination of alternatives, evaluation of alternatives, joint management with local government organization, monitoring results, and being joint beneficiaries. Essentially, the provision stated in such manner will urge local government organization to take initiatives in creation of various mechanisms and avenues for public participation.

Additionally, Section 287, Paragraph 2 also prescribes relationship between local government organization and local people particularly in terms of local government organization's conducts that affect lifestyles and livelihood of local people²⁰. Such prescription serves as a good reminder to local government organization that before conducting any project, a thorough study on advantages and disadvantages of potential impacts must be undertaken. In regard to such impact study, people must have an opportunity to jointly assess potential impacts with local government organization. If it is known that such implementation may pose any negative repercussion or damage to local people, local government organization is obligated to inform the people in advance. Furthermore, to prevent local government organization citing that people have already been informed (even though it is a very short notice), it is succinctly prescribed with wording **"...within a suitable period of time,"** meaning local government organization must inform the public with a suitable lead time whatever the case may be. Additionally, the same paragraph also stipulates that in some case, as deemed appropriate, or if local government organization is petitioned by people, local government organization is obligated to hold a public hearing or arrange a referendum to resolve a direction prior to actual implementation. Based on these conditions, however we must wait for more detailed prescription in a relevant law.

Additionally, Section 287, Paragraph 3²¹ stipulates that local government organization must dutifully report its conducts to the public on annual basis, whether it be budgeting, budget expenditure, or operating results. Even though these requirements constitute a burden for local government organization but the measure becomes a tool that local government organization can use to demonstrate its transparency. Moreover, reporting of operating results also serves as a good public relation tool for disseminating information about its performance, particularly those of executive members, administrators, and local council members. It also fosters good understanding between local government organization and people in locality. On the contrary, these requirements enable local government organization to work more readily and efficiently. Besides, people do not have to constantly request for information or pose questions because from now on local government organization must dutifully report to the public on continuous and regular basis.

²⁰ Constitution of the Kingdom of Thailand B.E. 2550, Section 287, Paragraph 2

²¹ Constitution of the Kingdom of Thailand B.E. 2550, Section 282, Paragraph 3

Fifthly, [REDACTED]

this concerns implanting transparency, integrity, and ethics in local politics. Section 284, Paragraph 10 stipulates that *“provisions in Section 265, 266, 267, and 268 shall be enforced upon local council members, local executive members, and local administrators whatever the case may be mutatis mutandis.”* After close examination of each of these sections, it was found that Section 265-268 are present in Part 2 Acts Constituting Conflicts of Interest.

Section 265²² prohibits local administrator or official from accepting, intervening or meddling in concession; or entering into agreement as a contractual party with the state, government office, state agency, or state enterprise, either directly or indirectly. Local administrator or official is barred from accepting money or other benefit from any government office, state agency, or state enterprise under any special circumstance, except those benefits granted by government office, state agency, or state enterprise under normal business conditions. Moreover, they are also barred from serving as a partner or shareholder in a partnership or company that involves in mass media or acting as a contractual party with such partnership or company. Such prescription will help promote transparency in local politics because it shuts off avenues for any direct or indirect collusion between local executive member, administrator, and official and contractual party, thus inducing conflict of interest in politics. Furthermore, such prescription allows local executive, administrator, and official to perform official duties to the best of their abilities, for example, pricing negotiation and job inspection and approval will be done primarily to serve public interest.

Besides, application of the content in Section 266²³ to local executive board, administrator, and official can also ensure integrity and ethics in local politics. In effect, these individuals are prohibited from exercising their official positions or status to intervene or meddle in affairs for interests of themselves, others, or any political party, either directly or indirectly, for example, intervening or meddling in any official duty or conduct of official, employee, or temporary staff of a government office is prohibited; intervening or meddling in appointment, transfer, rotation, promotion, salary adjustment, or removal from office of official, employee, temporary staff of a government office is prohibited. Essentially, the provision in this section induces virtuous and ethical conduct and administration and it can significantly and directly prevent intervention in deliberation and operational system of relevant individuals, a group of individuals, or government office. Furthermore, it can assure that any individual, irrespective whether they are civil servants, state officials, temporary staff of a government office, or local officials, shall be safeguarded and protected under the **“integrity system.”**

Aside from aforementioned changes in the essence of local administration, it was discerned that there was attempt to change general circumstances which constitute a vital factor in developing local administration and localities to foster development of local government. In regard to Chapter 13 Ethics of Political Incumbent and State Official, a

²² Constitution of the Kingdom of Thailand B.E. 2550, Section 265

²³ Constitution of the Kingdom of Thailand B.E. 2550, Section 266

new chapter was included and it stipulates disposition of ethical standards of each category of political incumbent, civil servant, or state official, thus instituting ethical norms for such group of individuals and individuals.

The prescription in this chapter creates a frame of reference for virtuous and ethical conducts for local politician and official, signifying virtues that local executive board, administrator, and official must strictly adhere to. If virtuous and ethical standards are not complied, it may be considered a ground for impeachment. Such prescription can influence performance and administration of local executive board, administrator, and official, and mandate these individuals to perform their duties within the scope of virtuous and ethical conducts and primarily focus on quality and efficient provision of public services in locality.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) constitutes a reinforcement to local government organization, whether they are “financial resources,” “human resources,” and “intellectual resources,” and notably it increases decision-making power in various aspects of local administration. This signifies a pivotal moment that will enhance local development processes through collaborative processes between local government organization and the people. Eventually, local government will become a solid foundation for further democratic development in the future.



Local Governance

in a Comparative Perspective

Dr. Anwar Shah*



1. Local Governance in the 21st Century: Theory and Practice

The local government concept focuses on the formulation and execution of collective action at the local level. The local government should be responsive, responsible, equitable, and accountable. The responsibility of the local government is based on the assignment principle in terms of political, social, and economic aspects. It also incorporates the principle of fiscal equivalency, the correspondence principle, the decentralization theory, and the subsidiarity principle, which transfer the authority to handle any project or matter to the higher government if it is beyond the capacity or control of the local government.

In many countries, the local government practice is very fruitful. The local government in some countries like Thailand, Japan, Brazil, Denmark, France, India and Italy

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is enshrined in the Constitution. However the concept of local government may be written in different laws such as in the state constitution, in the legislation or in the executive's orders. Therefore, it can be best explained that having the decentralization written in the Constitution and other laws does not necessarily mean that such a concept would be able to successfully navigate the local government throughout. Since the local governments must be responsive to local demands from the local people, they must expand their role to quickly react to such demands.

The role of local governments can be analyzed by four fundamental perspectives explaining the logic of local governments; they are the Fiscal perspective, the New Public Management, the Public Choice approach and the Neo-Institutional Economics.

Fiscal theorists postulate that local governments are under the influence of dual federalism. As a result, the criteria between local governments' role and the role of the central government must be clearly defined. The economies of scale, scope, spillover, political proximity, budget flexible and consumers' choices must be taken into serious consideration. Some missions and tasks must be clearly demarcated to avoid the overlapping mandate because each local government will fully understand its local tiers.

New public management approach suggests that local government actors such as local politicians, local administrators and local government personnel must professionally manage its jurisdiction. It means that they have to possess the managerial ability producing public value, goodwill and community spirit to improve social outcomes. More importantly, they must be accountable for the results of their managerial flexibility.

Public choice approach sheds a spotlight on two views – Common Goods and Self-Interests. Local governments must carefully govern the common goods for the people in their jurisdiction. However such goods may be captured by some elitists or some pressure groups. In the representative democratic state, elite groups, interest groups and pressure groups are so strong that they can dominate the common goods. In order to fend off these unwanted groups in the common goods management, local government may introduce direct democracy and/or voice mechanism to minimize the role of the elitists.

The neo-institutional economics explains that the local governments must be the primary agents to reduce transactions costs and deal with the problems. Also, they must be local governance network facilitators who are able to govern the shared rules.

Although the role of local governments is best explained by those four different theories, the most common point of each school of thought is that the local governments must be local citizen-driven governance which guarantees the governance responsiveness, the governance responsibility the governance equity and the governance accountability.

Unequivocally, the globalization age has yielded the new paradigm of local government. The local government will be geared toward the following principles:

- ❑ Subsidiarity principle;
- ❑ Community government;
- ❑ Primary agent for citizens and gatekeeper for shared rule (shared by people);

- ❑ Accountability to voters in terms of network facilitator, autonomy, managerial flexibility and accountability for results, being inclusive and participative, an attempt to overcome marketing and government failures, global and local connectivity.

It is obvious that the new paradigm puts a great emphasis on local voters, local networks and local community. The local governments must be responsive to local people first. The central government and market mechanisms fail to satisfy the people's felt needs because the central government is too far to reach out to the local community, whereas the market mechanism implicitly excludes some people who possess poor socio-economic backgrounds and who are unable to have some valuable resources to trade off at the market. Therefore, the local government must introduce managerial intervention in public service providing. There is no one best way in the local government model. In fact, there is a bunch of the model examples around the globe.

2. Local Government Around the World

The experiences of the local government worldwide vary in accordance with the countries:

- ❑ Swiss Model is based on direct democracy provisions;
- ❑ French Model views the local government as an instrument for political participation. It emphasizes the strong central command with dual supervision;
- ❑ German Model is based on the subsidiarity principle;
- ❑ British Model focuses on the stronger role of the central government and officers;
- ❑ Chinese Model is based on democracy with dual subordination. The local government is the catalyst for economic growth and poverty alleviation.
- ❑ North America Model emphasizes the role of self-government.

3. Tools for Financing Local Services and Possible Application

One of the most important gears in local governments is 'local income'. A recent survey found that the sustainable local governments must not rely only on the property tax. On the contrary, the local income from income tax is the largest proportion in local revenue. However, the salary scales of local governments vary between local communities. As a result, local government administrators must consider another source of local income. Here are the income sources and the possible applications:

- ❑ Local taxes;
- ❑ User fees for services with private goods;
- ❑ Conditional non-matching output-based grants for merit goods; education, health grants;

- ☐ Conditional matching grants for compensating for spillovers in some services;
- ☐ Unconditional grants for fiscal gap and equalization;
- ☐ Capital grants for infrastructure;
- ☐ Public-private partnership.

4. Conclusion

According to the discussion above, it clearly indicates that local governments are promising agencies that can provide public services with public value to the people. Decentralization, thus, aims to equip local governments with authorities and resources delegated by the central government. In a nutshell, the decentralization attempts to

- ☐ enhancing the role of the local government for better economy;
- ☐ balancing the roles of the local government in the areas of taxing and spending power with greater autonomy to be provided;
- ☐ strengthening the role of the local government which is critical to the local economic development.

Although the law prescribes the significance of the decentralization, it does not necessarily mean that the local governments will be fruitful. In Thailand, the concept of decentralization and local governments are substantially written in the 2007 Constitution. Admittedly, the current Constitution in Thailand could not ensure the proper decentralization practice. It is still better to make decentralization principles constitutional.



SECTION 2



Local Authorities Revenue Act : New Challenges

- ❑ **Local Authorities Revenue Act :
Conceptual Framework, Major Issues, Challenges, and Future Directions**
Prof. Dr. Somchai Richupan
President of Siam Development Institute
- ❑ **Conclusion of Seminar “Local Authorities Revenue Act”**

Local Authorities Revenue Laws :

Conceptual Framework, Major issues,
Challenges, and Future Directions.

Prof. Dr.Somchai Richupan*



1. Conceptual Framework

1.1 Revenue autonomy is a pre-requisite for the fiscal autonomy and the administrative autonomy.

- 1.1.1 Administrative autonomy is not only desirable but also crucial to the success of local administration.
- 1.1.2 To ensure that local authorities are able to well serve and satisfy the different needs of their local residents according to their differences in stages of development, culture, history and interests, it is necessary to allow them to operate autonomously, separately and distinctively from the national government, and among themselves.
- 1.1.3 Fiscal autonomy is a prerequisite for administrative autonomy. One cannot have administrative autonomy without fiscal autonomy.

* President of Siam Development Institute

- 1.1.4 There are two aspects of fiscal autonomy, revenue autonomy and expenditure autonomy.
- 1.1.5 Revenue autonomy means that the local authorities must
 - (1) have the power to impose local taxes including setting the rates of local taxes ,
 - (2) have the power and capacity to administer local taxes effectively and
 - (3) derive revenue from the local taxes in an amount large enough to cover the major part of the local expenditure.
- 1.1.6 Expenditure autonomy means that the local authorities must have the powers
 - (1) to set their own budget including their own expenditure priority,
 - (2) to set their own rule and regulation governing their spending and
 - (3) to alter their budgetary allocation as they see needed.
- 1.1.7 Revenue autonomy is a prerequisite to expenditure autonomy. Without revenue autonomy one cannot expect to have expenditure autonomy . Because if the local authorities depend mainly on government grants and tax transfers for their revenue, the government will have to come to control the local authorities to see that tax money collected by the government is properly spent by the local authorities.
- 1.1.8 Thus to ensure their administrative autonomy , local authorities must be empowered with taxation powers and equipped with tax administrative capacities.

1.2 Empowering the local authorities with taxation power helps accountability chain to become more direct and shortened.

- 1.2.1 Local authorities are supposed to be accountable to their local residents. However , at the present time , this is not really the case. Because most of the taxes in Thailand are imposed and collected by the national government. Some of the tax revenue collected by the national government is transmitted to the local authorities in the forms of tax transfers and government grants. These transfers and grants form the major part of local government revenue. Out of over 300,000 million baht of local government revenue, 90% are transferred tax and grants. Tax revenue imposed and collected by local authorities themselves account for only about 30,000 million baht or 10% of total local revenue.
- 1.2.2 Thus most revenue of the local authorities are taxes imposed and collected by national government. Normally accountability chain follows the path of money transmittal. Since money is paid as taxes to the national government and transmitted to the local authorities as transfers and grants, the local authorities must naturally be accountable to the national government for paying them tax transfers and grants. And the national government is, in turn, accountable to the taxpayers at large for their payment of taxation. If the

taxpayers were not satisfied with public services provided by the local authorities, they would protest to the national government who impose and collect taxes from them rather than protesting to the local authorities. If local authorities are empowered to impose and collect their own local taxation they will have to be accountable directly to their local residents, making the accountability chain to become more direct and shortened.

1.3 Empowering taxation power to the local authorities also increases the fiscal discipline of the local authorities.

- 1.3.1 At the present time, most of the money spent by the local authorities are not derived from their own tax efforts but from grants and transfers from the government. As a result they do not have to pay much attention to the value for money.
- 1.3.2 To make them exercise their own efforts in tax collection, they will be more cautious in spending and more concern about value for money. This will result in an increase in the fiscal discipline of the local authorities.

2. Major Issues

There are seven major local revenue issues

- 2.1 Total revenue of all local authorities all together is minimal compared to the national government revenue indicating that the relative size of the local authorities is quite small. (about 10% of the size of the government in 1999 and 25.5% in 2007).**
- 2.2 The shares of self-imposed and self-collected revenues of the local authorities are quite small (about 10% of total local revenue) indicating that local authorities cannot rely on themselves in term of revenue generation. They have to depend on government transfers and grants.**
- 2.3 The taxation capability of most local authorities is quite low. They can not be blamed for this because they have never been empowered with sufficient taxation power and have never been helped to build up taxation capability.**
- 2.4 The existing allocation of taxation powers to local authorities is not systematic, groundless, confusing, and at times not suitable and even inducing many practical problems.**

This is the result of the piece-meal-approach in the allocation of taxation power and of the struggling for taxing power on the part of the local authorities. Because the allocation of taxation power is done one tax at a time and one type of local authorities at a time, the overall picture of the taxation system has not been taken as primary concern or as a starting point for allocation. Thus, the allocation of VAT to the local authorities is specified in 4 laws, namely the Tax Revenue Allocation Act, the Decentralization Act, the organic law of the PAO, and the Pataya City Act. Each law is based on different

principle and specifies different rate of allocation. Another example is the allocation of revenue from the National Park entry fee to the Tambol Administration Office (TAO), whereas the maintenance of the National Park is still lies with the Department of Forestry. This is contrary to the principle of fee collection which says that fee is collected for the purpose of maintaining the Park.

- 2.5 Taxable capacity of various local areas are quite different. In many areas increases in tax efforts will not result in sufficient revenue to meet the expenditure needs. Thus tax equalization scheme must be in place. This scheme should distribute the national tax and not the local tax to local authorities with low taxable capacity.**
- 2.6 The piece-meal-approach to allocation of tax revenue to local authorities as used during the early stage of the Decentralization Commission gave rise to unhealthy competition among different types of local authorities for tax money. The result is one tax or one source of revenue is divided into many parts and allocated to many local authorities. This weakens the accountability principle because tax payers do not know who get the tax revenue and for what the revenue are being spent.**
- 2.7 A sizable amount of government grants to local authorities are still in the form of specific grants in which the government decide on what, where, and how the grants should be spent. This weakens the principle of autonomy in operation of the local authorities. Specific grants should not be counted toward the revenue of the local authorities because they do not have the discretion of making decision as to on what and how to spend the money.**

3. Challenges.

The challenges are :

- 3.1 Whether the Decentralization Commission dare to embark on a reform of the local authorities tax system or not;**
- 3.2 Whether the local authorities tax reform undertaken by the Decentralization Commission is supported by the Government or not;**
- 3.3 Whether the Ministry of Finance realizes the necessity for the local authorities tax reform, supports the reform and dares to empower local authorities with more taxation powers or not;**
- 3.4 Whether capacity building with respect to tax administrative capacity of the local authorities will be undertaken with proper approaches which ensure the success of the local tax administration or not.**

4. Future Directions

Because tax laws concerning revenue of the local authorities are in a mess, it is proposed that all provisions concerning local authorities' revenue which appear in various laws should all be revoked and a new law on local authorities' revenue should be systematically rewritten.

This is because specification of tax collection power of the local authorities that appears in the present laws is not systematic, is confusing and lacks of underlying principles. Thus the relevant provision of those laws should be revoked and a new law should be enacted. This new law should be called **"The Local Authorities Revenue Act" (LARA)** and should aim at assignment of taxes to local authorities. The Act should specify the rationales, principles, scope and coverage of taxation authorities of local authorities. It should be a master law which assigns taxation power to the local authorities. The details and practical matters of each tax should be spelled out in each specific tax law similar to what we now have, e.g., House and Rent Tax, Land Development Tax, and Sign Board Tax. For those taxes for which presently we do not have any law specifying details, and administrative matters, such as, the Hotel Tax of the Provincial Authorities, we will have to enact specific laws to spell out those details and matters.

It is important to emphasize that the LARA should provide sufficient revenue for local authorities expenditure. At least total revenue yield from taxation should cover 70% of the existing expenditure of the local authorities. This means that we are talking about tax revenue in an amount of about 210,000 million bahts, leaving the remaining 90,000 million bahts to be filled by general grants.

In addition, revenue equalization scheme should also be devised and put in place.

It is not necessary for local authorities to collect their own local authorities taxes. If it is more efficient, considering the Thai economy as a whole, local authorities taxes can be collected by the national government. But it should be clearly specified as to what taxes or what portion of taxes are local authorities taxes and what are national taxes. The distinction between local authorities Taxes and National Taxes should be made explicit. However, taxation power and tax administrative practices can be separately considered.





Conclusion of Seminar

“Local Authorities Revenue Act”

1. Introduction

The 2007 Constitution of Thailand, the Local Government Provision, stipulates that there must be the Local Authorities Revenue Act. As the Section 283 paragraph 3 says that:

there shall be a law on local revenues for the purpose of determining powers and duties in connection with the collection of taxes and other revenues of local government organisations, with suitable rules in accordance with the nature of each type of tax, the allocation of resources in the public sector, the adequacy of revenues for expenditure within the powers and duties of local government organisations, having regard to the achievement of economic development of the locality, the financial status of local government organisations and financial sustainability of the State.

The law on local revenues is considered an initiative to the Thai local government system. The law drafting processes have to involve various stakeholders such as the local government, Ministry of Finance and Ministry of the Interior.

2. Conceptual Framework of the Local Authorities Revenue Act

- 2.1** Revenue autonomy is a pre-requisite for the fiscal autonomy and the administrative autonomy. Revenue autonomy allows the local authorities to have the power to impose local taxes and to have the power and the capacity to administer the local taxes. In addition, revenue autonomy implies that the local authorities must generate revenue to at least cover the main part of the local expenditure.
- 2.2** Empowering the local authorities with taxation power helps streamline accountability chain. At present, most taxes are imposed and collected by the national or central government. So, some of such taxes are transmitted to the local authorities in the form of grants or tax transfers. Tax revenue imposed and collected by the local authorities account for only 30,000 million baht or 10% of total local revenues. However, the target is 70%. Therefore, if the local authorities are empowered to impose and collect their own local taxes, they will have to be accountable directly to their local residents, thus making the accountability chain more direct and shortened.
- 2.3** Empowering taxation power to the local authorities also enhances the fiscal discipline of the local authorities.

3. Major Issues of the Local Authorities Revenue Act

- 3.1** Total revenue of all local authorities is minimal compared to that of the national government (about 10% of the size of the government in 1999 and 25.5% in 2007).
- 3.2** Local authorities cannot rely on themselves in terms of revenue generation due to their small shares of self-imposed and self-collected revenues.
- 3.3** The taxation capability of most local authorities is quite low.
- 3.4** The existing allocation of taxation powers to local authorities is unsystematic, groundless, and confusing.
- 3.5** The taxable capacity of various local areas is different.
- 3.6** Unhealthy competition among different types of the local authorities for tax money is due to the piece-meal-approach to tax revenue allocation to local authorities used early by the decentralization committee.
- 3.7** A major portion of government grants would weaken the principle of autonomy in the operation of the local authorities.

4. International Perspectives of the Local Authorities Revenue Act

4.1 Republic of Korea

It is strongly recommended that striking the right balance between the political power and the relevant power stipulated in the New Constitution in Thailand at the right time be the priority. Such striking the balance is needed to help streamline the process of decentralization within which the conflicts and inconsistency resulting from the inequality or differences in the areas of culture, history, constitution, and economic condition which keep changing in various local authorities and/or from those between the national government and the local authorities are found. In case of fiscal power to be transferred to the local authorities, the linkage between expenditure and revenue-raising power is needed. However, the increase of tax revenue from 10% to 70% of the expenditure of the local authorities is not that easy to achieve.

4.2 Japan

The representative from the Tokyo University shared the experiences regarding the Japanese local tax system by starting with the history of the system. The Japanese local tax system was initiated by the mission headed by Professor from the university in U.S.A. The purpose of the mission was to establish the permanent tax system. But, great emphasis was on educating Japanese people in the democratic system. The following are the four elements of the conceptual framework of the local tax system:

- ☐ Local tax revenue should be increased and there should be separation of the tax basis among different levels of the Japanese government.
- ☐ Conditional grants should be distributed properly.
- ☐ Functions of different levels of the Japanese government should be clearly stated and specifically assigned to the right government.
- ☐ the balance between the expenditure and the revenue should be met by the equalization grants to be distributed to equalize most tax revenue and fiscal needs.

As a result, the Japanese local tax system was reconstructed and there were modifications later under 4 areas.

- ☐ Overlapping functions of the local and central governments should be clearly corrected.
- ☐ Conditional grants amendment of the local finance laws was made in 1952.
- ☐ Implementation of the new enterprise tax based on value-added system was abolished in 1954.
- ☐ Equalization grants were abolished in 1953. New equalization system was introduced in 1954.

In sum, the government acted as the promoter of decentralization in 1999. Spending power was assigned to the local government. And, the local government was empowered with fiscal resources by the central government that transferred tax revenue, and cut relevant grants.

4.3 Republic of Indonesia

The representative from Indonesia also commented on the increase in local tax revenue from 10% to 70% of the expenditure, which is not easy to achieve. This increase will definitely challenge the local government. The point is that some other relevant taxes, such as property taxes, which are not as high as income taxes or other sources of local revenue, may not be large enough to contribute to such increase in local tax revenue.

4.4 China

Revenue assignment is the starting point of China's fiscal reform (decentralization). Based on the representative from the Shanghai University's research:

- ☐ It is recommended that the clear revenue assignment be very helpful in encouraging the tax collection and promoting the economic growth.
- ☐ How to improve local independence is a tough issue. The central government plays a crucial role in enacting the tax laws and in appointing the local government.
- ☐ Competition among local authorities (the serious issue in China) contributes to economic growth.
- ☐ Equal public service is also emphasized.
- ☐ Framework to deal with regional disparity: China possesses significant regional differences. The Central government decentralizes the authority to the provincial government to deal with the local revenue assignment. Different approaches are for different provinces to perform the revenue assignment between provincial and the local government.

4.5 World Bank

Local Tax Reform should focus on

- ☐ the equalization and narrowing the gap between the local and central governments.
- ☐ the source of revenues coming from not only tax but also relevant fees and borrowings.

5. Thai Perspectives of the Local Authorities Revenue Act

As mentioned earlier, some sections of the local government provisions require that there be the related laws for decentralization plans and procedures in terms of authority and income allocation among the central, regional, and local governments and among the local governments. The Decentralization Plan to support local tax reform should be developed with the support of Ministry of Finance in cooperation with Ministry of Interior and Prime Minister's Office.

6. Major Challenges of Local Authorities Revenue Act

However, there are still some major issues concerning the Local Authorities Revenue Act:

- ☐ Whether the decentralization commission dares to reform the tax system of the local authorities;
- ☐ Whether the Government supports the tax system reform mentioned above;
- ☐ Whether the Ministry of Finance dares to support such reform and empower local authorities with more tax powers;
- ☐ Whether building the tax administrative capacity of the local authorities will be undertaken properly.

Such challenges mentioned above may get the local tax reform to broaden the gap between the central and local governments if they are not dealt with properly. For example, the transfer of authority (tax collection) must be performed clearly and properly; otherwise, it would be perceived as the removal of authority of Ministry of Finance and passing to the local government.

At present, it has been found that there are unsystematic criteria relating to assignment of the tax bases to the local and central governments. Moreover, the related issue is lack of information concerning the real tax bases, causing the hindrance to tax administrative capacity of the local authorities.

7. Taxation Power to be Exercised by the Local Authorities

The local government needs the authority to collect taxes by itself. The central government may help collect local taxes and transfer them to the local government according to the local tax reform law. And, the importance of the process of balancing revenue and expenditure of the budget of the local government must be emphasized; the concept of budgeting.

8. Equalization Grants

If the local government is empowered with the power of tax imposition and collection according to the local authorities revenue laws, the related fiscal discipline will be developed. And budgeting is a mechanism which will drive the financial management of the local government. There are also approaches to encouraging the taxing competition among the local governments. However, although armed with such taxation power, the local government in some areas currently is faced with a decrease in local tax revenue due to some local taxes to be waived. Other local governments may be faced with the situation in which the government agencies do not transfer the tax revenues to the local governments. Therefore, the equalization grants are needed to level out the inequality of tax revenue collected by different local governments.

9. Additional Tax Bases to be Proposed

The following tax bases are proposed so as to add to the revenue of the local government:

- ☐ Property-value-based tax to be passed as a law under the benefit principle;
- ☐ Environment Tax to be collected countrywide;
- ☐ Deposit Refund Tax, Packaging Tax, Surcharge Tax, Excise Tax to be introduced and assigned to the central and local government;

10. Other Recommendations

- ☐ Participation of the public in the design of the tax structure to promote the accountability of the public and the government;
- ☐ Clarification of the authority of the local government to determine its function;
- ☐ Revenue assignment to be emphasized;
- ☐ Tax reform to be revised or re-constructed on the ground of the local and central governments;
- ☐ Due to limited tax bases in some areas, the local authorities may turn to the other sources of finance, such as issuing the bonds to raise funds to be loaned to the public according to the public debt administration.

11. Future Direction

Due to unsystematic provisions of tax laws including lacking of underlying principles, the Local Authorities Revenue Act (LARA) should be enacted as a new master law which focuses on the tax assignment in terms of rationales, principles, scope and coverage of taxation authority of the local authorities. The details and practical matters will be spelled out in each specific tax. Therefore, all existing provisions concerning local authorities' revenue in various laws should be all revoked. The LARA should provide

sufficient revenue for local authorities' expenditure. Total revenue in the form of taxes should at least cover 70% of the existing expenditure of the local authorities; thus the remaining 30% will be financed by the general grants. The 70% taxes which belong to the local authorities' revenue according to the local authorities revenue laws may also be collected by the central government. It means that local tax-collecting role by the central government does not violate the concept of the revenue autonomy of the local authorities. In addition, the revenue equalization scheme should be operated.





SECTION 3



Decentralization Act : Possible Amendments

- ❑ **Decentralization Act :**
Conceptual Framework, Major Issues, Challenges, and Future Directions
Prof. Dr. Chatchai Na Chiangmai
Director of Institute for Good Governance Promotion
- ❑ **Conclusion of Seminar “Decentralization Act”**

Decentralization Act :

Conceptual Framework, Major issues,
Challenges, and Future Directions.

Prof. Dr. Chartchai Na Chiangmai*



1. Conceptual Framework

- ❑ The goal of decentralization is well-being and security of local people.
- ❑ Decentralization is a mean, not a goal.
- ❑ Concrete measurement is required to assess which decentralization and to what extent yields better outcome compared to centralization.
- ❑ Administrative autonomy of local authorities must co-exist in balance with internal control and oversight from outside.

Therefore, ***“decentralization is delegation of responsibilities for better provision of public services and development initiatives.”*** Decentralization with better governance and management.

* Director of Institute for Good Governance Promotion

1.1 Several perspectives, approaches, and concepts

Political perspective:	Return powers to local communities for some degree of self-government.
Governance perspective:	Governance system where national government delegates some powers to local authorities (LA) so that they are empowered to conduct activities within their own boundaries without any intervention
Administrative perspective:	Delegation of some purview to agencies/ organizations for the provision of public services, provided that proper autonomy is granted.

1.2 Decentralization concepts in Thailand

1. From democracy education to a sense of citizenship and self-governance
2. From state affairs to public affairs
3. From local administration to local governance

2. Balance between Decentralization and Accountability in Provision of Good Public Services

Many years ago, decentralization constituted ideological struggle and struggle for own interests between LA representatives, progressive academics, national politicians, and backward public officials. Many issues wasted time unnecessarily. For instance,

- ☐ Transfer of tasks is under legal mandates but transferring agencies resist and are not submissive;
- ☐ Argument over the proportion of government subsidy that local authorities will receive as stipulated under the law;
- ☐ Statutory amendment that will enable local authorities to really engage in task transfer;
- ☐ Capacity-building of local authorities in terms of the number and competency of personnel, budget as well as equipment and tools;
- ☐ Pressure on local authorities to spend subsidy in compliance with government policy and exploiting local authorities as a channel for granting budget to support regional authorities' tasks where most local authorities are not yet ready.

In the next five years, we should turn our attention to strengthening local authorities' management so that decentralization is truly pertinent to the interest of national development and people can believe and trust and have faith in conducts of local authorities and administrators as well as local politics.

A challenging question is how we can strike a balance between decentralization or administrative autonomy and demonstration of management responsibilities concerning provision of good public services and local development.

This handout presents key issues that should be considered for improvement of decentralization plan and procedure laws. These issues concerning legal conditions, administrative and fiscal mechanisms as well as socio-political mechanisms are based on the principle that how capacities of local authorities can be enhanced to maximize benefits from administrative autonomy in terms of achieving efficient provision of basic public services and fostering economic, social, and political security at grassroots level in the democratic system.

2.1 Rights, duties, and responsibilities

- ❑ Rights of communities to access resources such as community forest.
- ❑ Determine how much ownership in community resources convey meaning, scope, rights, and accountabilities as well as relationship with state powers and ownership of the state, it must be clearly defined
 - Which matter involves shared ownership
 - Which matter the state designates localities to perform their duties on its behalf to demonstrate ownership.
 - Which matter localities have exclusive ownership.
 - Which matter the state has exclusive ownership.

2.2 Local finance

There are several issues concerning local finance to be considered

- ❑ The proportion of taxation revenue collected by localities should be no less than 10 per cent.
- ❑ Annual expenditure budget must not exceed 80 per cent of annual revenue.
- ❑ To acquire loan for investment, local authorities must conduct comprehensive risk assessment, not just financial risk.
- ❑ The government should not allow each local government that borrows money from a financial institution to be solely liable for the loan without any loan guarantee from the Ministry of Finance. If local authority cannot repay its debt and faces civil lawsuit, people in such administrative zone may be affected from poorer services quantitywise and qualitywise. Implicitly, amendment of the code of revenue and custom laws that repeal collection of value-added tax, thus reducing collection of such tax for the national government, could be considered punishment of the public. The government should consider setting up a loan guarantee fund for local authorities.

- ☐ Utilize human security and governance level index as criteria for subsidy allotment.
- ☐ Allocate budget for localities to purchase health and other services from other authorities.

2.3 Determining minimum standards of public services of local authorities

This comprises standards of service volume that must reach service target groups and achieve service quality as assessed from satisfaction of service patrons and based on academic principles. There should be self-assessment and assessment conducted by outside assessor, and assessment findings should be used as a mechanism to restore service provision capacities of local authorities and to award good performance on annual basis.

- ☐ Which matter involves shared ownership.
- ☐ Which matter the state designates localities to perform their duties on its behalf to demonstrate ownership.

2.4 Implement quality management system in the administration of local authorities (Public Sector Management Quality Award - PMQA)

This system comprises seven administrative elements

- ☐ Organizational leadership
- ☐ Strategic planning
- ☐ Satisfaction of service patrons and stakeholders
- ☐ Knowledge management
- ☐ Accumulated human capital
- ☐ Process management
- ☐ Operating results

2.5 Oversight of local authorities' performance

There are various oversight mechanisms that can be applied to Thai context.

- ☐ Oversight mechanisms and channels should be explicit and practical such as
- ☐ Good Governance Committee at Provincial Level
- ☐ People's Audit
- ☐ Recall of local authorities executives
- ☐ Public Service Agreement

2.6 Should establish an organization to expedite amendment of laws dealing with authorities designated to transfer tasks to local authorities

To finish the transfer of tasks within the timeframe as stipulated in the law, there should be practical guidelines regarding whenever local authorities will accept transfer of any task, readiness for the transfer should be assessed in terms of the laws authorizing the implementation, personnel, budget, and technological capacities for fulfillment of transferred tasks which is comparable to transferring agencies.

2.7 Enhancement of economic development in localities through capacity-building on local economic management and new mechanisms

- ☐ Amend the code of revenue and custom laws to repeal collection of value-added tax which is transferred to the national government;
- ☐ Enact local investment promotion law.

3. Challenges and Future Directions

3.1 Challenges for the state

Study and assess impacts of decentralization during the last eight years in order to determine what to do with transferred tasks and which matter should be further empowered in the best interest of people.

3.2 Challenges for local authorities

- ☐ Develop new local leaders;
- ☐ Create collaborative network of local authorities for economical and decent management of services such as tourism network, community enterprise, and refuse disposal;
- ☐ Cooperate in a form of federation to foster academic and intellectual strength;
- ☐ Jointly determine indicators to measure public satisfaction of service provision and legitimacy in exercising powers.

3.3 Challenges for local communities

- ☐ Quickly create awareness and build capacities so they can become citizens, not just people;
- ☐ Recognize that local authorities must govern among themselves and pursue self-government without reliance on the state's support. Without the state, they can exist;

- ❑ Collectively responsible for their own lives and conduct public affairs without waiting for state affairs.



Conclusion of Seminar

“Decentralization Act”

1. Introduction

Decentralization is the controversial issue as seen from the long record of its practice. It would seem that the state departments and some local administrators misread the significance of ‘**decentralization**’. The ultimate goal of decentralization is ‘**people’s better livelihood**’. Perceiving decentralization as only functions and tasks transfer does really pose a threat to the whole process of decentralization. Admittedly, whenever discussing the process of decentralization in Thailand, the government and the local government administrators discern the discrepancy between the decentralization and the centralization. However, the main purpose of ‘**decentralization**’ is to ensure better governance and management.

2. Ideas Proposed by the Key Speaker

For years earlier, ‘**decentralization**’ has been a tug-of-war. The findings indicated five controversial problems incurred during the decentralization process as shown below;

2.1 Some disobedient central government agencies were not sincere to ‘**decentralization process**’.

- 2.2. Grants given to the local government have become increasingly problematic.
- 2.3 Some technical problems were found in some law amendments.
- 2.4 Manpower, budget and equipment were problematic factors
- 2.5 Pressure in budgeting imposed by the central government had undermined the decentralization.

3. Observations given by the international scholars

- 3.1 The local government needs high-caliber executives and staff to govern their jurisdiction.
- 3.2 Strong leadership in decentralization is needed.
- 3.3 The spirit of decentralization is people empowerment, not just only functions and tasks transfer and demarcation.
- 3.4 Some laws are contradicting the Decentralization Act; Fighting between some government agencies and local governments may occur.
- 3.5 'Autonomy' should come with 'Responsibility'
- 3.6 Improper local taxation could adversely affect the structure of the national income and the national security.
- 3.7 The logic behind the decentralization is the 'Freedom' and 'Management' of local governments.

4. Main Discussions

In order to amend '**Decentralization Act**', it is necessary to incorporate some significant ideas into the Act; here are the typical arguments found during the discussion.

4.1 Insufficient knowledge about decentralization

It is found that the decentralization is so ambiguous to the general public. Quite often, the people in general lack substantial information on decentralization. People in big cities who do not involve in the decentralization cannot imagine what the decentralization process would be like. Within the local jurisdiction, the local people always get confused and cannot identify the responsible agencies within their local communities. It obviously indicates that decentralization process and the agencies involved fail to make the people understand the scope and the mandate of local government. On one hand, some local government administrators perceive the decentralization as the central government's authority transfer only. Central government agencies have relinquished their functions and tasked to the local government authorities without further advice, on the other hand. As some functions transferred from the

central government are new things to the local authority, the local administrators may not get familiar with those tasks; as a result, administering decentralization without the pieces of advice from the central government agencies may end up with terrible mess. It would seem that the lack of correct understanding and erroneous interpretation in decentralization process really subvert the authority of local government.

4.2 Political culture and political instability

Admittedly, the political culture and the political instability have paralyzed the decentralization process. Decentralization process necessarily requires participatory culture and political commitment. Fast-changing political leaders who supervise the decentralization process have adversely affected the whole process because it always causes the stagnation. It can be also said that the participatory process in decentralization is rare. The parochial political culture has aggravated the decentralization as well because there will not be enough civic push in the process.

4.3 Autonomy

The autonomy is sought-after but it is one of the most debatable issues between the central and the local government; the autonomy is easier said than done. In practice, some local government still tolerate the 'top-down' procedures administered by the central government. The local government, in theory, needs high degree of autonomy to enjoy the freedom in governing the constituencies; however it is still unclear that how much autonomous the local government can be and in what way that each local government can utilize such autonomy. More importantly, the higher degree of 'local autonomy' must really come along well with the higher degree of 'local responsibility' because 'autonomy' without 'responsibility' can result in public boos and jeers.

4.4 Monitoring and inspection mechanism

The monitoring and inspection mechanism are not practical. Local authorities are perceived to be corrupt; therefore, the mechanism for monitoring and inspection specified by the central government is adopted. In reality, each local community has its own uniqueness; as a result, such a mechanism may not be compatible with the context of each local government which usually widely varies. For example, E-auction and E-procurement are problematic procedures because those systems satisfy bureaucratic regulations but clearly fail to meet the objectives of procurement. Contractors from E-procurement may be from different communities or regions and they may not understand the community where they made a takeover bid for local construction.

4.5 Ceiling of local income

Decentralization Act should incorporate the idea of income ceiling of local government. If the local income generated by the local government is very significant to the capability of local authorities, the income ceiling should be enshrined in the Act. Since such a ceiling is sensitive and it could affect the national public finance structure of the central government and homeland security, the whole issues therefore need careful consideration.

4.6 Capacity building

Apart from the decentralization process, the central government and the local administrators should not underestimate the significance of local government's capacity building. All parties must consider the local authority's capacity preparedness for extensive decentralized governance. Local government needs people of a higher caliber to govern the local jurisdiction. Top-notch management paradigm with professional staff may help build capacity of the local government to correspond with the local demands. However it is found that many local government authorities lack strong capacity building to accommodate the wide variety of local people's expectations.

4.7 Some enforcement constraint and law contradiction

Some laws may contradict the Decentralization Act. Some state departments use their own Act to protect their interests, their missions and their status quo. In reality, some ministries and government agencies are not sincere enough to transfer their authority to the local government. Apparently, such a contraction may end up with the 'political tug-of-war.' It can be said that there are two factors exacerbating the process; the Decentralization Promotion Committee Bureau and the paradox of the law.

Currently, the Decentralization Promotion Committee Bureau is the responsible agency running the decentralization process. As a matter of fact, there are only thirty five bureaucrats working, networking and coordinating many government agencies involved in decentralization. The manpower of the Bureau fails to accommodate the decentralization process. In addition, the Bureau is perceived as an empty threat because the Bureau has no authority to mete out punishments to the state departments who evade to abide by the decentralization process.

Regarding the paradox of some law contradiction, some laws stand stark contrast to the decentralization process. It is obvious that Public Sector Reform does not strongly accommodate the decentralization process. For example, the decentralization is enshrined in the Constitution, whereas the Provincial Administration Act is promulgated. Legal contradiction will inevitably blur the distinction between local mandate and provincial jurisdiction; in term of functions and tasks, the clash between local government and regional administration will be inevitable.

According to the issues discussed above, it obviously indicates that the Decentralization Act needs careful consideration. Having the Decentralization Act is essential, but it does really beg the question of how to incorporate those remarks into each appropriate Section. Since the Decentralization Act will be extensive and it involves both state authorities and the local government, some constructive recommendations must be taken into account.

5. Decentralization Act: Possible Way Forward

As the Decentralization Act needs careful consideration, the Act drafters must keep those arguments discussed in the previous section in mind while drafting the Act. Based on the main arguments mentioned above, these are the recommendations for the Decentralization Act.

- 5.1 Since the decentralization process needs strong leadership to accomplish the ultimate goal, the Prime Minister or the Cabinet must play an assertive role in steering the decentralization process because they can deal with the disobedient state departments more easily than the Decentralization Promotion Committee do.**
- 5.2 There should be a ministerial institution which can enforce the decentralization-related laws.**
- 5.3 After transferring functions and tasks, the ministries or government agencies must play a mentor role in supporting local government.**
- 5.4 Empowerment and capacity building must be enshrined in the Decentralization Act. The Act must accommodate the process and method of empowerment and capacity building to equip the local government in providing public services.**
- 5.5 The effectiveness of local government in providing public services must be pronounced in the Act.**
- 5.6 In order to avoid the blurred boundary between the central government and the local government, the mandate of the central authority and the local government must be clarified.**
- 5.7 Undeniably, not all local authorities are ready for decentralization. Decentralization without considering the preparedness of the local government can cause budget waste and a mess; therefore, the evaluation before and after the functions transfer must be conducted. The Act must include this point.**
- 5.8 Punishment mechanism in decentralization enforcement must be well written in the Act. Any departments hindering the decentralization process must be punished by the Act.**
- 5.9 Public Sector Reform must incorporate decentralization.**
- 5.10 Manpower transfer to local government should be also highlighted.**
- 5.11 The proportion of the office of Decentralization Promotion staff should be restructured.**
- 5.12 The Office of Decentralization Promotion should conduct a research to assess the capability and the preparedness of each local government.**





SECTION 4

Code of Local Government Organization: New Challenges

- ❑ **Code of Local Government Organization under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) :
Conceptual Framework, Challenges, and Future Directions**
Prof.Dr. Somkid Lerdpaitoon
Dean of Law Faculty, Thammasat University
- ❑ **Conclusion of Seminar “Code of Local Government Organization”**

Code of Local Government Organization under the Constitution of the Kingdom of Thailand B.E. 2550 (2007)

Conceptual Framework, Major issues,
Challenges, and Future Directions.

Professor Dr. Somkid Lertpaitoon*



1. Introduction

The Constitution of the Kingdom of Thailand B.E. 2540 (1997) is the first charter of Thailand that describes a code of local government organization in Section 303 (5), stating that

“Section 303, upon assuming state administration after the first general election which shall be held in conformity with this Constitution, the cabinet shall engage in disposition or improvement of pertinent laws relating to the following particulars within the stipulated time frame.

....(5) Law concerning stipulation of prescriptive plan and procedure of decentralization to local government organization, local revenue law, law concerning establishment of local government organization, law concerning local government official, and other laws under Chapter 14 Local Government. These laws shall be prepared or improved in conformity with this Constitution within two years after the delivery date of parliamentary policy address, as provided in Section 176. In this regard, such laws may be instituted as a code of local government organization.”

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In fact, even though the Constitution does not prescribe a code of local government organization, enactment of a code can be undertaken. During the tenure of Assoc. Dr. Phokin Pholakun as the Interior minister under Thaksin administration, a code of local government organization drafting committee was set up¹ and finally a code of local government organization was completely drafted, including five natures and 163 sections. Unfortunately, this administration was ousted. Then, this code of local government organization did not gain support for further enactment as an enforceable law.

The fact that the Constitution of the Kingdom of Thailand B.E. 2550 carries a provision that mandates enactment of local laws in a form of code of local government organization, as provided in Section 303 (5), within two years after the delivery date of policy address by the cabinet manifests a good sign, assuring that there will be a review on legal framework of the draft code of local government organization and its suitable content that should be incorporated in this law.

2. Legal Framework of A Code of Local Government Organization

Currently, Thailand has many codes such as Civil and Commercial Code, Criminal Code, Civil Procedure Code, Criminal Code, Land Code, and Code of Revenue. These codes are advantageous in terms of compilation of pertinent laws under the same law. By doing this, people using laws can apply these laws readily and conveniently without having to scrutinize many laws to learn about the same thing. Essentially, such objective and benefit is also applied to the disposition of a code of local government organization.

The first issue regarding the disposition of a code of local government organization evolves around questions: which legislation concerning local government should be prescribed in this local code? Should we include all of them or only some laws? Most likely, the answer to these questions may be discovered in constitutional provisions and learned from our own legislative drafting experiences in the past.

2.1 Legal framework for drafting a Code of Local Government Organization based on constitutional provisions

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) describes many local government laws, including

- 1) The law concerning the establishment of local government organizations is described in Section 281, Paragraph 2, prescribing that *“Any locality has suitable nature for autonomous government shall have the right to institute local government organization, as provided in pertinent laws.”*

¹ Ministry of Interior's Order No. 264/2547 dated 10 June 2004 appointed a local code drafting committee chaired by Prof. Dr. Somkid Lertpaitoon. The committee composed of 17 competent members, including academics, representatives from local government organization, and representatives from the Office of the Council of State and the Department of Local Government Promotion.

- 2) The law on Decentralization is described in Section 283, Paragraph 3, 5, and 6, prescribing that *“there shall be decentralization law to specify division of powers, accountabilities, and revenue allocation between central and regional authorities and local government organization, and among local government organizations. Accordingly, increasing degree of decentralization shall be considered in relation to competency level of each type of local government organization. Furthermore, oversight and evaluation systems shall be specified while a committee comprising an equal number of representatives from concerned authorities, representatives from local government organization, and qualified persons shall oversee enforcement of the law.”*
- 3) The law on Local Authorities Revenue Act is described in Section 283, Paragraph 4, prescribing that *“there shall be local revenue law to determine the powers and duties in dealing with collection of taxes and other revenue of local government organization. Suitable criteria that conform to the nature of each type of tax, criteria on allocation of resources in the state sector, and generation of revenue sufficient for expenditure according to powers and duties of local government organization shall be spelled out. In this regard, economic development stage of locality, fiscal standing of local government organization, and sustainability of the state’s fiscal standing shall be considered.”*
- 4) The law on the election of Local council and executive board member is described in Section 284, Paragraph 7, prescribing that *“qualifications of electorate and eligible candidates, criteria and election method of local council and executive board member and administrator, as provided in pertinent laws.”*
- 5) The law on the establishment of special form of local government organization is described in Section 284, Paragraph 9, prescribing that *“establishment of a special form of local government organization that has an administrative structure different from what is prescribed in this Section shall be undertaken, as provided in pertinent laws. However, local executive board member or administrator shall descend from election.”*
- 6) The law on removal of local council member, executive board member, or administrator is described in Section 285, prescribing that *“electorate in any local government organization discern that any local council member, executive board member, or administrator of such local government organization is unfit in the office have the right to vote for removal of such local council member, executive board member, or administrator from office. In this regard, the number of those eligible for subscription, criteria and subscription method, examination method of subscribed names, and polling method shall conform to legal provisions.”*

- 7) The law on subscription for local ordinance proposal associating with Section 286” prescribes that *“electorate in local government organization have the right to subscribe a petition submitted to local council president to table a local ordinance for deliberation by the local council. In this regard, the number of those eligible for subscription, criteria and subscription method, and examination method of subscribed names shall conform to legal provisions.”*
- 8) The law on local public consultation and referendum is described in Section 287, Paragraph 2, prescribing that *“in case any conduct of local government organization shall significantly impact on lifestyles and livelihood of local residents, the local government organization shall inform the people of any relevant detail well in advance prior to the execution. And, for any case where it is deemed expedient or called for by electorate in the local government organization, public hearing shall be held prior to such undertaking or referendum may be arranged to resolve such matter, as provided in pertinent laws.”*
- 9) The local personnel administration law is described in Section 288, prescribing that *“appointment and dismissal of any official and employee of local government organization shall depend on suitability and necessity of each locality. Personnel administration of local government organization shall conform to the same standards, and personnel may be jointly developed or rotated among local government organizations and consented by local official committee beforehand, which is a central body of local personnel administration, as provided in legal provisions. In this regard, personnel administration of local government organization shall be overseen by an organization designated to safeguard the integrity system of local official in order to implant integrity and ethical system in personnel administration, as provided in pertinent laws.”*

The local official committee pertaining to Paragraph 1 shall be composed of an equal number of representatives of concerned authorities, representatives of local government organization, local official representatives, and qualified persons, as provided in pertinent laws.

Transfer, promotion, salary adjustment, and punishment of official and employee of local government organization shall be provided in pertinent laws.

- 10) Regarding the law on the promotion and preservation of environmental quality in locality, Section 290 prescribes that *“local government organization is vested with powers and duties to promote and preserve environmental quality, as provided in pertinent laws.”*

The law in Paragraph 1 shall have at least the following essences:

- (1) Management, preservation, and exploitation of natural resources and environment within a boundary.
- (2) Participation in preservation of natural resources and environment outside a territory, especially the case which may impact on livelihood of the people within its own boundary.

(3) Participation in deliberation on commencement of any project or any initiative outside a boundary which may impact on environmental quality or hygiene of local residents.

(4) Participation of local community

Based on the aforementioned provisions in the Constitution of the Kingdom of Thailand B.E. 2550, if we scrutinize the contents of the Constitution separately, one by one, we may need to pass at least ten laws. And, if we compare this scenario with legislative drafting in Thailand in the past, we might find that bill drafters similarly resorted to separate enactment of disparate laws.

2.2 Experiences in dealing with drafting of legislation concerning local administration and state agencies before 2007

Regarding legislative enactment surrounding local and state agency laws in Thailand prior to 2007, we might find that the nature of these laws is quite diverse as follows:

- 1) The drafting of local administration laws that must be enacted in conformity with the Constitution of the Kingdom of Thailand B.E. 2550 (2007) includes
 - 1.1 There are five laws concerning the establishment of local government organization, including Municipality Act B.E. 2496 (1953), Bangkok Metropolitan Administrative Procedure Act B.E. 2528 (1985), Tambon Council and Tambon Administrative Organization Act B.E. 2537 (1994), Provincial Administrative Organization Act B.E. 2540 (1997), and Pattaya City Administrative Regulation Act B.E. 2542 (1999). Among these five legislations, it may be said that the Pattaya City Administrative Regulation Act B.E. 2542 was enacted after the promulgation of the Constitution of the Kingdom of Thailand B.E. 2540, but actually other laws had already existed before the 1997 Constitution. Nonetheless, all of them were amended and put into effect under the provisions in the 1997 Constitution.
 - 1.2 The Decentralization Act B.E. 2542 (1999) was enacted in conformity with Section 284 in the 1997 Constitution.
 - 1.3 The Local Personnel Administrative Procedure Act B.E. 2542 (1999) was enacted in conformity with Section 288 in the 1997 Constitution.
 - 1.4 The Election of Local Council Member or Administrator Act B.E. 2545 (2002) was enacted in conformity with Section 285 of the 1997 Constitution
 - 1.5 The Voting for Removal of Local Council Member or Administrator Act B.E. 2542 (1999) was enacted in conformity with Section 286 in the 1997 Constitution.

1.6 The Subscription for Local Ordinance Proposal Act B.E. 2542 (1999) was enacted in conformity with Section 287 in the 1997 Constitution.

- 2) The drafting of state agency laws involves many legislations, including the law concerning establishment and administration of state agencies i.e. State Administration Act B.E. 2534 (1991), Reorganization of Ministries, Bureaus, and Departments Act B.E. 2545 (2002), and Law concerning Personnel Administration in State Sector, that is, Civil Servant Regulation Act B.E. 2535 (1992), Subscription for Legislative Proposal B.E. 2542 (1999), and so forth.

3. Stipulation of Legal Framework of Proposed Code of Local Government Organization to be drafted.

Based on the findings shown in 1.1 and 1.2, it can be discerned that there is disposition that legislative drafting of local laws and laws in Thailand will entail many legislations rather than a single legislation or a few number of legislations. However, there are at least two reasons for compilation of these laws into a code of local government organization, that is,

- 1) Firstly, even though legislative drafting in the past has never been exposed to a code of local government organization, legislative drafting tends to be a long-standing customary practice, that is, enactment of a single legislation addresses a particular matter. Nevertheless, disposition of a code of Local Government organization constitutes a progress that will help consolidate many local laws in Thailand in a more orderly manner, thus keeping them in one place and interlinking their application, not scattering them like in the past. There are many instances of disposition of code of local government organization in foreign countries like France, Philippines, and Japan.
- 2) Secondly, in Section 303 (5) under the Constitution of the Kingdom of Thailand B.E. 2550, the last paragraph clearly states that “**...in this regard, a local code may be prepared.**” Evidently, this reflects the intent of the present constitution that recognizes a merit of the disposition of a code of local government organization. That is why the constitution prescribes it as an option.

3.1 Contents under the framework of repealed laws under a code of local government organization.

Upon reviewing the provision under Section 303 (5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), it was observed that local laws are categorized into five groups as follows:

- 1) Law on decentralization,
- 2) Law on Local authorities revenue,
- 3) Laws concerning the establishment of local government organizations,
- 4) Local personnel law, and
- 5) Other laws under Chapter 14 Local Administration of the 2007 Constitution, including the law on election of local council members and administrator as provided in Section 284, Paragraph 7; the law on the establishment of a special form of local government organization as provided in Section 284, Paragraph 9; the law on removal of local council member, executive board member, or administration as provided in Section 285; the law on subscription for local ordinance proposal as provided in Section 286, the law on public consultation and referendum in locality as provided in Section 267, Paragraph 2; and the law concerning promotion and preservation of environmental quality in locality as provided in Section 290.

All five groups of the aforementioned laws have substance relating literally to operations of local government organization, and this is consistent with an essential principle of the disposition of a code that compiles similar or closely related laws into a single law and carries clauses that are referred back and forth within it.

In my view, only the law on decentralization (in the first group) should not be repealed and incorporated into a code of local government organization. This is because it contains a specific attribute that pertains to establishment of a body, that is, the Decentralization Committee designated to oversee decentralization process and to stipulate procedure for decentralization to local government organization that concerns other state agencies. At present, there is an enforceable law, that is, the Decentralization Act of B.E. 2542 (1999). In this case, a specific law can probably entails better enforcement, but its legislative content needs to be improved for better efficiency and effectiveness.

Besides, there are also the second and fourth group of the laws as well as the local election law that should be separated from the code of local government organization because of their peculiar contents and practices that call for setup of a body dedicated to enforcement, such as the Election Commission and Local Personnel Administration Committee.

As for other local laws, we can repeal and incorporate them in a code of local government organization by classifying them into different chapters because the matters are specifically related to local government organization and bear no linkage with other agencies and concern with various aspects of the operations of locality.

Essence of the law	Should be included in a code	Should be prescribed in specific law
1. Law concerning prescriptive plan and procedure for decentralization to local government organization	X	✓
2. Local revenue law	X	✓
3. Law concerning establishment of local government organization	✓	X
4. Local personnel law	X	✓
5. Law concerning election of local council member and administrator	X	✓
6. Law concerning establishment of a special form of local government organization	✓	X
7. Law concerning removal of local council member, executive board member, and administrator from office	✓	X
8. Law concerning subscription for local ordinance proposal	✓	X
9. Law concerning local public hearing and referendum	✓	X
10. Law concerning promotion and preservation of environmental quality in locality	✓	X

3.2 Additional essence that should be prescribed to ensure robustness of a code of local government organization

Aside from the provisions pertaining to local government where the Constitution of the Kingdom of Thailand B.E. 2550 (2007) specifically requires legislative enactment to fulfill the intent of the Constitution and to ensure completeness of the local code's contents surrounding local government organization's affairs. After scrutinizing contents of local government provisions in the present constitution, it was found that some vital issues are described by the Constitution but no enactment of specific legislation is stipulated, including oversight of local government organization by the national government, public participation in various aspects of local government as well as establishment of cooperative (*sahakarn*), company, and public organization of locality. These three matters are key issues which have entailed practical problems that troubled the conduct of local affairs in the past. In this regard, the exercise of regulatory powers of central authorities sometime goes beyond stipulation of the law concerning establishment of local government organization, thus adversely affecting autonomy of local government. Regarding public participation in local government, currently there are no laws that coherently prescribe any detail, method, and procedure for the practice.

In the meantime, the establishment of local cooperative has never been observed in the history of Thai localities because there were virtually no pertinent laws, despite the fact that the cooperative would be a mechanism which can help develop and better streamline the provision of local public services.

Actually, there are many instances where localities are quite robust, such as in France and Japan. Therefore, to ensure completeness of the upcoming local code, we should consider formulating coherent provisions that encompass these three particulars.

4. Conclusion

A code of local government organization is considered a legal novelty which is illustrated in Section 303 (5) under the Constitution of the Kingdom of Thailand B.E. 2550 (2007). This matter should be pursued for the benefit of progressive enforcement of local laws in Thailand. However, issues surrounding which substance should be incorporated into a code of local government organization can be described in different scenarios for discussion and sharing among concerned agencies, especially those essences outside the realm of constitutional provisions. In fact, we can pursue the draft code of local government organization which was finished by the Department of Local Government Promotion. By doing this, we can save considerable preparation time. Furthermore, the existence of a code of local government organization will also mark a new beginning of legislative drafting process in Thailand that will make us ponder on potential compilation of other laws.





Conclusion of Seminar

“Code of Local Government Organization”

1. Introduction

Although the 2007 Constitution has clearly stated the decentralization and local government, it does not provide particular laws about ‘**Local Cooperation**’, ‘**Local Company**’ and ‘**Local Autonomous Organization**’. These three issues are quite new to local government. As a result, Local Government Code involves many ministries, government agencies and local government in decentralization process.

2. Ideas Proposed by the Key Speaker

There are two different perspectives on the Local Government Code: They are

- ☐ Being against the Code perspective
- ☐ Being for the Code perspective

2.1 Being against the Code perspective

The Code may not be practical because each local government varies widely, such as different strengths, different weakness and cultural diversity. Since the Code will be extensive and exhaustive, the future amendments in some flawed Section will be difficult and such

amendments can affect the other Sections in the Code. This group strongly believes that each specific law may be the most flexible in practice.

2.2 Being for the Code perspective

This group believes that having a common Code may unify local government authority. There should be some Code of practice common to the local authority. The Code can be the comprehensive law that boosts the efficiency and effectiveness of local government. Although there should be a common Code, it does not necessarily mean that everything about local authority should be written in the Code. Some key issues such as Income Generation, Taxation, Personnel Management, Structures and the proportion of the representatives should be written in each specific law. In order to make the Code comprehensive and useful for local government, some important arguments must be restudied.

3. Observations Given by the International Scholars

- ☐ The Code must be consistent with the decentralization objectives.
- ☐ How much should responsibility be given to the local governments as stated in the Code?
- ☐ The Code drafters must take the size and the numbers of local governments into their account when framing the Code.
- ☐ The Code must reflect the Freedom of local governments.
- ☐ The Code must clarify the mandate of the central government and local governments.
- ☐ The definition of 'decentralization' must be clearly stated in order to avoid the possibility of misinterpretation.
- ☐ The Code must bring about cooperation among relevant institutions in decentralization.
- ☐ Local investments, accountability, transparency, discipline, auditing and reporting must be included in the Code.

4. Main Discussions

In order to comprehend the big picture of this matter, these are the most controversial discussions that need to be addressed.

4.1 The Code and the decentralization objectives

Additionally, the Code must positively correspond with the Decentralization Act. The Code must also be consistent with the decentralization objectives. The Code must clearly define the terminology of '**Decentralization**'. Quite often, '**Decentralization**' is

misinterpreted; some people think **‘decentralization’** takes place when the central government has transferred some particular functions and tasks to the local government. The deviation from the actual decentralization objectives can cause horrendous damage to the whole process of decentralization.

‘Decentralization’ attempts to empower the local government to effectively provide public services to the local people. It also attempts to secure the sustainable livelihood of the local people. As such, the crystal clear definition of **‘decentralization’** and the degree of freedom given to the local government are of fundamental importance to all local government authorities. Any government regulations or any factors hindering the local government to accomplish the decentralization objectives must be taken away.

4.2 The Code and the mandatory responsibility

What are the local mandatory responsibilities and how much mandatory and responsible the local government should be the major questions needed to be thoroughly reviewed. Evidently, there are some overlapping areas of responsibility between central government, regional government and local government including among local government authorities. Without clear-cut mandatory responsibility, local government and agencies involved in decentralization process will encounter such a huge bunch of difficulties and barriers.

4.3 The Code and the category of local government

Apart from Bangkok Metropolitan Administration and Pattaya City, the ordinary local government has come in three categories; they are Sub district (Tambon) Administrative Organization, Municipality and Provincial Administrative Organization. Therefore, the Code must accommodate the different category of local government because different category requires different approach to empower the local government to better deliver public goods to the people with the constituency. Furthermore, in some Countries, for instance, Japan uses the Code to amalgamate the small scale local government. In Thailand, the Code drafters must bear the category of local government and the side effect incurred by the Code in mind when framing it.

4.4 The Code and the monitoring mechanism

It would seem that the Code should incorporate the monitoring mechanism. To boost the effectiveness of local government, accountability, transparency, disciplines, auditing and reporting must be clearly stated. These issues are the factors influencing the caliber and the characteristics of local government leaders. Since these issues are abstract concepts, some local government leaders may misinterpret such concepts. Misinterpretation can cause different discretion.

Based on the arguments shown above, it is obvious that the local government needs the Code to be the comprehensive guidance though it reflects some drawbacks in possible amendments. The Code drafters must carry these arguments to the logical conclusion if they wish to have the extensive code of local government organization. Although the Code drafting will be time consuming, the results are good that it is worth the effort.

5. Code of Local Government Organization: Possible Way Forward

According to the discussions from the previous section, the Code drafters must to address the points and incorporate those issues into the appropriate Sections. These are some recommendations extracted from the arguments.

- (1). The Code drafters must write the clear-cut definition of **‘decentralization’** reflecting the degree of freedom that the local government can entitle to.
- (2). The Code drafters must realize the differences in structures and patterns of each local government; otherwise, the overlapping in mandate and management must be found.
- (3). The relationships between the central government and local government and among local government must be clearly written.
- (4). The Code drafters must realize the significance of cultural diversity from each local government.
- (5). People’s participation must be enshrined in the Code.
- (6). Local Cooperation must be stated in the Code.
- (7). Recall and Monitoring systems must be clearly written in the Code.

Since the Code will be introduced as the common practice and reference for local government countrywide, therefore, it should not be hurriedly done. For the people’s satisfaction is of the fundamental importance to the decentralization, it can be concluded that the Code must correspond with the ultimate goal of how to ensure ‘the better livelihoods of local people’.



SECTION 5

Local Public Participation Laws: Possible Amendments

- ❑ **Moving Towards Enforcement of the 2007 Constitution :
Local Public Participation Laws**
Assist.Prof. Dr.Orathai Kokpol
Director of College of Local Government Development,
King Prajadhipok's Institute
- ❑ **Conclusion of Seminar “Local Public Participation Laws”**



Moving Towards Enforcement of the 2007 Constitution :

Local Public Participation Laws

Assist. Prof. Dr. Orathai Kokpol*



1. Introduction

Public participation is a key constituent of local government. One of the key reasons is that principally local government connotes political and administrative decentralization, empowering local residents to determine their own directions and resolve community problems by community people. Therefore, public participation is inseparable from local government. However, despite quite a long historical development of local government in Thailand, empowering communities to govern themselves is still a long-term goal which we need to achieve. One of the impediments is state-centrism of Thai state has been in existent for a very long time, causing delay in decentralization to localities. Moreover, local government organization has minimal roles in public lives of people who are familiar with and accept the roles of central and regional authorities. For that reason, establishment of local government organization is not

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merely delegation of powers and responsibilities as well as management capabilities, but it also involves encouraging people to directly involve themselves in politics and administration of local government organization. So, the ultimate goal of local government is not merely the provision of public services with standards comparable to those of central and regional authorities, but the goal should be to implant a sense of ownership among people and foster active participation in attending their own communities on collective basis. In essence, it means encouraging people to carry on their lives in local democratic setting which forms an essential foundation for development of sustainable democracy.

As the supreme law, constitution places emphasis on and opening up spaces for public participation as observed in the 1997 Constitution, which signified a critical transition of decentralization efforts. Beside delegation of powers, duties, and responsibilities, the Constitution also warranted civil rights to participate in local government, initiated new mechanisms for direct public participation, for example, local ordinance proposed by people and removal of local administrator and council member and so forth. It may be said that the 2007 Constitution still upholds the principle of public participation and aims at producing more practical consequences. Thus, the objective of this article is to study provisions concerning public participation as provided in the 2007 Constitution and recommendations on approaches to ensure that the intent of the Constitution be fulfilled. Additionally, considerations are also given to development of mechanism for public participation as provided in the Constitution, which is not just an automobile decoration or a piece of paper.

2. 2007 Constitution and provisions concerning public participation in local government organization

How does the 2007 Constitution carry provisions concerning public participation in local government organization and will it effect improvement of relevant laws? In this regard, public participation may be divided into two forms, that is,

- 1) indirect public participation, meaning public participation in election of local representatives; and
- 2) direct public participation, meaning people directly exercise their power in local government organization. Presently, it is generally accepted that indirect public participation through election and representatives are insufficient and are under some constraints. So, it is imperative that modern democracy must provide channels for direct public participation.

2.1 Indirect public participation: local election

The 2007 Constitution retains the original essence of the 1997 Constitution stipulating that local council member be directly elected by a popular vote, and executive board member or administrator be either directly elected by a popular vote or consented by local council. As stated in

“Section 284, local government organization shall have local council members, executive board members, or administrators

Local council members shall descend from election.

Local executive board members or administrators shall be directly elected by a popular vote or consented by local council

The election of local council members, executive board members, or administrators who are directly elected by a popular vote resorts to direct polling or secret ballot method.”

.....

“Qualifications of electorate and electoral candidate, electoral criteria and method, local council member, executive board member, and administrator shall be provided in pertinent laws.”

.....

It is discerned that this section does not change the structure and selection method of local executive board and administrator. For that reason, amendment of the pertinent law, that is, the Election of Local Executive Board Member and Administrator Act B.E. 2545 (2002) which was enacted in compliance with Section 288 under the 1997 Constitution has not yet been required. However, the present local electoral system is being challenged with the questions regarding to what extent local council can reflect representation of local residents, as observed from persistent efforts to expand community organization's roles in allocation of local community resources through enactment of the community organization council bill. Concurrent with the writing of this article, this bill is being scrutinized by the National Assembly.

2.2 Direct public participation

The 2007 Constitution still retains the original public participation mechanisms associating with removal of public official and proposal of local ordinance. Moreover, direct public participation spaces have been expanded by supplementing public participation mechanisms that would influence administration and decision-making, including public hearing and referendum as well as expansion of public roles in oversight of local government organization's operations. Details are as follows:

❑ Removal of local council member, executive board member, or administrator

“Section 285, if electorate in any local government organization realize that any local council member, executive board member, or administrator of such local government organization is unfit for office, they shall have the right to vote for removal of that local council member, executive board member, or administrator from office. In this regard, the number of those eligible for subscription of petition, criteria and subscription method, examination of subscribed names, and voting method shall conform to pertinent laws.

....

Even though this section in the Constitution emphasizes empowerment to people for the exercise of the right to remove local council member, executive board member, or administrator, its substance is different from the 1997 Constitution in terms of the number of subscribed names, that is, how many subscribed names are required to petition for removal. Consequently, it is imperative that the pertinent law, that is, the Voting for Removal of Local Council Member and Executive Board Member Act B.E. 2542, which was passed to comply with Section 286 under the 1997 Constitution, be amended for better clarity and, at the same time, greater flexibility for practical reasons.

❑ **Proposal of local ordinance**

“Section 286, electorate in local government organization have the right to gather signatures to petition president local council president to propose a local ordinance for deliberation by local council. In this regard, the number of those eligible for subscription of petition, criteria and subscription method, examination of subscribed names, and voting method shall conform to prescribed law.”

.....

After Section 287 in the 1997 Constitution was scrutinized, it was found that the number of those eligible for the subscription was clearly stipulated and also required submission of the proposed local ordinance bill. Thus, the challenge facing Section 286 in the 2007 Constitution does not only lie with explicit stipulation of the number of eligible subscribers but also takes into account the issue whether it is practical for eligible subscribers to prepare and submit proposed ordinance bill. For that reason, it is imperative that the pertinent law, that is, the Subscription for Proposal of Local Ordinance B.E. 2542, which was passed to comply with Section 286 in the 1997 Constitution, be amended to incorporate this challenging issue.

❑ **Public participation in administration and oversight**

The 2007 Constitution stipulates that people play roles in oversight of local administration and authorities. In this regard, Section 282, Paragraph 2 stipulates provision of oversight mechanism for public scrutiny. Moreover, the 2007 Constitution also provides opportunities for people so they have the right to participate in administration of local government organization's affairs, as illustrated in

“Section 287, local residents have the right to participate in administration of local government organization's affairs, and local government organization shall arrange avenues for such public participation.

In case any action of local government organization shall significantly affect livelihood of local residents, it shall inform the public with relevant details in advance with a considerable lead time. In addition, when appropriate or petitioned by electorate in local government organization, it shall hold a public hearing prior to such undertaking or may resolve the issue with a referendum so that people can cast votes, as provided in pertinent laws.

Local government organization shall publicly report its annual budget preparation, expenditure, and operating performance so that people can partake in examination and oversight of local government organization.”

....

It may be said that this section constitutes expansion of spaces for direct public participation to influence administration and decision-making of local government organization. In the past, provisions under the chapter concerning local government organization have never been so specific. Even though public hearing conducted before passing of resolution involving widespread impacts on local residents has been pursued by administrators of local government organization in compliance with the Prime Minister's Office Regulation Concerning Public Hearing B.E. 2548 (2005), which was passed to comply with Section 59 in the 1997 Constitution, this section in the 2007 Constitution carries substance that does not concern only a project but also applies to a resolution to grant something. In addition, this section also provides opportunities for people to vote in referendum to determine a course of action that produces widespread impacts on the public. In the past, this substance has never been prescribed specifically for local government organization. Thus, new laws that facilitate public hearing and referendum involving local government organization should be passed.

Furthermore, Section 287 stipulates that local residents have the right to participate in administration of local government organization's affairs in accordance with schemes arranged by local government organization. Crucial questions: What should be the characteristics of "participatory approach in administration of local government organization's affairs"? What criteria should be considered? And, is it necessary to pass a law to legalize this? If needed, we should consider original laws that already stipulated the right to participate in administration of local government organization's affairs, such as the Ministry of Interior's Regulation Concerning Formulation of Local Development Plan and the Ministry of Interior's Regulation Concerning Purchase and Procurement of Local Government Organization. These regulations have already provided avenues for public participation. Similarly, should formats of oversight mechanism or disposition of annual report be determined? How can they be executed?

3. Issues to be considered

Similarly, every legislation is prescribed to fulfill some intent of the 2007 Constitution, particularly concerning public participation in local government organization. The intent of various sections under the 2007 Constitution as described in Part 2, that is, strengthening local democratic system by promoting robustness of public participation. When these intents are used as criteria, three interesting notions are present.

3.1 Should there be deliberation on proportion of local council members based on gender, vocational groups and local community organizations?

Section 284 in the 2007 Constitution, which still preserves the original essence of the 1997 Constitution, does not guarantee that election of local council and executive

board members will bring genuine representatives of local residents. It is generally accepted that both local council and executive board members tend to be exclusively dominated by men and local capital groups that either have direct or indirect relationship with political capital groups and national political parties. In many local government organizations, especially those in city and town municipalities, entrenchment of political powers and enduring tenure of local council and executive board members responsible for administration of local government organization is common. This problem is considered a fundamental flaw of the representative democracy.

Therefore, it may be said that the 2007 Constitution still does not respond to a vital question, that is, how do we make election of local council and executive board members truly reflect the voice of local residents through other relationship beyond power-based relationship and interests of these three levels of political capitalists. The answer may lie in the stipulation of proportion of local council members in order to represent Women, diverse vocational groups and community organizations. Beside strengthening civil society through opening up political spaces for community organizations and vocational groups, this approach may help mitigate potential confrontation between **“community organization council”** and **“local government organization.”** This is attributed to the fact that women and community organization representatives can have a place to set their feet, so to speak, in oversight mechanism and operations of local government organization.

3.2 Design public participation legislation that is flexible and can be implemented more readily

Compared to the 1997 Constitution, any section or provision that deals with direct participation of local residents must be more flexible and lenient, especially stipulation of the number of electorate subscribing to various modes of direct participation, ranging from submission of local ordinance proposal to petition for removal of official. Up to now, there have been only five areas where subscription for removal of local council and executive board members was pursued. Furthermore, it is necessary to mention about stipulation that submission of subscribed names to local ordinance proposal must be accompanied by ordinance bill that requires knowledge and skill on legislative drafting and design, which may be beyond what local residents can do. Additionally, this task is also complicated and time-consuming, not to mention the fact that such bill must be scrutinized and consented by regional and central authorities which will enforce or oversee such ordinance in conjunction with existing laws. For instance, in the case where local residents being affected by high-rise buildings in Moo 8, 10, and 14 in Suthep sub-district, Muang district, Chiang Mai province collectively set in motion the passing of a coherent building construction control ordinance. This incident escalated because of uncontrolled construction of high-rise buildings which adversely impacted people who have settled down and built houses in this area for a long time.

The ordinance bill of Suthep TAO (tambon administrative organization) concerning the control of high-rise buildings was just unanimously endorsed by Suthep TAO council on 14 June 2007. Nevertheless, the matter must be forwarded to the district office which will refer to the Building Control Committee in Chiang Mai, and this committee will then refer to the National Building Control Committee which is

under supervision of the Department of Public Works and City Planning. Subsequently, after a final review by the public works department, the matter will be submitted to the cabinet for endorsement. It is anticipated that the whole process might take around nine months after the date of the minutes of meeting prepared at Suthep TAO council.

The main cause for time-consuming process of the enforcement of local ordinance proposed by local residents is the Ministry of Interior has a regulation stipulating that prior to passing of local ordinance, local government organization must submit such ordinance to the central authority for approval, passing through **“successive approval layers”** from district level up to the Ministry of Interior, not to mention the fact that a local ordinance concerns many local authorities. So, it is imperative that they partake in any review of such matter, and to reach a conclusion, provision of a suitable forum in local government organization is also time-consuming as well. If these circumstances surrounding issuance of local ordinance are still allowed to continue, it seems we contend with government powers being centralized in the national government as always. Then, the power granted to local residents to gather signatures for proposal of local ordinance is merely conferment of legislative power that is difficult to exercise or nearly impossible to meet objectives.

3.3 Is it necessary to identify which action of local government organization causes widespread impacts to local residents and explicit criteria on public consultation and referendum schemes?

A prominent aspect of the 2007 Constitution lies with the provision requiring local government organization to hold public consultation or referendum in case local government organization's action will potentially affect livelihood of local residents. As illustrated in Section 287, the issue is “should a greater weight of **“public consultation”** consideration be given to investment projects laid out under main policies of central and regional authorities, including private investment that has direct repercussions on allocation of local community resources, which tend to have economic, social, and environmental impacts on the lives of local residents through enforcement of other pertinent laws?” Since conflict on allocation of local community resources may precariously turn into a sensitive issue and confrontation that might culminate in a conflict between local residents and project owner that exploits resources in the local community, which may adversely affect livelihood of local residents.

The disposition of conflict over allocation of community resources can be discerned in the case where martial law was recently proclaimed in some sub-districts of Prachuab Khiri Khan province, including Thong Chai, Mae Ramphung, Kamnerd, Nopphakhun, and Thong Prasart sub-district in Bang Saphan district, Saeng Arun in Thub Sakae district, Bor Nok sub-district, and other sub-districts in Muang district.

Nithi Eiawsriwong tried to point out that these areas are linked with the blast furnace plant in Bang Saphan which has expanded its capacity and the plant location also encroached into controversial public area. Moreover, villagers are also discontented with pollution which might be released from the blast furnace process. Consequently, villagers rallied to oppose the project and subsequently confronted with **“mysterious persons”** even though public hearing was held before declaration of martial law. However, the

villagers opposing the project decided not to attend two public hearings that had been organized because the atmosphere and meeting arrangement was not conducive to freedom of expression.¹

The aforementioned discussion concerns stipulation of **“issues to be heard or shared by public opinions or voted by local residents in a referendum.”** However, wording **“local residents”** is also another issue to be considered with equal importance, that is, should criteria be set out regarding how many local residents should be involved in a referendum (of which implementation cost is quite high). Moreover, public consultation method should have defined criteria as execution framework to assure that **“opinions”** reflect **“genuine voices”** of local residents who are stakeholders in local government organization’s affairs. Evidently, public consultation which is hoped to be a mechanism to reflect opinions of local community members and a consultative mechanism to influence administrative decision of local government organization still appears to be a setup that involves mobilizing people to input recommendations, opinions, or information that benefit only own groups. As a result, implementation of local government organization’s development project could not distribute benefits to the project’s genuine target groups according to its objectives. In an official visit report prepared by an inspector of the Prime Minister’s Office in the fiscal year of 2007 concerning subsistence allowance of senior citizens, it was found that in each zone, implementation of local public hearing to identify names of senior citizens eligible for subsistence allowance did not produce the genuine list of underprivileged elderly. In many official visit zones, it was found that senior citizens receiving subsistence allowance whose names appear in the list that was identified in a public hearing are actually middle-income and well-to-do persons. Therefore, if genuine voices are not given opportunities to voice their concerns to local government organization, public hearing may be just a superficial political and government ritual that does not facilitate direct participation of local residents in conformity with the intent of the 2007 Constitution.

4. Conclusion

Evidently, setting the 2007 Constitution in motion towards enforcement greatly depends on both direct and indirect public participation in local government organization through expansion of spaces for public participation into election and exercise of government and administrative powers of local council and executive board members at both the level of stipulation of local community development directions and the level of oversight of the exercise of powers. Consequently, people will develop a sense of ownership and actively participate in caring for their communities together.

¹ Ministry of Interior’s Order No. 264/2547 dated 10 June 2004 appointed a local code drafting committee chaired by Assoc. Dr. Somkid Lertpaitoon. The committee composed of 17 competent members, including outside academics, representatives from local government organization, and representatives from the Office of the Council of State and the Department of Local Government Promotion.

Thus, the challenge facing fulfillment of the aforesaid intent does not end at enactment of subordinate legislation or comprehensive amendment of existing legislation to conform to the such intent, but also encompasses strengthening of enforcement mechanisms and achieving a balance between exercise of legal powers by the state and autonomy of local residents in development and demonstrating their political maturity through the existing participatory mechanisms or channels.

However, the most significant challenge relates to an issue that despite the availability of participatory mechanisms or channels, if local residents lack enthusiasm or knowledge or are not conscious of active citizenship, these mechanisms or channels will definitely become useless.

Suppose we make an analogy of such mechanism or channel as **“local democratic classroom.”** If this classroom had a very few students or none at all, it would be just like a historical ruin that no one knew how to really restore or utilize it for the benefit of local community.





Conclusion of Seminar

Local Public Participation Laws

1. Introduction

‘Public Participation’ is a buzzword in democratization. Public Participation comes in different terminology such as **‘People’s participation’**, **‘Popular participation’**, **‘Citizen participation’** or **‘Civic participation’**. Whatever it comes, participation means people’s involvement in activities. As a result, public participation in local government should demonstrate the high degree of people’s involvement in local governance.

2. Ideas Proposed by the Key Speaker

‘Public Participation’ is a loose term that anyone can fill up the meaning and its practice. In term of local government, public participation has become increasingly problematic because of its broad definition. The law drafters must keep three key considerations in mind; they are

- 2.1 **The necessity of composition of local assembly from the occupational groups and community-based organizations.**
- 2.2 **The more flexible laws promoting direct public participation.**
- 2.3 **The specific scope of case that substantially affects the local livelihood.**

3. Observations Given by the International Scholars

- 3.1 There should be some particular laws stating the people's participation mechanism.
- 3.2 People should participate in Budgeting process as well.
- 3.3 Mechanism in Public participation must be clearly defined.
- 3.4 Different opinions in democratization and participation may produce different public participation patterns.
- 3.5 Direct democracy and cost-conscious people's participation can be the possible way forward.
- 3.6 Richer the areas are, the lesser people's participation will become.
- 3.7 Local participation within the rich areas is about transparency.
- 3.8 People's participation must come from people's felt needs.
- 3.9 Participation is captured by some interest groups or elitists.
- 3.10 The separation of power in local governments is a good signpost to check and balance mechanism and public participation.

4. Main Discussions

These are the major arguments usually found when discussing the participatory democratization.

4.1 The understanding of 'public participation'

Theoretically, public participation is a part of a participatory democracy, a dimension of good governance and a measurement of democratization of a country. The level of participation comes in many types starting from the lowest level – conversation relating to politics – to the highest level – participation in public activities and monitoring the activities of a political party or government. Because of different levels, public participation has confused the local government leaders and the general public. Erroneous impression of participation may derail decentralization effort. Public participation usually ends up with '**people's audit**'. Many people think that their participation is to cast a ballot, monitor and inspect the performance of their representatives in the local council and the top administrators whom they voted for. Undeniably, casting a ballot, monitoring and inspection are part of public participation; however, participation is not only those activities. On the contrary, active participation requires people's involvement throughout. It would seem that different opinions in 'public participation' may yield different practice.

4.2 The public participation in practice: the lesson learned from the history.

In practice, public participation should base on local issues; however, the outcome

of participation is not yet fruitful as expected. Each paragraph reflects some shortcomings of public participation in practice.

It is found that active participation occurs within the rural constituency rather than the big city like Bangkok or urban areas. It can be explained that big city dwellers are lacking the sense of community belonging, whereas the small towns or rural areas seem to have far better participation. Active participation is derived from people's felt needs. If local people do not actually feel it, 'participation' will be nominally implemented.

In addition, it is discovered that '**public participation**' is always manipulated by some government or local government agencies. The preconceived notions about what must be done have usually provoked public outcry. According to information from the history of participatory democracy in practice, 'public participation' is introduced to legitimize some preconceived projects. Nominal public participation is always adopted to claim that the projects have already received public approval.

Since '**public participation**' is budget consuming, the participation is implemented on the basis of cost consciousness. To identify the people who are the stakeholders is necessary; failing to do it so may result in huge budget loss. Then, the question is who are those stakeholders and to whom they represent. Seldom has direct participation occurred, nor have all stakeholders been invited to the forum. The participation, therefore, captures the attention of interest groups, pressure groups and elitists in the community rather than the grass root people. Obviously, sound socio-economic-political factors such as education, income and sound household background have yielded different aspects of participation; in other words, the quality of participants can activate or deactivate the participation process. As such participation facilitators should shed light on the question of the representativeness of the representatives.

Another factor that hampers the participatory democracy is the insufficiency of information about participation. The local people need to participate in some government activities; however, without substantial information about participation issues, their participation attempts are of little avail. Moreover, insufficiency of information paves the way for the government's interference in the participation forum. That explains why passive participation usually takes place. Therefore, people's right of access substantial information on participation process is a must.

4.3 The Public Participation Law: the question of 'Who is the actor?'

Unquestionably, the public participation is enshrined in the 2007 Constitution as seen from many Sections; the Constitution makes '**participation**' legitimate. In practice, Bureaucracy is the spearhead of '**public participation**' leading the people to the participation forum. With the legitimacy, bureaucrats fully exercise their authority to impose '**public participation**' on the local people. The procedure does not associate with the concept of '**felt-need**' participation. Participatory democracy should really come from the actual needs of the local people not from the wants of the bureaucrats.

4.4 The Public Participation: Law is the one best way?

Undeniably '**Public participation**' is very significant to the decentralization process because it needs people's high involvement throughout. However it is not that easy to smoothly run '**public participation**' because it is under the influence of socio-political pressure caused by the local people, bureaucrats and politicians. Hence, to have a particular law stating 'public participation process' at least guarantees its practice; yet, it does not necessarily mean that malpractice and manipulation in participation will melt away.

The major argument is whether ‘law’ is the way out of the participation impasse. Apart from the legitimacy of public participation written in the Constitution, there are a whole bunch of participation-related laws. Apparently, those laws are poorly enforced. To have a law does not ensure high involvement of the participants. In order to ensure active participation, social capital should be taken into consideration.

5. Local Public Participation Law: Possible Way Forward

If the law is of the fundamental importance to ‘**public participation**’, the law makers must incorporate some significant points into the law. According to the discussion from the previous section, these are the recommendations for the ‘**Public participation Law**’

- 5.1 The law must pronounce the involvement of local people in Budgeting process as well.**
- 5.2 Mechanism in Public participation must be clearly defined in the law.**
- 5.3 The law must correspond with the uniqueness of each local community; cultural diversity, community backgrounds and people’s livelihood etc., can positively or negatively impact the participation process.**
- 5.4 The procedures of people’s participation must be flexible and easy to access.**
- 5.5 There should be a particular Section in the law regulating local government and other government agencies in decision making that affects people’s livelihood.**
- 5.6 The local people must participate in the process of public participation law promulgation throughout.**
- 5.7 Since public participation needs education and socialization, all actors in society (family, schools, universities, etc.) should assist local people to learn ‘participation’ continuously.**
- 5.8 Participation must ensure the sense of collectivism, not individualism.**
- 5.9 Sections written in the law should be derived from Citizen needs survey research conducted by local government.**
- 5.10 Since each local government and each local community have their uniqueness, public participation pattern should come in different types.**

Admittedly, the Local public participation law is not a panacea for all local problems. To some extent, the law will be used as a tool to push both central government and local government to implement some important projects carefully. Furthermore, the law will hold all government agencies involved accountable for the whole process of participation. It can be concluded that the law will act as a catalyst for better change in decentralization process.



SECTION 6



SEMINAR CONCLUSION

- ☐ **Next Step in the Implementing the Local Government Provision of the 2007 Constitution**





Seminar Conclusion :

Next Step in Implementing the Local Government Provision of the 2007 Constitution

1. Introduction

It can be best explained that local government consists of central government, local administration, regional administrators and local people. The ultimate goal in decentralization is not just transferring functions and tasks to local government, nor have the people participated in casting a ballot. Before any law promulgation, the first thing to be done is to answer the questions of **‘What is decentralization?’**, **‘What is the logic behind decentralization?’**. If **‘decentralization’** only refers to functions transfer, the purpose of the relevant law will be distorted accordingly.

2. Local Authorities Revenue Act

Undeniably, tax is one of the most important factors accelerating the decentralization process in Thailand. The principle of tax reform for local government is how to ensure tax equalization attempting to minimize the big difference of income between the central government and the local government and how to support the local government in earning up to 75%.

In order to comprehend the difficulties in tax problems, it is necessary to study the current tax situation encountered by the local government. There are a couple of arguments regarding this matter.

First, how to equalize the ratio of the income from the central government and the local government needs to be addressed; also, tax equalization among local government must be emphasized.

Secondly, the major income source of the local government should not be from taxes; fees could be another substantial income source. Only Corporate Tax may not be sufficient. On the contrary, the Corporate Tax can subvert the power of investments; potential investors may move their investments away to evade the Corporate Tax. Additionally, the poor may migrate to the urban areas. Therefore, new tax bases need to be reviewed; the Income Tax should be taken into consideration.

Thirdly, the insufficiency of tax data base is another factor hindering the decentralization process. Apparently, the local government administrators have no sufficient tax data base to support their decision making. They do not know their own tax data base, nor do they utilize the data base. Value-Added Tax or VAT is a good example. Each local government has no mechanism to inspect the tax base; therefore, the central government collects this tax and then partially returns it to the local government. As a result, it is necessary to create the tax base system to assist the local government and relevant agencies to easily access the system and to make use of tax base information. The tax base system will be used to guarantee fair tax allocation. In addition, new tax bases such as environment taxes, fees and etc. should really be developed; clinging to just only the property tax and the signboard tax is not sufficient should the local government needs to be sustainable.

In order to empower the local authorities by tax collection, the basic question that needs to be addressed is the tax collection mandate; who will be the collector? More importantly, tax collection must correspond with the functions and service providing capacity of each local government. In addition, the public finance performance must be taken into account; consequently, the balance between earning and spending must be pronounced.

3. The Decentralization Act

This Act attempts to steer active people's participation; it also reflects the dynamics of decentralization process. Therefore, local government's empowerment principles must be laid down because decentralization process has affected the organization's structure of many government agencies.

The Act should incorporate the sense of civic participation into the appropriate Section. The Decentralization Act with active people's participation will empower the local people; however, people's participation is often perceived to be people's audit, only. It is simply a question of how to balance people's participation in supporting, brainstorming and coordinating and in monitoring, auditing and inspecting. The Act should come up with interactive means of communication promoting people to involve in local administration throughout; however, it must not be an abrupt enforcement because people's participation can become both direct and indirect involvement.

4. Code of Local Government Organization

The Code must be able to solve the old problems such as the overlap between central government and local authority, the Check and Balance mechanism within the local government between the Local Assembly and the Local Executive.

The Code must yield the restructure of local government to positively correspond with the ultimate goal of decentralization process that is **'people's empowerment'** and the effectiveness of the local government.

The Code must clearly state common themes and the direction of decentralization; the details of each local government can be different, but they have to rely on the common goal. For example, the Constitution points out the difference between Sub district Administrative Organization and the Municipality.

The freedom of each local government is really essential; therefore, the autonomy must be enshrined in the Code.

5. Local Public Participation Laws

The 2007 Constitution is the main catalyst for governance. The Constitution has ensured the decentralization process empowering local government, promoting autonomy and facilitating people's participation; as a result, each local government must think of the preparedness for the appropriate strategy.

The point that the relevant agencies must bear in mind is how to build **'trust'** in decentralization. Local government must belong to local people rather than bureaucracy. Therefore, decentralization process has involved four groups of actors; they are the politicians, local government administrators, regional government administrators and local people.

First, the politicians must realize the significance of local governance and they have to fully understand the logic of local government. They have got to believe that local government is not their rivalry; on the contrary, the local government will help the central government in governing the local constituency.

Second, the local government administrators must clearly understand their role in local governance. They should not act as governors or ruling bureaucrats but they have to be facilitators who can build 'trust' and point out the significance of local government.

Third, undeniably, regional administrators are another group destabilizing the local governance. The 2007 Constitution also protects the regional administration. According to the history, the interference done by the regional administrators was found. Therefore, clear distinction between the regional administration and local government is sought after; otherwise, the decentralization will be stagnant.

Fourth, local people are the most important. People's participation in the local government and local governance since the beginning will guarantee the effectiveness of local government including better local people's livelihood.

6. Next Step in Implementing the Local Government Provision of the 2007 Constitution

6.1 What should be done in the near future?

Since the decentralization requires the best effort from all sectors, the officials involved must bear the ultimate goal of decentralization in mind. The question is how to put all four laws to the same ultimate goal.

It is necessary to balance ‘**autonomy**’ and ‘**responsibility**’. Autonomy allowing the local government to enjoy freedom when implementing some projects must incorporate the minimum standard requirements that each local government can produce. It will ensure that people can receive proper public services given by the local authority, no matter how remote, how rich or how poor the local government has become.

The balance, in the context, includes the line of demarcation between the central and the local government. In addition, the balance among local government is really important.

Capacity building within the local government is another factor influencing the effectiveness of local government. Capacity building given by the central government agencies or external organizations may not sufficient to boost the effectiveness of local government. Capacity building should be derived from the local authorities; however, each local government can produce different outcome because of local uniqueness.

Last but not least, the balance should cover the difference between direct and indirect democracy. Should the representative democracy is functional, direct democracy can cause high political and operational cost.

6.2 What are key success factors?

Key conditions for the success of decentralization are:

- (1). **Crystal clear framework of decentralization:** Laws, rules and regulations must base on the ultimate goal of decentralization. The framework must show the relationships between laws, the set of knowledge, reality and practicality.
- (2). **Supporting systems:** The political commitment is the most important supporting system and the central government must be the most sincere to accelerate the decentralization process.
- (3). **Sound education system:** Since public participation needs continuous learning process, education is of the fundamental importance to public participation process.
- (4). **Suitable political socialization:** Political socialization will help local people understand the significance of decentralization and it will ensure the political maturity.

The ultimate aim of decentralization is to ensure **'local autonomy'**, **'effectiveness'** and **'active people's participation'**. The good combination of local autonomy, effectiveness and active people's participation will transform the local government into local people's organization being able to solve the problems that the local people always encounter. As a result, any law, any section and any regulation must never stand out against the ultimate aim of decentralization because local government must be livable. If all stakeholders can make decentralization balanced, **'Laws'** drafters will be able to achieve the goal of decentralization as expected.





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Implementing the Local Government
Provisions of the New Constitution of Thailand**



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