

CRIMINAL LIABILITY OF MONKS IN THE CASE OF HIRING FOREIGN WORKERS IN TEMPLES

Pongwanat Kongsab¹

Faculty of Social Development, Mahachulalongkornrajavidyalaya University¹
Thailand¹

Email: pttraining59@gmail.com¹

Received: August 22, 2023; **Revised:** November 17, 2023; **Accepted:** November 26, 2023

Abstract

The research entitled “Criminal Liability of Monks in the Case of Hiring Foreign Workers in Temples” there are objectives 1) Thai law has concepts about the law, whether it is criminal law. The law deals with the punishment of the wrongdoings of individuals in society. It must consider the person who did it. The actions of that person according to customary law (common law) is a structured system, criminal liability 2) The rights of monks in criminal law have problems in practice. The protection of the right to be a monk is per what has been practiced in the past only preliminary and 3) the impact of hiring foreign workers in temples and in the Kingdom of Thailand, it appears that the impact is security. It caused additional nationality, a crime problem, ignoring the laws of foreign workers problem of distrust economic impact. It has a positive effect on the private sector. But affecting the collection of taxes and wages environmental issues disorganized housing create sanitation problems such as waste water, destruction of the natural environment Cultural changes, drugs.

Keywords: Criminal liability; Governing the clergy; Foreign workers

Introduction

Buddhism is like a root of the ethical and moral system of Thai society. Religion is therefore regarded as a tool for controlling the conduct of a person to be a good person with morals. Whether a person is a good person with morals or not depends on the training in accordance with the principles of Buddhism through monks who spread the teachings of Lord Buddha, the prophet of Buddhism, all the monks are likened to representatives of Buddhism who have a

duty to oversee morality in Thai society. Thus, monks are like those who determine the norms of proper conduct of people in Thai society. It is a pattern of good behavior in society that is no less important than the laws of the country. Only those who have passed ordination according to the Buddhist guidelines. But when those people said that they would ask for ordination which the blessed one, having committed himself to adhere to the teachings of the master as the refuge of his life, refrains from clinging to sensual desires, pleasure in forms, tastes, smells, sounds, touches, nonsense things such as gains, ranks, wealth and various happy and sad emotions in order to reach nirvana, which is the way to end suffering. Those people must be good role models and act as missionaries of Buddhism for the Buddhists to follow. Since the monks are regarded as having an important role in maintaining morality in Thai society. In most practice, it was found that the actions of these monks. Even if it is considered a violation of the monastic discipline, they will be punished only by leaving the monks and receiving criminal penalties like ordinary people. The Sangha Act, 1962, amended (No. 2), 1992, section 29, which states that "Any monk who was arrested for a crime, when the investigating officer or the public prosecutor does not see fit to be released temporarily. The investigating officer did not see it appropriate for the abbot to take him into custody or that monk was affiliated with a particular temple. The investigating officer shall have the power to arrange for the monks to that image can renounce the priesthood. Section 30 states that "when imprisonment to detain or imprison any monk according to the judgment or order of the court, the competent officials who have the powers and duties to perform complying with the court's judgment or order, it has the power to cause the monks to the image can renounce the priesthood. To report to the court about the renunciation of that sex". At present, there is no provision in the criminal law that can directly punish the case of a monk committing a crime, only a crime in the case of a common person. This is in line with the current Criminal Code, which stipulates offenses related to religion in title 4 under Sections 206 - 208, it is only a provision aimed at punishing those who cause harm to religion.

Therefore, a monk is considered a person of high status in society and is trusted by society. It may be comparable to those who practice a specific profession. Especially comparable to the case of a government official committing an offense against property. Thus, they must be more careful about their behavior than other people. They should behave within the framework of

the discipline and social law is a good example for Buddhists intended to help propagate Buddhism. When a monk turns out to be an offender, it causes problems for society itself. The Dharma and Vinaya alone in the Tipitaka cannot control the behavior of the monks in the Dharma. Because Dharma and Vinaya are just moral guidelines. (Phra Brahmakunakorn, 2012 p.81) which arises from the feelings and thoughts within the human mind that what action is right Actions, however, are unscrupulous actions. It's just something that controls the thoughts within the human mind, which aims only to complete human beings with goodness both physically and mentally. But there is no coercive condition like criminal coercion under the law of the country, which is a state regulation that defines the behavior of a person who is shown to the outside. Therefore, the existing rules of the Dharma and Discipline cannot be enforced in the case of a monk seriously committing an offense. Therefore, there should be a way to punish these monks more severely than in the case of ordinary people committing offenses. For example, the offense of a monk may be defined as a serious offense that requires heavier punishment under the Criminal Code. It may be defined as an offense under the Sangha Act, BE 2505, which is already a law. It may be added to the base of offenses in the bill on the patronage and promotion of Buddhism. That is about to be re-enacted to apply specifically to cases of offenses committed by monks, etc. and in addition, there should be a system for collecting the money that monks receive from donations and not opening a channel for monks to be involved in receiving money in many cases in order to cut off the fire but wind to prevent the monks from becoming more defiled in committing offenses able to conduct the practice to reach the highest truth that the Lord Buddha discovered the most (Yut Sang Uthai, 2005, p.71).

Currently, management science and management have a great progress. The Sangha should be able to use those technologies to enhance the administration and governance of the Sangha. Some Sangha affairs may rely on the bureaucratic administration of the government. Especially the principles of good governance, such as the rule of law moral principles. Transparency principles of participation, responsibility value principle as a guideline for management. Some Sangha affairs may rely on private streamlined administration and others must be managed according to the principles of Dharma and Vinaya. The Sangha should combine the good parts of the public and private systems with the principles of discipline (Phra Medhithammaporn, 1994, p.78). The administration of any organization, including the

administration of the monks, must have elements or resources that are important and must be the basis for that administration, which consists of money, materials and management of tools, machines, including authority. The length of work and the convenience of working as mentioned above, it is important and continuous bond closely. Success in management for the Sangha of the Sangha will be successful, as well as other agencies or will be successful. It depends on the ability of the Sangha administrators to bring out such resources to be useful and worthwhile. It is considered that it is the duty of the Sangha to pay serious attention to the “administration” in order to administer Sangha affairs more efficiently and effectively as well as being more economical (Religious Affairs Department, 1985, p.1).

The abbot must comply with the laws and regulations related to the management of the religious properties. It can be seen that the government has been involved in the control and supervision of the temple's income, such as the regulations for the disbursement of temple benefits B.E. 2488, the regulations on the allocation of benefits for temples, B.E. 1974 and the Sangha regulations on the practice of building. Buildings in the temple with tenants, 1994 (National Office of Buddhism, 2022).

This reason, the researcher interested in studying criminal liability of monks for employing foreign workers in temples. Due to laws and regulations related to temple income. It has been enacted for a long time and inconsistent with social conditions and current economy. Including the lack of laws related to the criminal liability of monks, in the case of hiring foreign workers in the temple. Therefore, further studies should be taken to find ways to amend relevant laws.

Research Objectives

1. To study concepts, principles and legal theories concerning criminal liability of monks in the case of hiring foreign workers in temples according to the Sangha Act, 1962 Amendment (No. 2), B.E. 2535.

2. To study legal measures on criminal liability of monks in the case of hiring foreign workers in temples according to the Sangha Act, 1962 Amendment (No. 2) B.E. 2535 of foreign countries and the Kingdom of Thailand.

3. To study the pattern of criminal liability of monks in the case of hiring foreign workers in temples according to the Sangha Act, 1962 Amendment (No. 2), B.E. 2535.

4. To analyze and suggest ways to amend relevant laws. or new legislation to protect Buddhism to be able to solve problems sustainably in the future.

Literature Reviews

Monks are the unit in the society and must behave in accordance with the rules and provisions of the law for the peace and happiness of the country. Therefore, the monks and the country cannot be separated from each other. They are related to each other in the country, the law is important. A person or a juristic person, once born, must have a recognized legal status to protect the rights and duties of that person. However, once a person has been ordained as a monk, that person's social status has changed. The legal status, especially the criminal law should change accordingly for the criminal law to support the rights and duties of monks and determine the ability to exercise rights and duties and responsibilities as required by law. Thai criminal law should clearly specify the rights of monks appropriately and consistent with the conditions of Thai society. Including requiring monks to participate in protecting and taking responsibility for their own criminal rights, which will be beneficial to the society to live in peace and happiness under the framework of the law of the state. All parties should work together to find an appropriate way to lay down the rules for the treatment of monks. This is especially true when a monk is charged with a criminal case. Criminal law has no special provisions whatsoever. Therefore, they must comply with the same laws as ordinary people. But there is the Sangha Act, 1962, amended by the Sangha Act (No. 4), 2018 (Government Gazette, 2018).

Laws aimed at maintaining the peace of society by stipulating which acts are wrong and stipulating the punishment to be inflicted upon them. It must explain the meaning of the action, nature of preparation and the consequences of the action clearly the law stipulates that any act or omission is an offense and determine the punishment that will be imposed on the offender as well in other words, it is a law that prohibits any action, forcing any action violators or non-compliance will be subject to penalties (Kietkachorn Wajanasawasdee, 2006,

p.1). Criminal law is deeply related to morality. Serious crimes such as murder, robbery, rape is all immoral. Sometimes in the formulation of criminal law is no different from moral principles, or the way of Buddhism. However, there are many cases that are considered immoral but not criminal, such as telling lies (unless it is a false report to an officer or fraud, etc.), drinking alcohol. Criminal Code Section 378. Adultery is obviously immoral, but in Thailand it is not considered criminal. A monk having sex with a woman in a monk's cloister which is in the temple area is an act that is immoral and highly inappropriate. But there is no offense under Section 206 of the Criminal Code for insulting religion. Cases of absolute criminal liability, that is to say, not intentional, not careless, but the law still prescribes. That the action was wrong. However, it can be seen that morals and criminal laws are not consistent in all cases. Therefore, we cannot use morality as a determinant of a fixed crime because of what is wrong.

The morality of some religions may not be considered criminal. Civilized societies hold that rights and freedoms are necessary for each human being. Human rights and the freedom to develop one's personality both physically and mentally is the highest value. Organizations of all parts of the state, whether those using legislative powers executive power users or those who use the judicial power must respect and protect their rights and liberty of a person, one of these rights is constitutional rights, which means the constitutional power as the supreme law to guarantee and protect individuals in doing or not doing certain acts; Granting such powers to individuals created the right to protect the project from anyone interfering with a person's constitutional rights. Individuals can petition government agencies not to interfere with their rights. In some cases, such guarantees have given rise to a right to demand that the State take some action (Kittiwat Rattanadilok Na Phuket, 2009, p.7).

Thai monks played an important role in the way of life in Thai society for a long time from the past to the present. A monk is a missionary who acts as a missionary and guides the Buddhists to live their lives in a peaceful and peaceful society. Regarding the monks, even though the discipline is a framework to control their behavior. At the same time, it is still considered a citizen. When committing a criminal offense, they will be prosecuted according to the law as well. In Buddhism, in addition to bringing the law to help create morality laws must also be brought to help people develop their own morality.

(Phra Brahmagunaporn, 2012, p.48) Therefore, the process of prosecuting criminal cases against monks There are the following steps.

1) Arresting when a monk commits that crime: there are no special provisions in the Criminal Procedure Code. Therefore, they must comply with the same laws as ordinary people. It is the power and duty of administrative or police officers who perform arrest and arrest under the Criminal Procedure Code.

2) Investigation: the investigation of monks who commit crimes. It would be like investigating ordinary people in general. Because there is no regulation or law to interrogate the monks. The investigating officer therefore has the power to investigate the monks who have committed crimes. This is in accordance with the Sangha Act, 1962, amended (No. 4), 2018, Section 29, "Any monk who is accused of committing a crime, when investigating officers, the prosecutor did not see a temporary release. The abbot in temple which the monk belongs does not accept to be taken into custody, the investigator does not see the fit of the abbot to take custody, or that monk is not affiliated to any temple, the investigating officer has the power to the monk to renounce his monastic sex."

3) Prosecution: criminal prosecution is the power and duty of the public prosecutor to issue an order to prosecute or not to prosecute, order further investigation or ordering witnesses to be sent for interrogation. If the investigating officer is of the opinion that a prosecution should be filed, the case will be sent along with the accused for the prosecutor to order prosecution if the monk is arrested and held in police custody without asking for temporary release and investigators are not allowed. The investigating officer makes the monk renounce the priesthood before being taken into the control room by taking the accused monk to meet the nearest local monk to perform the renunciation of the priesthood. But if it is the case that the monk has been temporarily released since the investigation, the status of the monk remains. Unless the clergy have ordered the renunciation of the priesthood during that time.

4) Trial and adjudication: Procedures for the trial and adjudication of cases under the Criminal Procedure Code, Section 172. The trial and examination of witnesses in court shall be conducted openly in the presence of

the defendant, unless otherwise provided. Therefore, causing the monks who were accused in the status of monks to come to trial, because when they become an accused or defendant in a criminal case, it is necessary to bring them to justice. In the past, the Ministry of Justice used to discuss with the Sangha Supreme Council in the case of a monk having to face criminal charges on how to proceed, which the Sangha has given guidelines on whether it should be worn or not.

The outcome of the war during the proceedings in the absence of insurance if a monk is charged with murder or theft allow the court to order temporary detention in prison, they do not use restraints and let the primate force you to wear it. After that, you can use restraints. If it is a case other than the aforementioned, they shall be sent to the primate detention. If the court wants him, he will send him away and the Sangha Deacons have the power to determine whether or not they should be worn.

5. Compulsory punishment: the criminal proceedings of a monk who have been proceeded according to the law, according to various steps passed the process in which the monk has not yet renounced his monastic sex since the arrest and investigation stage, trial until the enforcement of the punishment according to the judgment, including imprisonment and imprisonment required the renunciation of the priesthood. But in the process of renunciation of the priesthood at present, the Sangha which is an organization that oversees the sangha of Thailand throughout the kingdom, does not have rules and regulations governing monks to renounce their monastic sex during criminal charges or imprisoned for a criminal case. There is no circulating letter of practice to let the relevant agencies know about the method of giving up the priesthood and how to proceed. Relying on following each other to lack certain criteria (Somchai Boonkongmak and Phuphanat Rattanachai, 2018, pp. 11-24).

Research Methodology

The study in this document defined the topic area of the study specifically related to criminal liability of monks in the case of hiring foreign workers in temples. It is a qualitative-research in law. The nature research papers by collecting information from primary documents, including relevant laws. Thesis texts, research papers, articles, judgments of the Supreme Court

foreign law and secondary source documents published online from various websites.

Results

Concepts and Theories Related to Monks' Criminal Offenses in the Case of Hiring Foreign Workers in Temples and Concepts According to the Discipline and Law

The results showed that: The Thai law has concepts about the law whether Criminal law (Civil Law) is the law that deals with the punishment of the wrongdoings of individuals in society. Therefore, must consider the person who did it and the actions of that person. Common Law is a system of common law, laying out the structure of criminal liability into two parts:

1) Actus Re us refers to an act that is illegal or prohibited by law. and the doer has no power to do so.

2) Men Rea refers to the state of mind involved in the offense. It is an element within the mind of the doer which is a subjective element, including intentional negligence, deliberately or recklessly and know the facts which are the elements of the offense including knowing that the action is wrong knowing that he has no power to act. When it comes to labor liability laws, there are different labor protection law labor relations law Enterprise Labor Relations Law foreign labor law under equality.

Criminal Liability of Monks in the Case of Hiring Foreign Workers in Temples According to Foreign Law and the Kingdom of Thailand

1) The issue of proceedings for monks who violate the criminal law to relinquish their monastic sex, the Sangha Act, 1962 (amendment, No. 4, 2018), section 29 and section 30. The essence of discretion under sections 29 and 30 is of 2 importance: empowering investigators or the public prosecutor exercises discretion in the case where it is not appropriate to grant temporary release. There may be reasons as to whether the accused monk would flee or not destroy the evidence accompanying. The abbot which the accused monk was affiliated did not take him into custody. Although there are provisions regarding the principle of temporary release and supervision of monks who have been

accused, which are different from those of general people. In the case of item 1, it can be seen that if the abbot which the accused monk is attached takes care of him and the investigator or the prosecutor has the power to exercise his discretion to temporarily release him.

2) If the inquiry official does not see fit for the abbot to take him into custody. The investigating official have the power to cause the monk to renounce his monastic sex according to the law. The issue of detention of monks who are abbots which is a criminal offense Section 29 of the Sangha Act 1962 (Amendment No. 4, 2018) requires that the abbot be the custodian of the offender monk. But if the abbot himself was the culprit, the law did not prescribe that the primate of the higher hierarchy would be detained. Therefore, the problem arises as to who will be detained if the abbot commits a crime with the following issues:

Issue 1: In the event that a natural person affects the rights of a monk, that monk can bring criminal charges. But there are no principles that are separate from ordinary people. Therefore, monks had to prosecute criminal cases in the same way as ordinary people.

Issue 2: Reinstatement of the image of a monk in the case of a monk who was accused of committing a crime and proceeding to renounce his monastic sex, but later it was proved that he was not a criminal offender, what would be done to return the status of a monk to him? In addition, in the year that that monk was ordained according to the Vinaya, he ceased to exist due to the renunciation of the monkhood. Counting the monks' rainy season is irreversible when entering a new ordination, the Buddhist Lent ceremony must be counted again. Therefore, a special unit should be set up to deal with criminal proceedings that is directly responsible for the detention of monks who have committed an offense pending proceedings.

Issue 3: Lack of certain rules for monks to relinquish their monastic sex. Procedure for monks to renounce sex, when that monk commits a criminal offense, there is still a lack of certain principles of practice, causing problems for those involved, whether it was the clergy or the officials.

When analyzing issues as mentioned above It can be seen that the rights of monks in criminal law have problems in practice. The protection of the right to be a monk is the practice that has been practiced in the beginning only. There is no clear measure to protect the rights of monks in law. In any case, whether it is the process of arrest, investigation and trial in court. This is because there is no separate criminal proceedings against monks who violate the law. Religious prohibitions: some acts of little unwholesome thought that cause defilement may be an offense according to the discipline, but not a criminal offense, for example, in the case of a monk stealing only with a clear mind. (The mind wants to steal) then must be guilty of every rule. Which is a light penalty. An act that is an offense under the criminal law will always be an offense according to the discipline, often classified as a violation of the discipline in the "lokwatcha" section, which is an offense that the world condemns.

Comparative Analysis of the Criminal Liability of Monks in the Case of Hiring Foreign Workers in Temples

Comparative analysis of the criminal liability of monks in the case of hiring foreign workers in temples. The results showed that: the impact of hiring foreign workers in temples and in the Kingdom of Thailand appears to have an impact on security. It consists of giving rise to additional nationality, has a crime problem ignoring the laws of foreign workers problem of distrust economic impact. It has a positive effect on the private sector. But affecting the collection of taxes and wages environmental issues disorganized housing creates sanitation problems such as waste water. Destruction of the natural environment, cultural changes, drugs, bringing drugs into the border, social aspects, illegal entry, resulting in the problem of homeless children, inequality, language, way of life, mental health problems. The problem of misunderstanding of foreigners' health led to unhealthy behaviors and beliefs. In terms of security, Thai people are afraid of foreigners stealing and happened when employers took advantage of foreign workers.

The offense in the case of illegal foreign workers can be seen that the Thai government gives workers the opportunity to work in Thailand under the memorandum of agreement or memorandum of understanding that the Thai government made with foreign governments and statute if violated, there will be clear punishment laws. When comparing the elements of the monk's crimes in

the case of employing foreign workers in the temple, it was found that whether it was the Dharma Discipline or The Sangha Governing Act in Thailand makes no mention of foreign workers whereas Thai law does. Acts relating to labor are good. Pleasant aliens are determined shown that, the Act on the Administration of the Thai Sangha should be considered systematically.

Discussions

Criminal acts committed by monks in the case of hiring foreign workers in temples and concepts according to the discipline and law. The results showed that: the Thai law has concepts about the law whether Criminal law (Civil Law) is the law that deals with the punishment of the wrongdoings of individuals in society. It must consider the person who did it, and the actions of that person. Common Law is a common law system that lays out criminal liability structures. Corresponding with the research of Kathawut Weerawong (2008), it was found that the role of Buddhism in various aspects mentioned above. Therefore, it can confirm that Buddhism is very important to Thai society. It has also influenced the traditions and traditions of the Thai people for a long time. Buddhism has evolved to become part of the way of life of the Thai people became an institution that holds the hearts of the Thai people throughout the nation. It is a religion that most the Thai people respect. Therefore, it can be said that Buddhism is like the root of the ethical and moral system of the Thai society from the past to the present.

Criminal liability of monks in the case of hiring foreign workers in temples according to foreign law and the Kingdom of Thailand. The results showed that: the rights of monks in criminal law are problematic in practice. The protection of the right to be a monk is the practice that has been practiced in the beginning only. There is no clear measure to protect the rights of monks in law. In any case, whether it is the process of arrest, investigation and trial in court. This is because of no separate criminal proceedings against monks who violate the law. Religious prohibition: some acts, just a small act of charity that cause defilement, may be an offense according to the discipline, but not an offense under the criminal law. Consistent with the research of Sompong Kajonchaikul (1996), it was found that most civilian countries such as Germany, France, Italy, Spain and Latin America determine the criminal liability of a person by considering that the act is three criteria: the components of the offense part of

the fault and part of evil determining Criminal Liability in Civil Law. Nowadays, it follows a structured process. Does the action fall into the elements of the law? when such action falls into the elements prescribed by law will consider further that; Is that action illegal? and the next step is to look at the person who does it whether there is evil or not.

New Knowledges

Criminal liability of monks in the case of hiring foreign workers in temples: Thai law has concepts about the law whether Criminal law (Civil Law) is the law that deals with the punishment of the wrongdoings of individuals in society. It must consider the person who did it and the actions of that person. Common Law is a common law system that lays out criminal liability structures.

In practice, the protection of the right to be a monk is the same as the practice that has been practiced in the beginning only. There is no clear measure to protect the rights of monks in law. In any case, whether it is the process of arrest, investigation and trial in court. This is because of no separate criminal proceedings against monks who violate the law.

Monk's crimes in the case of employing foreign workers in the temple, it was found that whether it was the Dharma Discipline. The Sangha Governing Act in Thailand makes no mention of foreign workers whereas Thai law does.

Conclusions

Determination of criminal penalties, penalties and criminal liability of monks in the case of hiring foreign workers in temples by studying the criteria, concepts, theories about the determination of various criminal penalties. The study from the judgments of the Supreme Court on the punishment of the offenders of monks in the case of hiring foreign workers in temples considered into law to fix the problem, study measures to prevent problem management and the legislation of the Synod of the Association, etc.

References

Department of Religious Affairs, Ministry of Education (1985). **Handbook for the Sangha's Educational Administration**. Bangkok: Religious Affairs Department Printing House.

Kittiwat Rattanadilok Na Phuket (2009). **A guide to study the basics of constitutional law**. 2nd edition. Bangkok: Sema Tham.

Kiatkajohn Wajanasawasdee (2006). **Explanation of the Criminal Law Region 1**. 9th edition. Bangkok: Chararat Printing.

Katawut Weerawong (2008). **“Criminal proceedings against monks under the Sangha Act, B.E. 2505 and its amendment (2nd edition), B.E. 2535”**. Master of Law Thesis. Faculty of Law: Thammasat University.

Phrapromkunakorn (2012). **Buddhist jurisprudence**. 13th printing. Bangkok: Winyuchon.

Somchai Boonkongmak and Puphanat Rattanachai (2018). **The problem of the renunciation of monks according to the Sangha Act 1962: a case study of discretionary powers of government officials in the judicial process**. Humanities and Social Sciences Journal Air Master.

Sompong Khajonchaikul (1996). **“The problem of negligence in criminal law”**. Master of Laws thesis. Graduate School: Thammasat University.

Yud Saeng Uthai (2005). **Introduction to general law**. 16th edition. Bangkok: Prakai Pruek.

National Office of Buddhism (2022). Rules. [online]. Source: <http://www.onab.go.th/category/rule/>.

