

COMPARATIVE STUDY OF IMPUNITY IN CRIMINAL CASES WITH IMPUNITY IN THE DHAMMA VINAYA

Phra Teerasak Wongkhueakhan¹

Faculty of Social Development, Mahachulalongkornrajavidyalaya University¹
Thailand¹

Email: Teerasak.pt2@gmail.com¹

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

Abstract

Criminal actions of people in today's society. The offender may not intend to commit an offense. Sometimes, some causes may be necessary to make the offense complete with all elements of the offense and that action has no cause except for the offense. It is considered a criminal offense to be held criminally liable. However, there is a reason that the offender is not subject to criminal penalties. Exemptions under French criminal law, priority on personal grounds, and grounds of impunity under German criminal law emphasize the importance of individual exemptions, exemptions under British criminal law. Adhere to the principle of offense because the offender has the power to act, Thai criminal law, the Criminal Code has provided for the exemption of punishment for the offender by considering both the sense of responsibility of the offender and other reasons that the law provides for exemption from punishment. For example, the exemption from punishment under Section 65, Section 66, and Section 70, which in religion has an exemption in the Dhamma discipline called Ānāpattivār (A monk who is not guilty). Punishment of the 4 Pārājikas of the last 4 items of every precept considered as the main basis for judging a monk who has committed an offense, it is the cause of exemption from punishment, namely: 1) A monk who is insane, 2) A monk whose mind is distracted, 3) A monk who is restless because of his feelings but not insane to study and compare the grounds for exemption in criminal cases with the grounds for exemption from punishment in the Buddhist Doctrine and Discipline which will lead to the development of law and Buddhist discipline in the future.

Keywords: Impunity; Criminal cases; Impunity in the Dhamma and Vinaya (discipline)

Introduction

When referring to crime (verbrechen) we generally think of “Criminal offence” (verbrechen) bases in the criminal code and in other laws, and remind to the details of the action provided for in that criminal offense. In thinking of the crime (verbrechen) in such a way one finds various criminal offenses. There are no details of the action or components that's the same. When a German jurist has studied and researched, it was found that all bases of criminal offenses (verbrechen) have the same 3 essential points. That action would not be a criminal offense, and when it is not a crime there would be no punishment for that action. The essential point is the same everywhere. The base of this crime constitutes the structure of the aforementioned crime that any action is not a criminal offence. Then there could be no punishment for that action when researching the structure of a criminal offense. Therefore, research must be conducted from criminal offenses and penalties. There are assumptions about crime and “punishment”. The first effect of this hypothesis is that who is right? Or doing the right thing will not be able to punish him. “Illegal” is one of the essences of “structure of criminal offenses” (Kanit Na Nakorn, Thani Worapat, 2020).

Lawyers are of the opinion that the establishment of grounds for impunity, that can only be done without going against the law in any way. Because in criminal law there is only that “no punishment without evil”. “When there is evil, there must always be punishment”, so any action, even if there is evil, may not be punished for that action (Hans-Heinrich Jescheck, 1988). The criminal offense to be held criminally liable. However, there may be legal grounds that prevent the offender from being subjected to criminal penalties for that offense. Whether imprisonment or a fine, which the law calls such incidents exemption. There are many things together according to different sections. In the criminal code, such as (1) the act of a person of insanity under section 65 (2) the act of drunkenness under section 66 (3) the act of an unlawful order of the official under section 70 to reflect the structure criminal liability systematically harmonized therefore would like to explain the related sections. For example, an

offense by necessity under section 67, a reduction in the offense of an offense relating to property in some offenses between husband and wife under section 71, the offense of a child under 12 years of age under section 73, and the offense of children under 15 years of age under section 74, etc. Even those who have committed an offense. It is an offense that is not suitable for punishment, which is an exemption from the penalty that the law has set.

This study collects the theories and concepts of lawyers from foreign textbooks, according to French criminal law, according to German criminal law, and according to British criminal law with Thai textbooks, along with comments, statutes, comparisons of the grounds for exemption in criminal law and the grounds for exemption from punishment in this Dhamma Vinaya and the concepts that have influenced Thai lawyers from the past to the present which will lead to the development of laws and disciplines in the future. In addition, from the principle that the Lord Buddha called a meeting of the Sangha before prescribing the Vinaya by not punishing the offender monks as a template for criminal law. On the principle that there is no law, no offense, no law, no penalty. According to the first paragraph of the criminal code, section 2 (Surasak Wattanakul, 2017), as well as summoning the accused monks to inquire whether you have done what other monks or the public complained or not? The Buddha looked at both actions and behaviors as a principle of investigating the truth of actions and the truth of individuals in the current justice process. But in Buddhism, on the subject of *Ānāpattivār* (the grounds for exemption from punishment in the Dhamma Vinaya), it is not widespread. Because the Tipitaka has up to 45 books, in some schools there are up to 90 books. Modern monks do not know which category of the cause of impunity or do not know the word *Ānāpattivār* (Phrabrahmakunabhorn, 2009, 487), together with lack of knowledge no expertise in activating the scriptures which is complicated to search. Therefore, it is hard to understand the word *Ānāpattivār*.

Thus, it's an ongoing problem from not knowing about the *Ānāpattivār*. The exemption from punishment in the Dhamma and discipline for that reason. The life of the monks may be a problem because the monks live in groups. There are hundreds of monks living together lack of knowledge about the reason for exemption from punishment in the Dhamma and discipline. It is normal for Buddhist monks to find fault with each other. Sometimes there are violations of

morality and discipline. But in the case of exemption from punishment in the discipline may cause problems among the group and must be accused of society or become a target for people who want to destroy Buddhism as well as the current problem of undecided case, corruption and misconduct cases (Criminal) 205/2561 in the case of the assistant abbot of Wat Saket, which is regarded as an official under the criminal law. To do any action must be assigned by the abbot, they have to suffer unfair criminal penalties, forced to disrobe. Even nowadays, they come to un-disrobe, but must retire from the position, both rank and job duties without any agency responsible, despite the provisions of section 70 of the criminal code stipulating that: Whoever acts according to the order of the official even if the order is unlawful, if the offender has a duty or believes in good faith that there is a duty to comply he shall not be punished, which is considered an exemption in the case of an unlawful order of the official, but it's not covered. Causing a decline in faith and destroying the stability of religious institutions. The researcher views that; this part of the criminal law may not be consistent with the principles of criminal and religious practice. It should be improved to be more-clear for the benefit of Buddhism in the future. For this reason, I would like to study and research this thesis.

Research Objectives

1. To study the theoretical concepts and review the literature on the grounds of impunity in the Thai penal code, compare the concepts of the theory on the grounds on the grounds of impunity in the French criminal law, German criminal law and British criminal law.
2. To study and compare the grounds for exemption from punishment in foreign criminal law, Thai law, and Buddhist discipline.
3. To analyze and compare the grounds for exemption from punishment in criminal cases under foreign laws according to the Thai criminal code and according to the discipline.
4. To find appropriate conclusions and suggestions, to further improve and amend the Thai Code in relation to the grounds of impunity to be consistent with the principles of Buddhism.

Literature Reviews

Exceptions in criminal cases and exemptions in the Dhamma Discipline will be given as two examples: Case 1: German criminal law clearly separates offenders and accomplices. When the action of the perpetrator or a co-offender exemption of punishment, reduction of penalty or increase of punishment will affect the offender as well or not, will have to consider “specific grounds for exemption from punishment” and “conditions of subjective punishment”, where both grounds, it is a fact that is outside the criminal structure as well. But there would be differences in that if the cause is “Individual exemption”, and it only affects the perpetrator. But if it is a condition of a subjective punishment, then it will apply to all offenders (Chanon Srisat, 2002, p.17), in which the provisions refer to facts or events that occur after the offense. Therefore, the meaning of forgiveness can be given specifically as the facts of the matter on the perpetrators that are not dependent on the illegality. In some provisions are provisions made by law. Seeing that any facts arising after the commission of the offence resulted in “punishment” has changed for the better that it is not appropriate to continue punishing the offender, for example, in the case of withdrawal from the offence. The reason why the law forgives the offender and by the good deeds of the offender in accordance with the facts provided by the law, the object of that punishment is also neglected (Etwa Harro Otto, 2004).

In case of exemption: The penalty that the sponsor will receive will mainly depend on the action of the principal. When there are many persons committing an offense and there is a cause for exemption or additional punishment. The problem therefore is whether the cause of exemption or increase in punishment will affect the supporter or not. French law must be considered separately. The event that occurred: Is it a personal cause or a cause in the nature of a lawsuit? or a cause that is mixed between a cause in the nature of a case and a personal cause. Namely:

1) Causes in the nature of the case (circonstances aggravantes et excuses reeles) if there is a cause for exemption and the cause of the additional penalty is due to the nature of the offence. or the nature of the case shall apply to sponsors as well regardless of whether the sponsor had wished or knew of the cause.

2) Personal reasons (Circonstantes aggravantes et excuses personnelles) Reasons for which a penalty should be excluded, if the cause is due to the offender or personal reasons would only have the effect of the person who had that cause. Therefore, personal reasons of the protagonist that do not affect the supporters in any way, such as impunity because they are children or exemption from punishment because he is an ascendant or successor or husband and wife, etc.

3) Reasons that have mixed characteristics, Exemption or increase of penalty in a mixed manner between the causes in the nature of the case and personal reasons because it is due to the properties of the doer. But that cause has the effect on the offense by making the seriousness of the offense heavier or lighter. Whereas this combination of events alters the severity of the offence. Therefore, it is considered as a cause in the nature of the case rather than. Thus, if it is the cause of increasing the penalty for any, it would also apply to supporters. Whether the sponsor knows or not, such as being an employee or premeditated. However, if the reason for increasing the penalty or the exemption of punishment, a mixed nature is present in the protagonist of the event, besides not having the effect of the culprit. Even the sponsor himself had no effect, because the supporter relies mainly on the fault of the principal causes of mixed nature include children supporting others to kill their parents, both children and the person who kills will be punished for killing others as normal (Chanon Srisat, 2002, p.9). The law uses the word not to be punished (section 73). The law provides for absolute exemption or non-punishment in which the court may not exercise its discretion in imposing any punishment or exemption. However, in some sections, conditions are also imposed on offenders (section 74) for greater clarity in provisions relating to grounds for non-punishment under Thai criminal law. From the study of non-punishment in Thai criminal law, it was found that in the Thai criminal code, prescribed reasons for not punishing offenders in many cases which has both provisions and general provisions and stipulated as a specific chapter for offenders.

In the Thai criminal code, the following clauses are used regarding non-punishment of offenders:

1. The offender shall not be punished (section 67, section 73).

2. The Court may inflict a lesser punishment to any extent than what is required by law for that offence (section 72).
3. To refrain from punishing the offender (section 205, last paragraph).
4. Order the court to release the offender.

Although the words in the Criminal Code are different. But the result of that statement is that the law does not punish all the offenders. (Exemption of punishment) or only some (reduction of punishment) itself (Pichai Nilthongkam, 2015, p.605).

As for the reduction of the punishment, the law allows the court to exercise discretion in punishing the offender, for example, “allowing the court to reduce the punishment but not more than one-half of the law” or the court to punish less than what the law provides for punishment at the minimum rate or will not be punished at all (section 81, last paragraph).

Research Methodology

This research is a qualitative research by means of documentary research, both Buddhist scriptures and Buddhist scriptures and academic books, related to the law on the grounds of exemption in criminal cases in the criminal code by bringing content from British criminal law, theory textbooks German criminal law, the theory of French criminal law and exemption from punishment in the Dhamma and discipline and information to discover guidelines and legislative updates, concluded and made appropriate recommendations for improving the law on the grounds of impunity to be in line with the principles of Buddhism.

Results

Exemption under German criminal law describes a person's specific act as an offense and imposed penalties may not always be punished, if it appears that such act is exempt from punishment by law German criminal lawyer showed that the establishment of a specific cause for exemption from that penalty. It can be done without contradicting the principle of law in any way, simply that “no punishment without evil”. “When there is evil, there must be

“punishment” always, so any offence. That action, even if there is evil, there may not be a penalty for that action. The law provides for the exemption of that specific penalty. There are reasons that are beyond criminal structural reasons.

Exemptions under the French criminal law featured in “personal cause” is divided into 2 parts: (1) the law exempting punishment must consider conscience, intellect, and independence in making decisions for wrongdoing; (2) impunity law must consider the appropriateness of punishment, when the action of a person completes the criminal structure in terms of legal substance including the substance of the action mental message. In general, the person's actions are criminal offenses according to the preliminary law. But the action must be taken into account. “Grounds of impunity,” which is outside the criminal structure and considers a person's actions to be criminal.

Exemption from penalties under the British criminal law, an action does not make the perpetrator of the action an offense. If there is no evil mind, that is, the mind of crime. These two intentions and actions must be combined to make them a criminal offence. If there is only one, both are not complete. It can be regarded as an exemption from punishment British crime.

Thai criminal law, the criminal code has provided for the exemption of punishment for the offender by considering both the sense of responsibility of the offender, the other reasons that the law exempts punishment for offenders, which are provided for in the general provisions and specific provisions criminal code of the Kingdom of Thailand.

Exemption from punishment according to the Dhamma and Discipline, when it can be concluded, there are 4 reasons that the monk who commits an offense as specified in the Dhamma Vinaya but not to be punished, that is, not to be a misdemeanor, consisting of: be madman, relapse (insane mind), because of insanity (mind distracted), 3) a monk who is restless because of his feelings, even though he is unconscious, or because his mind is distracted but not insane, and 4) a monk who establishes the precepts. called the commandment.

Discussions

An individual's actions that are stipulated as an offense and punishable may not always be punished. If it appears that such act is exempt from punishment by law German criminal lawyer showed that the establishment of a specific cause for exemption from that penalty can be done without going against the law in any way featured in "personal cause" is divided into 2 parts: (1) the law exempting punishment must consider conscience, intellect, and independence in making decisions for wrongdoing; (2) impunity law must consider the appropriateness of punishment when the action of a person completes the criminal structure in terms of legal substance including the substance of the action mental message consistent with the research of Chanon Srisart, it was found that the diagnosis of offenses according to the structure of the French criminal law consists of (1) element legal (2) element materiel (3) element moral). In addition, all three essential actions must be taken into account as "causes of non-liability" consisting of (1) the cause of the action (cause objective), (2) the cause due to the person (cause subjective) that the person's actions would be guilty and must be punished according to the law or not. The adjudication part according to the German criminal law structure consists of (1) elements stipulated by law (Tatbestandsmassigkeit) (2) illegality (Rechtswidrigkeit) (3) An evil (Schuld), and besides that shall complete the acts of the criminal structure. To consider the causes outside the structure of the offense, consisting of (1) grounds for exemption from penalty, divided into 2 categories: (1.1) grounds for prohibiting punishment, (1.2) grounds for forgiveness, and (2) conditions of subjective punishment divided into 2 types (2.1) Conditions of actual subjective punishment (2.2) Conditions of subjective punishment (Chanon Srisat, 2002, p.80).

New Knowledges

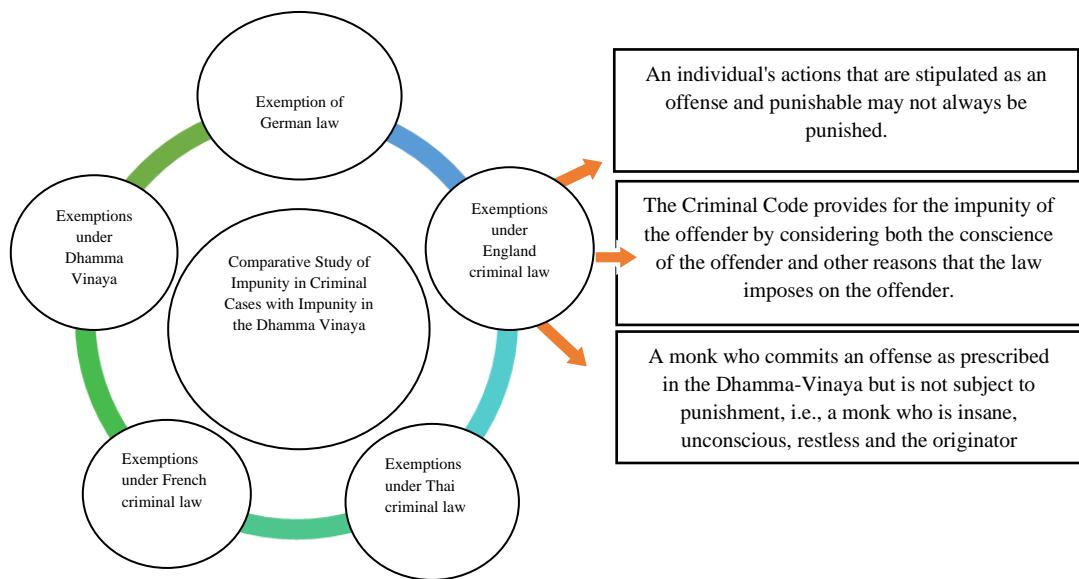


Figure 1: body of knowledge from Research

Conclusions

From the study of impunity in criminal law by studying French criminal law, German criminal law, England criminal law on the grounds of impunity in the Dhamma Vinaya, it was found that the academic debate on the grounds of impunity. It arises from the fact that Thai lawyers have different concepts in diagnosing criminal offenses. Where Thai lawyers have tried to apply concepts and theories of foreign criminal law, especially French criminal law, German criminal law, and England law to explain in Thai criminal law. Including a comparative study of the exemption of punishment in the Dhamma discipline.

References

Gomes Kwanmuang. (2007). **High Criminal Law**. Bangkok: Winyuchon Publishing House.

Math Na Nakorn. (1986). **Criminal Offense Structure and Academic Controversies about Mens Rea**. *Journal of Law*. Volume 16, No. 3 (September 1986).

Kanit Na Nakorn. (2020). **Criminal Law, General Region**. 7th edition. Bangkok: Winuchon Publishing House.

Kanit Na Nakorn, Thani Woraphat. (2020). **The structure of criminal offenses**. Sukhothai Thammathirat Law Journal, Vol. 31, No. 2. (July-December 2020).

Chanon Srisart (2002). “**The problem of intent in criminal law**”, Master's degree thesis. Faculty of Law graduate school Dhurakij Pundit University 2002.

Pluem Chotthayangkun (2016). **Lectures on the Sangha Law**, 3rd edition, Bangkok.: Mahachulalongkornrajavidyalaya University Press.

Phraphromkunaporn (2009). **Buddhist Dictionary**. Vocabulary edition. 12th edition. Bangkok: Chanpen Publishing House.

Pichai Nilthongkam (2015). **Civil and Commercial Code**, Book 1-6, Criminal Code. Bangkok: Attaya, 2015.

Surasak Copyrightwattanakul (1992). “**Academic controversy. on grounds for impunity**”. *Journal of Law*. Vol. 22, No. 1. (July): 76.

Etwa Harro Otto (2004). **Grundkurs Strafrecht: Allgemeine Strafrechtslehre**. 7. Auflage, Berlin.

Hans-Heinrich Jescheck (1988). **Lehrbuch des Strafrechts: Allgemeiner Teil**, 4. Auflage, Berlin.