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## A Study of Administrative and Developmental problems of Bangkok Metropolitan city

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### **Introduction**

Law is primarily perceived by most people to be a set of rules promulgated by a legitimate authority (such as parliament, city council, administrative councils or international body) designed to regulate societal, group or state behavior. As such is it usually seen to be simply prescriptive in identifying what kinds of acts are not allowed, thereby legalizing all other actions. Although there are laws that lay out affirmative duties (such as a duty to care for a child who belongs to one's family, the duty of nations to collaborate to achieve some human rights objectives), the vast majority of laws are prohibitory in nature and seek to limit individual or group conduct. What is not forbidden is therefore implicitly allowed. If law is a system of enforceable rules governing social relations and legislated by a political system, it might seem obvious that law is connected to ideology. Ideology refers, in a general sense, to a system of political ideas, and law and politics seem inextricably intertwined. Just as ideologies are dotted across the political spectrum, so too are legal systems. Thus we speak of both legal systems and ideologies as liberal, fascist, communist, and so on, and most people probably assume that a law is the legal expression of a political ideology. One would expect the practice and activity of law to be shaped by people's political beliefs, so law might seem to emanate from ideology in a straightforward and uncontroversial way. "Law is a rule of civil conduct, prescribed by the supreme power of a state." According to this definition, the possibility to do injustice is as much low, as a command to do justice. All that is necessary, according to this definition, to make the command a law, is that it issue from a will that is supported by physical force sufficient to coerce obedience

Order maintains harmony and peace in the society.

Order controls social behavior.

Order brings limitations in the social activities.

Order controls offender's behavior/acts & activities.

Order prevents unlawful action/activities of the law breaking tendency or law breaking elements among the peaceful society. The law has many kinds of meaning and its meaning may have got variation as various conditions such as the character of different society, changed situation, the desire of the people in a particular society, but important principle and general real law meaning, there 4 types:

1. Law must be the obligation.
2. Law is allocated by the man who has the power in society.
3. Law is used to force while everybody has to acknowledge openly.
4. Law must have obligated condition with violated person.

### **Major causes of Maintenance of Law & order:**

The task and function of local administration organization has got the importance both in reflection on the level of decentralization and having freedom of local administration organization within any other states in the side of the level of political and administrative institutions of local administration organization and in the side of structural determination within local administration system. In this part, it will emphasize to suggest the idea in providing the task and function of the local administration organization to appear generally what its principle and formation are, what local administration organization can do or not it lays on the way of thought and any determination and at the same time in the task and duty that the locality provided has the condition or not, so it becomes the background for laying out the principle and formation in arrangement of task and function of local administration organization that has appeared generally in which it consists of 3 main ideas below

1. The task as in the legislation of law (Ultra vires) the principle in determination of the task and function for local administration organization in this way, means the task of local administration organization that has how much limitation and what it covered in, will be assigned by the law given the authority to local

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administration organization to be able to manage in such a task. Besides it displayed that the task which local administration organization can provide and do, will have the law to approve or denote as the authority and the function of local administration organization if local administration organization has operated to do some affairs that the law has never denoted, this us regarded as to do with violation of limitation of the authority and duty that oneself can do or it is to use the authority over the law assigned so within such a principle, the task and duty of local administration organization is limited by the law itself. If to consider from the point in the matter of only affair in the state to hold as the principle in providing the task and function as in the law maybe to see that being free for local administration organization according to the principle of self-government which will have rather limit because of local administration organization, it can provide specific duty that the law denoted only, for example, if the law denotes that to wipe out the garbages is known as the duty of local administration organization, it can operate to manage such a task but if local administration organization will operate to construct school, even though it will be the desire and the need within society of the locality, in this case, it is regarded that the said local administration had used the authority over than the law assigned indeed etc;

2. The affairs according to general competence within the state organization that the system of local administration has management of affair as in general competence, this means local administration can manage the duty broadly as far not to do violation to the law of affected to the authority of other administration institution, that is, it is to hold the principle of the necessity and the desire of society significantly; if society in the locality has the cause to call for what they want, local administration organization can operate in such activities in order to respond to the problem and the desire of society possibly, therefore in the principle of law, it did not have evidence to identity any task and important function for local administration organization to promote in the detail of activity but it will give the freedom to local administration organization to be able to go on any activity to respond the desire within society of oneself.

To provide the task and function according to the principle of general competence is to emphasize at the desire of “local society” which is the matter of the management but not to be “the affair” or task or a public service to force to do, so local administration organization does not have got the specific task and duty of public management that oneself has been proceeding now but it still means all over the provision to give a public service which probably will take place in the future, in case, it belongs to the necessity and the desire of society in the locality also, for example, supposing, one day nest the local society wants to expand and develop oneself for the prosperity as more the town; and the necessity in the system of the mass transportation inside the locality become the necessary factor; and local organization then can operate to manage a particular task immediately if we ourselves have potentiality enough to do, but not to be necessary to enact the law to give the authority in the provision to complete such a task etc;

In the country to hold the principle in managing the task in the principle of general competence, it had reflected to see the background and historical development that reflected about the strength of local society, so the country which holds such a principle then to have got development of modernized state which come from oneself-association of community-based such as Union of Germany including the group of the Nordic countries in the zone of Northern Europe for the idea developed countries about public law rather progressive such as France to hold this theory at the same by the way this theory is named “Free Administration” for in the countries around Asia, it has appeared the evidence to manage the affairs and function in this way at the same such as Japan, South Korea etc;

However, even though in the aspect of theory it made us to see that this general competence is going to reflect on being freedom of local administration organization management rather high but in the practical way then local administration organization may provide doing rather limited affairs, that is, owing to other limitation especially financial matter resource enable us to give public service in only certain sides, for example if the level of being the city and the growth of economic of society in locality to be in high level; the people in locality and local administration organization itself maybe see the necessity in the provision to have large airport in order to support economic development but in practical way, local administration organization may have got the budget and managed the base to collect rather limit income which causes the provision about such a public service over the capacity if oneself as limited as possible etc;

3. Mandatory Delegated Function, general competence assigned mandatory delegated function for local administration will have two main systems mentioned above, however, there still is the evidence of the

principle in the provision of mandatory delegated function in another character which likes hided inside, that is, task and function to be entrusted that means the principle to manage the task and function for local organization to be regarded that the task and function in this group as the affair of the state that only the state will held up, nevertheless, the state must entrust local administration organization as the performer instead.

The task in this group likes rather to be the task and function to be known as the basic necessity of the state while the state must held up under the frame of method; the state has determined because of necessary reason, so the state has “entrusted” or “is authorized” (delegate) such a function to local administration organization to proceed providing instead; in practical was, it is known as the task in this group regarded as the function that local administration organization must provide to do while to do must carry out accordance of the direct way and practical method of the state assigned; and the sample of this task group such as to survey population census, census records were, election provision register work and registered me of premilitary age work.

Besides there is still one interesting case, for instance, even though in Japan the local organization will have the high freedom in providing public service which lays on general competence with high potentiality of finance but there is another point which had been more arguing, that is, in case of Japan, there is more or less task which is grouped to be the task; the state entrusted to the locality to service the public through the determination of law to every level of local executive committee to have the duty as the authority of the state the same as that of a case of finance, when considering in this point, that means besides the local administration organization “to have the function” must provide operation of such a task but to do that has to do within norm and the regulation of the state also, so the matter became the main point that the local administration organization called for to have correction in the period of the end of last 20<sup>th</sup> century, it is because, it would be contradiction of principle which is still the important opportunity to enter in an interference to serve the public of the locality by the authority of the government of the nation because of the said service to be determined as the task and function entrusted.

#### **Views of Experts on Problems**

Although Bangkok Metropolitan Administration will have the way of practice in the procedure of the B.M.A. officials according to the Act of Building control in 1979 but the problem of building construction and adaptation in the violation of law without limitation but with a daily increase. The problem in law enforcement can be separate out as follows

#### **1. The problem Bangkok Metropolitan Administration officials.**

To responsibility, it is the important condition which makes the law enforcement effective according to the objective of the building controlling law as observed below:

##### **The official do not inspect the building construction and adaptation**

As found, BMA. Officials who have the power of inspection may doing construction and adaptation without being permitted, especially in case of uncorrected house plan. BMA. Specifies the district office and the division of building control to set up the officials in the examination and report of construction at least fifteen days time whether the construction is correct according to the permitted plan. If the plan of construction is not correct, it must be reported to the commander, and if the result of investigation says they are faultily to which officials must respond. Although there will be mentioned regulation, it appears that the construction and adaptation of construction in the legal violation since imitating unpunished the wrong doers of when the committee informed BMA. Appeal these short coming in the case of the officials without can inspection and control of building.

From the interview of the building specialist about the practice to the law of the building control, the inspection officials views that

##### **1. Mr. Bamrung Choonhasawasdikul** has the opinion that

Bangkok Metropolitan Administration officials have no efficiency but sees the several benefits although he knows law very well, and advise the wrong doers. Mostly the officials allowed the building constructers of making a wrong plan and then of revising it afterwards. 80 % of buildings permitted by BMA are illegal. Most of the buildings have been built for 3 to 5 years but why did the officials said those building's plans were wrong, this means that the officials were not strict in the regulation of construction.

##### **2. Mr. Mati Tangpanit** views that

Most of the buildings in Bangkok Metropolitan Administration were illegally built as much appeared; it seems the legal constructed builds are have found in BMA. It is not necessary to speak of other matters, may one see the regulation of the house back, and setting up the iron cage, all these done are illegal. This clearly appears that but the officials are not interested in an inspection but may seek for the personnel benefit.

**3. Mr. Chavapong Chamniprasart** has got his opinions that

BMA.officials have neither strictness nor proficiency in inspection about the impermissible construction and adaptation, and also the case of safety in construction. There are specified officials to perform their duties completely, namely although they can inspect wrong doing, they cannot compel every demolition. If they can do, a lot of faults remain which will bring about a selection of practice which all gives rise to the self- exploitation.

**2. Obstacle in the officials' procedure.**

The problem of local officials in the law enforcement is generally well-known that one case occurs from the officials' correction. Besides, there are other problems which are obstacle in this procedure.

**Obstacle in lack of officials**

In case of law administration for achievement, the number of officials and a quantify of work must have the mutual relationship, e.g. in case of Pranakorn District Office (1992) the division of building control has 6 officials in responsibility in the control or operation under the following building controls:

- 1) Consideration and permission in contraction, adaptation demolition and remove of building, permission to renew the license reviser of an around plan details of plan permitted must be all right.
- 2) A control of construction an adaptation, demolition and remove of buildings are correct and agreed to an around plan, details of plan permitted and also to the methods or condition that local official specified in the license.
- 3) The procedure of issuing order to the owner of building construction and adaptation in the trespass of law in the build control to stop a mentioned behaviors and demolition of the building and practice for the demolition of the building.

**Obstacle in the officials' knowledge and ability (skills)**

The officials who have the power in a control of construction and adaptation according to the law of building control, namely the official technician and the inspector, especially the local officials will have low qualification e.g. high certificate and diploma but not many B.A. degrees. At present all there are more 10,000 graduated civil engineering all over the country, of whom nobody does not want to be a government officer but likes to work to public in the private sector. Similarly, the technician and the inspector who have the law power, in return, have lower qualification than the inspected persons. To allow the technicians who finish the certificate to approve the building plan in 20 floors height designed by a civil engineer or architect who is doctorated and experienced. Besides, the civil engineering and the inspector have a lack of knowledge in particular, the low of building control as the government law (public law) which has the procession of exercising the administration power to this problem.even if the law official of the government has the lack of good knowledge and understanding since the limitation of law study in B.A. degree has not been stressed in the particular skills.

**Obstacle from people**

The problem of using an enforcement Act in 1979 is derived from the limited knowledge of people who are contractors and adaptator of building cause the officials to do the wrong duty and be the source of adapting the wrong building, e.g. in the constructors are likely to calculate and give money to the officials who have a power in the law responsibility.

**Major Damage Caused due to Law & Order (Demolition):**

Sample case of Judge, case the occurred the problem in the area of Bangkok Metropolis the Judge of case of the request to demolish the building.

Such as case occurred between the complainant part that is, the governor of Bangkok Metropolis and another part is the defendant, Mrs. Manirat Raksaphon by the accusing that I am the Local official as in the building controlled act in 1979, to have got the authority to judge and issue the license to construct the buildings, adapt, add to the buildings including to order in improving or stopping the construction and to

order in pulling down the building throughout the request to the supreme court to force the construction and the building adaptation to concord with the law in order to control in the area of Bangkok Metropolis where the complainant has given the authority to the district director or the district head in each district to act the civil service public administration instead.

The defendant who is the owner and occupies of 4 floors, row buildings in the area of Bangkok Metropolis in which the built adapted, added the row building, the residence of the said defendant by the way to construct consisting of 2 floors of building: as the modernized style, concrete floor added with steel on every floor covered with the area of open side walk on the back side of row building of the defendant and there are to construct, add the roofdeck on the 4<sup>th</sup> floor building as the structure with the ironwork roof and to tile, that is, the defendant was not permitted by local authority as in the low while committed to violate the bill of Bangkok Metropolis, the case of Building construction control in 1979 determined that row houses, row buildings must have the empty places without the covered things using as the sidewalk at the back of the building at least 2 meters as well as determined to add the building by increasing the floor or boarding any floors including since 6 squares meters onwards it must be permitted. The authority of the complainant who was authorized to examine and found that the defendant made a mistake the law and the regulation of Bangkok Metropolis, so the complainant has ordered to declare for acknowledgement as the letter in order that the defendant must stop such a building addition at the same time, to inform by this letter that the defendant must pull down the part to be added of the building completely within 30 days since the day received the order. The complainant had complaint to examiner official at Bangphat Metropolitan police station to sue the crime with the defendant while he had confessed his guilt; and the District Court, Thonburi judge and fined on the amount 3,000 baht, the end of case, since until now, the defendant has never pulled down the added building out at all and not to use the right to appeal the order of local authority as in the bill. Request to force the defendant to pull down the part that the defendant constructed and added to covered with in the back side of the building and added things on the roofdeck of the row building, and if the defendant refused to pull down in this case, the complainant can pull down by oneself possibly, but the expense about this belongs to the defendant's responsibility entirely.

In the point the defendant submitted a petition that the act of the legislation or statue to control the building in 1979 had enacted to give the authority to the local officer to order the building owner to submit the request for grant and to rectify, change the illegal constructed and local bill constructed building that will have the authority in the order to pull down but it appeared that no any local authority practiced as in such a law, inversely, there was the order for the defendant to pull down the disputed building that made the acting missing the procedures of the law, thus the complainant did not have the authority to order the defendant to pull down that building and such a problem, the Appeal Court had judged that, as the complainant had got the order for the defendant to pull down the building in the added part without permission, that is to issue the order as in the act to control the building in 1979, in this case, it had shown that the defendant's behavior cannot rectify and change correctly, so the complainant had got the authority to issue the order for the defendant to demolish the added building immediately and the defendant part did not point out reasonably that the adaptation and addition of the defendant's building mentioned above inspite of it acted violating the regulation of Bangkok Metropolis, in case to control the construction, but it is possible to rectify it correctly and it will enable the defendant to receive the legal right.

In the said accusation of the Appeal Court, the defendant did not submit a petition to dispute that the adding building can be rectified and adapted correctly as in the regulation Bangkok Metropolis, therefore the fact in this point can understand that the defendant's building addition had been illegally done and violated to the regulation of Bangkok Metropolis also while the added building cannot be rectified and changed correctly as in the regulation of Bangkok Metropolis, but now the complainant on behalf the local authority had got the authority to order the defendant to pull down or make the request to the district court to force to pull down it as the bill to control the buildings in 1979 which was the act to force in using in these days; and all the petition cases were unreasonable, so the Supreme Court had judged to confirm and let the defendant pay the lawyer's charge instead 200 baht also.

#### Cases Registered under Various Laws:

#### The Judgment in case, the act to control the building.

The judgment on the case between the complainant, the governor of Bangkok Metropolis, and the defendant part, Mrs. Waruni Warasuntharkan, by the complainant part had accused that oneself is the local authority as in the act to control the building in 1979 which the complainant was to entrust the authority to the district director to operate the civil service instead of oneself; and the defendant submitted to obtain the license to repair the buildings, 2 storages, row building in the area of Bangkok Metropolis and the said building was the building constructed before the regulation of Bangkok Metropolis the subject to control the building construction in 1979, issued in using to force by having got the line of the building and space to be contradicted with such a provision of law, that is, the defendant had offered the layout of the area of the plan to repair the building according to the request, later the authority of the complainant had examined the said building found that the defendant had repaired the building and built and adapted together with addition of the said row building in the backside of the building with the construction of the roof base consisting of stump post, horizontal beam, two beams of layer to support the roofdeck, the roof was expanded at the floor on the second storage and added at the roofdeck and all of them are the concrete with ironwork, added the roof to cover the step as the concrete with ironwork, to construct the brick wall to put up the rooms on the second floor; and such a building adapted construction opened the sidewalk in the backside of the building that must be the empty place without the roof or the covered things as the sidewalk in the backside of the building closed with wide not less than 2 meters to construct, adapt and add the building belonging to the defendant know as to violate the act to control the building in 1979 and the regulation of Bangkok Metropolis, in case, to control the building construction in 1979 that is the unimprovable and unchangeable action correctly as in the said regulation later the Director General, Bangkok district, acting civil service stead of the complainant on behalf of legal local authority had submitted the letter to charge criminal case with the defendant in the guilt because of the building adapted construction not to follow the allowed plan and the defendant had testified, confessed and consented to make comparison to be fined, the amount, 5,000 baht, the ended.

The complainant had got the letter to order the defendant to stop the building construction that made a mistake from granted plan while he had got the letter to order the defendant to rectify the said building as in the model to receive permission along with the letter to order the defendant to pull down the building in the part to be built out of the plan to finish within 30 days since the day to receive the order, that is, the defendant received every order letter, but he had never followed such on order and never demolished the living building but the constructed place adapted, added made a mistake from plan at the area to be allowed a license to repair but contradicted with the regulation of Bangkok Metropolis including not to use the right to appeal to the committee to judge in the appeal as in the law also and request to force the defendant to demolish the living building in the part to construct, adapt and add to mistaken from plan in the license to repair out of the row building, and if the defendant does not practice the order, the court will permit the complainant to pull down it in the part to construct, adapted and added mistaken from plan mentioned above and let the complainant demolish it by oneself as in the act to control the building in 1979 for the expense in demolishing to be in a charge of the defendant all.

The defendant testified that he did not have the authority to charge to court since he was not the local government service official as in the act to control the building in 1979 while had no the authority in judging to permit or prohibit in building construction, adapted, demolished moved or order to improve, change, or stop the construction or order to pull down the building or request to the court to force the building construction else and the complainant might not consign the authority to the district director to act a civil service administration instead of the complainant, because it is illegally authorized right now; and the person to be authorized did not have the right more than the authority offer, so the defendant who is the owner of the land where there is building construction on such an area; and the defendant had requested in repairing 2 floors, row building mentioned above and had permitted already, the defendant constructed, and adapted the said building as in the act to control the building 1979 while the defendant had added the floor or expanded at the second floor, 6 square meters wide only, not to go against the regulation, that is to say, the defendant had added the root base, a past which supports a beam, for increasing the step room covered the roof and to add the beam to support against the second floor and the beam to support against the roofdeck for carrying the weight of the building enough with the building structure in order to secure the people to live in for protection if the harm maybe happening from the collapsibility, to repair of adapt for being the order and beautiful, not to go against to support the roofdeck

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to increase the weight but not to be over percentage 10, it must be permitted before as in the legislation, however the sidewalk in the backside of the building to be nearby both sides including the building to be closed surrounding already on 3 sides, not to use as the way to walk through at all, the defendant used such an empty place in the backside of the building to develop to be the residence of him in order that it is orderly and beautiful for the building but not to contradict with the regulation of Bangkok Metropolis, because this building was constructed before to enact this Bangkok Metropolis legislation in 1979 to force in using even though the building line and space of it will be contradict with the regulation, it never minds, it is known that the construction had been made up before, agreed with the regulation of Bangkok Metropolis right now.

### **Concluding Remark**

Human is a social animal lived together as group and community; the prosperity of human society in more to make human society become complexity as instinct of humans then liked to do anything arbitrarily, if without controlling behavior of humans, they have to perform in things over limitation, the more prosperous society, however the necessity is to find out standard in assigning behavior of humans to be regarded as the same standard more and more, that is because, for using force generally with everybody in the aspect of rule and regulation or character that is to assign the guideline of practice in daily life since birth until death, criterion and regulation human behavior must have development and evolution continuously and forever, so we would not refuse that the law has no the necessity and concordance with our lives. At present the law has come to concern more our lives, for example, since birth we have to declare born registration to have the birth certificate; and when the age is completed 15 years old, we have to register our identity cards, the marriage, to get marital registration, otherwise it is not completed legally between being husband and wife of the couple and death must register “death” called “Death registration” besides there is to manage the heritage which the law comes to concern always, furthermore, in the daily life of ours, we have still to concern the others such as to go shopping and the law comes to concern necessarily daily life of human has to concern the trade or working as employee, employer or it may be the government officials but it must have the matter of law concerning always whereas in the case of the country, to be the same, the people have the duty to take responsible for the country much more, for instance, to behave one own as the law, everybody in society practice the duty in paying income tax, even though to work in the position of government officials also, for Thai people, the different laws have to come to concern in many copies of law, labor law, taxation law, civil law, commercial law, criminal law, it said that the person does not know what the law is, cannot attest that because of one own unknowledgeable, so he/she committed a mistake, that is, if individual attested that one own does not knows unreal, when attesting like this, one who made a mistake may be exculpated from guilt need not be punished, that will be to close up ears and eyes until it can cause the people not to know law since whoever knows law, he must be impeached.

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