

# The State of the Art of Key Public Service Provision-related Laws under Digital Economy in Thailand

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## ABSTRACT

To promote good governance in Thai state agencies under the digital economy, a huge number of laws was promulgated in Royal Thai Government Gazette as troubleshooting tools for the problem of Caveamus Expertum, opportunism, and ineffectiveness of Thai state agencies. However, there was no systematic study of the arts of these laws under a digital setting. This study's objective was to investigate the state of the art of key public service provision-related laws under the digital setting. Documentary research was employed in this study. The findings revealed that 106 key laws consisted of 59 IT-based laws (55.7%), 24 public and private laws (22.6%), 17 money-oriented laws (16.0%) and 6 planning-related laws (5.7%). There are five issues as follows: (1) the 106 laws revealed that Thai state agencies under Digital Economy still employed the Weberian model, (2) centralization by a comprehensive network of laws was the Thai state agencies' strategy for controlling their general public administration -based and IT-based affairs, (3) general public administration -based affairs were regulated by a set of laws in order to promote good governance in the public sector, (4) IT-based affairs were also regulated by a set of laws in the following areas: database, data governance in the public sector, knowledge management, e-government, and cybersecurity; telecommunication; monitoring and controlling of money supply and money transfer in a cashless society and digital economy, (5) the 106 laws lessened the complexity of Thai state agencies' setting, both within and beyond Thailand's jurisdiction. Though many laws reduced Caveamus Expertum, opportunism, they also led to ineffectiveness in Thai public administration.

**KEYWORDS** Public Service Provision, Laws, Digital Economy, Thailand

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## I. SIGNIFICANCE OF PROBLEM

Law is one crucial mechanism for Thai state agencies according to Western public administration. The formal application of Weberian bureaucracy in Thai state agencies was made by the Thai government in 1928 with the promulgation of the first Civil Service Act 1928 in the era of Rama VII after the publication of Max Weber's "The Theory of Social and Economic Organization" in 1922 (Siffin, 1966; Weber, 2019). To promote good governance in Thai state agencies under the digital economy, a huge number of laws were promulgated in Royal Thai Government Gazette as troubleshooting tools for Caveamus Expert's problems, opportunism and ineffectiveness of the Thai government agencies. However, there was no systematic study of this phenomenon. Hence, this study's objective was to investigate the state of the art of key Thai public service provision-related laws under the digital setting.

## II. METHODOLOGY

Documentary research with primary data from Thai laws and secondary data from various sources such as textbooks and online materials was employed in this study. The scope of the study was only on law for Thai state agencies in general. This does not include specific laws for certain types of agencies such as state enterprises or public organizations.

## III. REVIEWS OF LITERATURE

In this paper, the setting of contemporary public administration was reviewed here. Due to the emerging of IT, the digital economy and the cashless society, public administration's external setting could be categorized into two parts – state-based setting and stateless-based setting. The first half of the set was the setting under states controlling. It consisted of governance among the public, private, and people sector, good governance, data governance, and government-based cryptocurrency. The latter half was out of states controlling such as deep web and dark web, non-government-based cryptocurrency, and pirate organizations. Like Microsoft, Apple, Tesla, Amazon, and Facebook, the net States were in both settings because they mainly followed local laws of every country. However, they sometimes disobey every country's local laws (Peters, 2001; Gohwong, 2018a, 2018b, 2019a; Wichowski, 2020).

## Finding

The finding was that there were 106 key laws for providing public goods and services of Thai bureaucracy under digital setting, shown in Table 1, as follows: 59 IT-related laws (55.7%) as the highest, 24 public and private laws (22.6%), 17 money-

oriented laws (16.0%) and 6 planning-related laws (5.7%) as the lowest.

**Table 1 Classification of Thai laws**

| No | Type   | Lists of laws   |
|----|--|---|
| 1  | IT-based laws (59 laws)  |   |
|    | 1.1 Data Governance and Information Security – oriented laws (25 laws) | Electronic Transactions Act 2001; Electronic Transactions Act (No. 2) 2008; Electronic Transactions Act (No. 3) 2019; Electronic Transactions Act (No. 4) 2019; Notification of the Electronic Transactions Commission Re: Printout Certification 2012; Notification of the Electronic Transactions Commission Re: Printout Certification Authority 2012; Notification of the Electronic Transactions Commission Re: Guidelines and procedures for the preparation or conversion of documents and text into electronic data 2010; Notification of the Electronic Transactions Commission Re: Guidelines and procedures for Certificate Policy and Certification Practice Statement of Certification Service Authority 2019; Notification of the Electronic Transactions Commission Re: Cloud Service Guidelines 2019; Electronic Transactions Development Agency Act 2019; Royal Decree Prescribing Civil and Commercial Electronic Transactions Exemption from the Enforcement of Electronic Transactions Act 2006; Royal Decree Prescribing Rules and Procedures of Electronic Transactions in the Public Sector 2006; Notification of the Electronic Transactions Commission Re: Policy and Practice of Personal Information Protection of Government Agencies 2010; Notification of the Electronic Transactions Commission Re: Policy and Guidelines for Information Security of Government Agencies 2010; Notification of the Electronic Transactions Commission Re: Policy and Guidelines for Information Security of Government Agencies (No. 2) 2013; Royal Decree Governing Secure Methods in Electronic Transactions 2010; Notification of the Electronic Transactions Commission Re: Types of Electronic Transactions and Criteria for assessment on the scale of impact of electronic transactions pursuant to Security Techniques 2012; Notification of the Electronic Transactions Commission Re: Security Standards for Information Systems pursuant to Security Techniques 2012; Notification of the Electronic Transactions Commission Re: List of agencies or organizations or divisions of agencies or organizations that are considered as critical infrastructure of the country, which must comply with strict safety procedures which must act in strict, safe procedures, 2016; Official Information Act 1997; Digital Development for Economic and Social Development Act 2017; Personal Data Protection Act 2019; Cybersecurity Act 2019; Digital Government Administration and Services Act 2019; Digital Economy and Society Council Act 2019 |
|    | 1.2 Regulator-oriented laws (10 laws)                                  | Telecommunications Business Act 2001; Telecommunications Business Act (No. 2) 2006; Broadcasting and Television Businesses Act 2008; Radio Communications Act 1955; Radio Communications Act 1961; Radio Communications Act 1992; Thai Public Broadcasting Service Act 2008; Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act 2010; Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act (No.2) 2017; Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act (No.3) 2019   |
|    | 1.3 Property rights – based laws (10 laws)                             | Copyright Act 1994; Copyright Act (No. 2) 2015; Copyright Act (No. 3) 2015; Copyright Act (No. 4) 2018; Patent Act 1979; Patent Act (No. 2) 1992 and Patent Act (No. 3) 1999; Trademark Act 1991; Trademark Act (No. 2) 2000; Trademark Act (No. 3) 2016  |
|    | 1.4 Computer Crime - related Law (14 laws)                             | Computer Crime Act 2007; Computer Crime Act (No. 2) 2017; Ministerial Regulation prescribing a letter of seizure or seizure of computer systems, 2008; Notification of the Ministry of Information and Communication Technology Re: The Identification Form of The Officer under the Computer Crime Act 2007; Notification of the Ministry of Information and Communication Technology Re: Criteria on Employee Qualifications under the Computer Crime Act 2007; Notification of Ministry of information and communication technology Re: Criteria on Employee qualifications under the Computer   |

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|----|--|--|
|    |  | <p>Crime Act 2007 (No. 2); Notification of the Ministry of Information and Communication Technology Re: Rules for Maintenance of Traffic Data by Service Provider 2007; Notification of the Ministry of Digital Economy and Society Re: Appointment of the Computer Data Screening Committee under the Computer Crime Act 2007; Notification of the Ministry of Digital Economy and Society Re: Criteria, Duration and Procedure to Stop the Dissemination of Computer Data or the Removal of Computer Data by the Competent Official or the Service Provider 2017; Notification of the Ministry of Digital-Economy and Society Re: Characteristics and the Method of Sending Data Deemed Not Causing a Disturbance to the Recipient 2017; Notification of the Ministry of Digital Economy and Society Re: Criteria, Period of Time and Procedures for Blocking Dissemination or Deletion of Computer Data by the Competent Official or Service Provider 2017; Announcement of Ministry of Digital Economy and Society Re: Appointment of The Comparative Committee under the Computer Crime Act 2007 2017; Regulation of Ministry of Digital Economy and Society on Criteria and Procedure for Recruiting Qualified Members of the Computer Data Screening Committee 2018; Regulation of Arrest, Control, Search, Conduct and Prosecute offenders under the Computer Crime Act 2007</p> |
| 2. | Public and Private laws (24 laws)                                  |  |
|    | 2.1 Public laws<br>(20 laws)                                       | <p>Constitution of the Kingdom of Thailand 2017; Administrative-oriented laws (Administrative courts and administrative court procedure 1999; Administrative courts and administrative court procedure (No.2) 2002; Administrative courts and administrative court procedure (No.3) 2005; Administrative courts and administrative court procedure (No.4) 2007; Administrative courts and administrative court procedure (No.5) 2008; Administrative courts and administrative court procedure (No.6) 2011; Administrative courts and administrative court procedure (No.7) 2014; Administrative courts and administrative court procedure (No.8) 2016; Administrative courts and administrative court procedure (No.9) 2017; Administrative courts and administrative court procedure (No.10) 2018; Administrative courts and administrative court procedure (No.11) 2018; Administrative courts and administrative court procedure (No.12) 2019; Administrative Procedure Act 1996; Administrative Procedure Act (No.2) 2014;</p> <p>Administrative Procedure Act (No.3) 2019; Liability for Wrongful Act of Officials Act 1996; Determination of the Powers and Duties among Courts Act 1999; Arbitration Act 2002; Arbitration Act (No.2) 2019)</p>  |
|    | 2.2 Private laws<br>(4 laws)                                       | Criminal Code; Criminal Procedure Code; Civil and Commercial Code; Civil Procedure Code  |
| 3. | Money-oriented laws (17 laws)                                      |  |
|    | 3.1 Non-government-based Crypto-currency-related laws<br>(13 laws) | Emergency Decree on the Digital Asset Businesses 2018; Emergency Decree on the Amendment of the Revenue Code (No.19) 2018; SEC's eleven regulations in Royal Thai Government Gazette on 16 July 2018 for setting procedure of Initial Coin Offerings according to the Emergency Decree on the Digital Asset Businesses 2018 and the Emergency Decree on the Amendment of the Revenue Code (No.19) 2018 as follows: criteria of algorithm, Accountant's agreement of issuers, criteria for investment design, portfolio management, license fee for offering of Digital Tokens to the public, offering of Digital Tokens to the public, criteria-condition-agreement of ICO Portal, license fee for Digital Asset Businesses, Prohibitions of provider in Digital Asset Businesses, criteria-condition-agreement of Digital Asset Businesses, and criteria of persons in the secondary market   |
|    | 3.2 Fiat currency – based law<br>(4 laws)                          | <p>3.2.1 Public Finance and Budgeting – related laws: Budgetary Procedures Act 2018, Fiscal Responsibility Act 2018</p> <p>3.2.2 Revenue - oriented laws: Notification of the Director-General of the Revenue Department Re: Stamp Duty (No. 58 and No.59) re: Prescribing the Payment Method in Cash for the Electronic Transactions</p>  |

|    |   |
|----|---|
| 4. | Planning-oriented laws (6 laws)   |
|    | Royal Decree on Criteria and Procedures for Good Governance 2003; Royal Decree on Criteria and Procedures for Good Governance (No. 2) 2019; National Strategies Preparation Act 2017; Royal Command Re: Announcement of National Strategy 2018 – 2037; National Reform Plans and Procedures Act 2017; Royal Command Re: Announcement of Twelfth National Economic and Social Development Plan (2017-2021) |

Source: Official Information Act 1997; Royal Decree on Criteria and Procedures for Good Governance 2003; Administrative court (2015), National Reform Plans and Procedures Act 2017, National Strategies Preparation Act 2017, Royal Command Re: Announcement of Twelfth National Economic and Social Development Plan (2017-2021), Gohwong (2018a), Budgetary Procedures Act 2018, Fiscal Responsibility Act 2018, Royal Command Re: Announcement of National Strategy 2018 - 2037, Royal Decree on Criteria and Procedures for Good Governance (No. 2) 2019, Electronic Transactions Development Agency (2020)

#### IV. DISCUSSION

There are six issues from finding for discussion as follows:

First, the above 106 key public service provision-related laws were the outstanding evidence that Thai state agencies under Digital Economy were strictly based on Weberian ideal type of bureaucracy since the first Civil Service Act 1928. The reason was that Thailand employed a set of laws in order to control Thai state officers' behaviours for lessening abuse and misuse of power (opportunism or corruption) due to lack of accountability (*caveamus expertum*), and impersonally serving people with standardized public services according to laws and regulations (*sine ira et studio*) (Civil Service Act 1928; Gulick, 1937; Siffin, 1966; Weber, 2019)

Second, centralization by a comprehensive network of laws was the Thai state agencies' strategy for controlling their general public administration -based and IT-based affairs.

Third, general public administration - based affairs of Thai state agencies were regulated by a set of laws in order to promote good governance in the public sector, especially transparency and accountability, as follows:

Six planning-oriented laws for strategic management, the promotion of good governance in public service provision

public and private laws for setting up frameworks and limitations of behaviours and decision-making in both public administration – based act and administrative act

property rights-based laws for promoting knowledge management in Thai state agencies and society

There were three important issues for general public administration - based affairs as follows:

(1) strategic management, project management, the implementation of every National Economic and Social Development Plan, and good governance in all Thai state agencies were based on the X-Y-Z formation (or project-master plans-national strategy formation) of the 20-Year National Strategy (2018 – 2037), clearly determined in Section 4 of Royal Decree on Criteria and Procedures for Good Governance (No. 2) 2019 and 23 master plans (Royal Decree on Criteria and Procedures for Good Governance (No. 2) 2019; Office of the National Economic and Social Development Council 2020a, 2020b)

(2) According to public and private laws, any firms or individual could prosecute government agencies with administrative courts and courts of justice. The plaintiff could simultaneously sue the defendant to the Administrative Court, Civil Court, and Criminal Court. However, the plaintiff could also sue the defendant to the Administrative Court first. If the Supreme Administrative Court finally determined that any agency and/or officer(s) were guilty, the plaintiff would sue the defendant to the Criminal Court and the Civil Court, respectively (Administrative court, 2015)

(3) the enhancement of knowledge management in Thai state agencies and society were done in three issues - copyright, patent, and trademark via property rights-based laws. For example, "Akarawisut" by Chulalongkorn University and Inspica Company Limited was a Software as a service (SaaS) for text analysis and text mining against plagiarism in order to promote the awareness of copyright in Thai Higher Education according to Copyright Act 1994, Copyright Act (No. 2) 2015, Copyright Act (No. 3) 2015, Copyright Act (No. 4) 2018 (Inspica Company Limited, 2015; Electronic Transactions Development Agency, 2020).

**Fourth**, IT-based affairs were also regulated by a set of laws in the following areas of state agencies: database, data governance in the public sector, knowledge management, e-government, and

cybersecurity; telecommunication; monitoring and controlling of money supply and money transfer in cashless society and digital economy. There were three interesting issues for each area as follows: (1) database, data governance in the public sector, knowledge management, e-government and cybersecurity must be complied with data governance and information security - oriented laws and computer crime - related law. Database, data governance in the public sector, knowledge management, and e-government in Thai state agencies were regulated by Official Information Act 1997, Digital Development for Economic and Social Development Act 2017, Digital Government Administration and Services Act 2019 (informal known as e-government Act), and Personal Data Protection Act 2019. In addition, cybersecurity that mainly focused on information security of Critical Information Infrastructure organizations (CII organizations), cyber-attacks management, and computer crimes was regulated by Cybersecurity Act 2019 and Computer Crime - related Law (such as Computer Crime Act 2007, Computer Crime Act (No. 2) 2017 as the amendment of Computer Crime Act 2007);

(2) telecommunication was regulated by the regulator-oriented laws in the followings: business in radio, television, and telecommunications; two regulatory agencies as independent administrative organizations with the status of juristic person - Thai Public Broadcasting Service (TPBS) (established by Thai Public Broadcasting Service Act 2008) and Office of National Broadcasting and Telecommunications Commission (NBTC) (established by Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act 2010); (3) money supply and money transfer in cashless society, both fiat currencies and 7 legalized non-government-based cryptocurrencies (Bitcoin (BTC), Ethereum (ETH), Ripple (XRP), Bitcoin Cash (BCH), Litecoin (LTC), Stellar (XLM), and Ethereum Classic (ETC)), were regulated by money-oriented laws, both non-government-based cryptocurrency - related laws and fiat currency - based law (Peters, 2001; Gohwong, 2018a, 2018b; Budgetary Procedures Act 2018; Fiscal Responsibility Act 2018; Electronic Transactions Development Agency, 2020).

Fifth, the 106 key laws were the reduction of the complexity of Thai public administration's environment by regulating both state-based and stateless-based affairs (especially non-government-based cryptocurrencies and the Net States). Though a large number of laws led to reduction of Caveamus Expertum, opportunism, a huge number of laws also led to ineffectiveness in Thai public administration because a great number of state agencies involved led to high requirement of coordination and communication among them for law enforcement. For example, there was many agencies get involved

cybersecurity of Thailand according to Cybersecurity Act 2019 as follows: government agencies, National Cyber Security Committee (NCSC), Organizations of Critical Information Infrastructure (CII), supervising or regulating organizations, national coordinating agencies for the security of computer systems and the incident response and computer forensic science, coordinating agencies for cybersecurity in the country and foreign countries, Cybersecurity Regulating Committee (CRC), National Security Council, Office of the National Cybersecurity Committee, and Committee Managing the Office of the National Cybersecurity Committee (CMO). In addition, a large number of laws directly affected to the level of understanding and acceptance of Thai state officers because more than half of them were IT-based laws with the use of lots of difficult technical terms. For instance, the word "Digital" in Section 3 of Digital Government Administration and Services Act 2019 was defined by the Act as any technology that employed a method of bringing zero and one symbols or other symbols for representing things in order to use or create systems for human use. The reader understood it suddenly if he/she had some good basic background about a computer that a bit, the smallest unit of data that a computer could handle, comprised one (positive) and zero (non-positive) (Pressman and Wildavsky, 1973; Van Meter and Van Horn, 1975; Bardach, 1977; Berman 1978; Osborne and Gaebler, 1992; Peters, 2001; Cybersecurity Act 2019; Digital Government Administration and Services Act 2019; Gohwong, 2019b; Laudon and Laudon, 2020).

Last, it was unfortunate for Thai public administration that technology around Thai state agencies goes beyond human minds, both state officers and their clients. That was why the problems of Caveamus Expertum, opportunism, and ineffectiveness were not absolutely terminated by a set of comprehensive laws since 1928. Ethics was a solution to these problems by cultivating professionalism in Thai state agencies. This was not new because Siffin once raised the importance of professionalism in Thai state agencies in 1966 (Siffin, 1966; Freidson, 1994).

## CONCLUSIONS

Thai state agencies have employed laws as their key mechanism to reduce the problems of Caveamus Expertum, opportunism, and ineffectiveness. The findings revealed that 106 key laws were employed in Thai public administration in four areas – IT, public and private laws, money, and planning.



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