

Importance of the Rule of law in the Public Administration of Thailand

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ABSTRACT

Thailand adopted democratic governance in 1932 and established itself as a constitutional state, with the constitution as the supreme law governing the nation. The state's power is constrained by law, adhering to rule of law principles that aim to create a society where all individuals are equally subject to just laws. This study assesses Thailand's adherence to the rule of law by examining public administration practices. Findings indicate that while governance incorporates rule of law principles, implementation is insufficient. Civil servants and state employees demonstrate knowledge of the rule of law, but lack adequate capacity to strengthen it within a global context.

Challenges include centralized bureaucratic structures, protracted administrative processes lacking effective oversight, entrenched negative values within the bureaucracy, and eroded societal morality that has long undermined rule of law in public administration. Overcoming these obstacles requires government officials, civil servants, and citizens to recognize the rule of law's critical role in multidimensional national development, including economic, political, social, scientific, and sustainability domains.

To fortify rule of law principles in public administration while ensuring justice, this study recommends that the government, public agencies, civil society, and relevant stakeholders: 1) Reform and develop public administrative structures and systems; 2) Cultivate awareness among justice system personnel regarding rule of law in a global context; 3) Instill values of integrity, honesty, responsibility, and legal compliance among civil servants and state employees; and 4) Foster ethical values in society beginning at a young age.

Keywords: Importance of rule of law; public administration; Thailand.

INTRODUCTION

Thailand transitioned from an absolute monarchy to a democratic system of governance in 1932, establishing itself as a constitutional state with the constitution as the supreme law limiting state power and adhering to the rule of law. This principle aims to create a society where all individuals are equally subject to just laws. The government of that era designed a system of governance based on the separation of powers, including an independent and impartial judiciary, respect for human rights, and citizen participation through electoral processes for national and local representatives.

However, the rule of law in Thailand has faced persistent challenges, with certain groups, particularly some business elites and military factions, resistant to operating within its constraints. Successive governments, both military and civilian,

have demonstrated a lack of maturity regarding rule of law principles. Power conflicts and vested interests have led to a cyclical pattern of coups d'état, constitution drafting, elections, and subsequent coups (Baker & Phongpaichit, 2005). Since the 1932 political revolution, Thailand has experienced 22 coup attempts, with 13 successful and 9 failed. Successful coups have resulted in power transfers to coup leaders and subsequent legal modifications to consolidate their authority, weakening the rule of law in public administration.

The bureaucracy, as part of the executive branch of sovereign power, is responsible for implementing laws enacted by the legislative branch and producing public goods such as national defense, education, healthcare, and infrastructure.

Civil servants and state employees, from the Prime Minister down to local officials, must operate within their legally defined roles and responsibilities, adhering to a hierarchy of laws from the constitution to ministerial regulations and local ordinances.

The strength of Thailand's rule of law can be assessed through administrative court case statistics. In 2021, there were 4,582 administrative cases where state agencies or officials were represented by the Office of the Attorney General (Office of the Attorney General, 2021). The Administrative Court currently has over 100,000 pending cases (Office of the Administrative Court, 2024). This trend suggests an increase in administrative acts by civil servants and state employees that may not fully align with rule of law principles.

This article examines whether Thailand's public administration sufficiently adheres to the rule of law and whether civil servants and state employees possess adequate knowledge and understanding of rule of law principles in carrying out their duties. The study employs content analysis of relevant legal and public administration documents and articles.

THE CONCEPT OF RULE OF LAW IN PUBLIC ADMINISTRATION

The principle of the rule of law gained widespread recognition when the United Nations advocated for member states to adopt good governance as a framework for national development and administration. The rule of law is a key component of good governance, defined by the UN as "a principle under which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (UNDP, 1994).

The rule of law within the good governance framework impacts all sectors of public administration. One indicator of a country's adherence to the rule of law in governance and development is the extent to which public officials and civil servants make decisions and take actions based on legal principles, applying laws equitably and respecting citizens' fundamental rights. By upholding the rule of law in their duties, public officials directly strengthen this principle. Moreover, adherence to the rule of law in public service aligns with the United Nations' Sustainable Development Goals, specifically Goal 16, which aims to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" (United Nations, 2024).

While the rule of law concept appears to have gained prominence with the UN's promotion of good governance, its origins can be traced back to the 17th-18th centuries. John Locke's "Two Treatises of Government" (1632-1704) emphasized governmental adherence to laws respecting individual rights, though not explicitly using the term "rule of law." Montesquieu's concept of separation of powers (1748) proposed governance under a system of checks and balances to prevent abuse of power. Fuller (1964) outlined eight principles for effective laws in public administration, including generality, publicity, prospectivity, clarity, consistency, feasibility, constancy, and congruence between official action and declared rules.

Public administration theories have long incorporated rule of law principles. Max Weber (1922) discussed the rule of law in the context of legal systems and administrative authority, particularly in bureaucracy and rational-legal authority. Woodrow Wilson (1887), considered the father of public administration, advocated for the separation of politics and administration, emphasizing the importance of fair and efficient law enforcement by public administrators. Wilson stressed the need for transparency, accountability, and good governance in bureaucratic systems, with civil servants operating within legal frameworks to prevent abuse of power.

The rule of law in public administration ensures that governmental actions adhere to established legal frameworks. It guarantees that all state officials and institutions are subject to the law, with their powers exercised fairly and transparently within legal boundaries. This concept promotes accountability, protects citizens' rights, and prevents arbitrary decision-making.

Key benefits of applying the rule of law in public administration include:

- 1) **Legality:** All actions of public officials must be grounded in law, preventing arbitrary or ultra vires actions.
- 2) **Equality under the law:** Ensures non-discriminatory treatment in administrative processes.
- 3) **Accountability:** Public officials are responsible for their actions, with systems in place for oversight and sanctions.
- 4) **Transparency:** Allows public scrutiny of governmental decision-making processes.
- 5) **Fairness and justice in decision-making.**
- 6) **Proportionality in administrative actions.**
- 7) **Judicial role in maintaining the rule of law in administration.**

8) Protection of individual rights within administrative processes.

The rule of law in public administration positions the government and civil servants as public servants rather than authorities over citizens. It ensures that governmental operations occur within a legal framework, promoting justice and equality in society.

THE SIGNIFICANCE OF THE RULE OF LAW FOR CIVIL SERVANTS AND STATE EMPLOYEES

The comprehension and adherence to the rule of law by civil servants and state employees not only enhances their operational efficiency but also mitigates the risk of malfeasance and dereliction of duty. Non-compliance may result in administrative, disciplinary, criminal, and/or civil liabilities. For instance, in the criminal domain, Article 157 of the Criminal Code stipulates: "Any official who wrongfully exercises or does not exercise any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished with imprisonment of one to ten years or fined two thousand to twenty thousand Baht, or both."

In the realm of administrative actions, civil servants and state employees are obligated to perform their duties in accordance with rules and regulations. The Administrative Procedure Act B.E. 2539 (1996) and its amendments delineate

the procedural requirements for issuing orders or regulations. Negligence or improper execution of legal procedures that causes or may cause unavoidable damage or distress to others (Section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)) may result in administrative sanctions (Section 72 of the same Act), such as revocation of orders or regulations, monetary penalties, suspension or revocation of licenses, injunctions, professional or business restrictions, and asset seizure or confiscation.

The Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), Section 9, outlines the categories of unlawful administrative actions subject to Administrative Court jurisdiction, including:

- 1) Disputes concerning administrative orders or actions of state agencies, officials, or local administrative organizations that cause damage to individuals.
- 2) Disputes related to administrative regulations.
- 3) Disputes involving administrative contracts.
- 4) Disputes regarding state agency liability.
- 5) Disputes concerning the exercise of administrative power over property.
- 6) Other cases as prescribed by law, such as environmental cases or compliance with international obligations.

Administrative procedural laws serve to reinforce the rule of law and prevent discriminatory practices or arbitrary use of executive power by civil servants and state employees. The rule of law plays a crucial role in public administration by:

- 1) Supporting sustainable social development.
- 2) Establishing a transparent and equitable operational framework.
- 3) Fostering public confidence in state management systems.
- 4) Ensuring accountability of civil servants and state employees.
- 5) Promoting impartiality in decision-making processes.
- 6) Enhancing transparency in governmental operations.
- 7) Constraining the exercise of power within legal boundaries.

Administrative law significantly contributes to the promotion of the rule of law by defining the scope of state authority, establishing checks and balances, advancing principles of equality, transparency, and accountability, and protecting citizens' rights and freedoms. Consequently, this framework facilitates just, transparent, and efficient public administration.

THE SIGNIFICANCE OF THE RULE OF LAW IN PUBLIC ADMINISTRATION

The provision of public goods and services necessitates the involvement of state agencies. These agencies should operate in accordance with fair and equitable laws that are universally applicable, without exception, regardless of an individual's social status. Such laws must mandate that government entities, civil servants, and public employees protect human rights, establish conditions for justice, ensure peace and security of life and property, and deliver efficient public services. This includes expeditious processes for approvals, permits, and civil registration, such as

issuing birth certificates, death certificates, marriage licenses, citizenship certifications, and business operation authorizations.

The concept of the rule of law in public administration requires government officials to consistently adhere to legal frameworks and treat citizens with fairness and equality, safeguarding their rights and freedoms. Crucially, laws must be clear, transparent, and subject to checks and balances. This adherence to the rule of law is fundamental to democratic governance and plays a vital role in fostering social stability, economic prosperity, political democracy, and everyday justice for citizens.

Numerous organizations and scholars have evaluated the quality of public services in the Thai bureaucratic system, identifying areas for improvement. In response, the Office of the Public Sector Development Commission has established

the Public Sector Management Quality Award (PMQA) framework. This framework encompasses seven key areas: organizational leadership, strategic planning, focus on service recipients and stakeholders, measurement and knowledge management, human resource emphasis, process management, and results-oriented operations. It aims to enhance effectiveness, service quality, efficiency, and organizational development across public sector entities.

Despite efforts to improve public service quality, challenges persist. The concept of "New Public Management," attempts at bureaucratic reform, and the establishment of public service standards all reflect ongoing concerns about administrative quality. These initiatives underscore the difficulties faced by civil servants in implementing economic and social development policies effectively.

Moreover, broader issues reflecting a lack of rule of law in public administration include systemic human rights violations and prevalent corruption within the bureaucracy. Thailand's score of 35 on the 2023 Corruption Perceptions Index, ranking 108th globally, indicates persistent challenges in addressing corruption (Office of the National Anti-Corruption Commission, 2024).

In light of these challenges, the government has justification to prioritize strengthening the rule of law in public administration as a preventive measure. This approach aims to enhance the system's capacity to resolve issues, recognizing that the lack of adherence to the rule of law principles contributes significantly to administrative shortcomings. It is imperative for the government and public agencies to identify the specific rule of law challenges they face and determine strategies to improve accessibility and accountability. Similarly, citizens must be aware of their legal rights and the legitimate demands they can make of government and public sector entities.

THE CHALLENGES TO THE RULE OF LAW IN THAILAND'S PUBLIC ADMINISTRATION SYSTEM CAN BE ANALYZED THROUGH THE LENS OF POLITICAL SCIENCE AS FOLLOWS:

Institutional Deficiencies and Structural Constraints

The centralized administrative structure in Thailand poses a significant challenge to the effective implementation of the rule of law. This centralization of power inhibits local autonomy and contextual decision-making, potentially leading to:

- 1) Inefficient policy implementation that fails to address local needs and contexts
- 2) Increased risk of abuse of power due to limited checks and balances
- 3) Reduced accountability and transparency in governmental operations
- 4) Potential for discriminatory practices in law enforcement due to lack of local understanding

Weak Oversight Mechanisms

The concentration of power within the bureaucratic system, coupled with inadequate oversight mechanisms, creates an environment conducive to:

- 1) Arbitrary exercise of authority
- 2) Lack of transparency in decision-making processes
- 3) Potential for corruption and misuse of public resources
- 4) Inconsistent application of laws and regulations

Erosion of Rule of Law Consciousness

There appears to be a diminishing awareness and commitment to rule of law principles among key actors in the justice system, including judges, prosecutors, law enforcement officers, and legal professionals. This erosion manifests in:

- 1) Compromised impartiality in judicial proceedings
- 2) Vulnerability to external influences and pressures
- 3) Insufficient protection of human rights and individual dignity
- 4) Potential loss of international credibility and economic repercussions

Entrenched Bureaucratic Culture

The persistence of problematic values and norms within the bureaucracy undermines the rule of law. These include:

- 1) Patron-client relationships that prioritize personal connections over merit
- 2) Abuse of power for personal gain
- 3) Lack of professionalism and ethical conduct
- 4) Resistance to reform and accountability measures

Societal Factors

Broader societal issues contribute to the challenges facing the rule of law, including:

- 1) Weak civic consciousness regarding integrity, justice, and accountability
- 2) Limited public understanding of legal rights and processes
- 3) Insufficient mechanisms for public participation in governance
- 4) Cultural norms that may conflict with certain aspects of rule of law principles

Systemic Challenges

The Thai public administration system faces multiple systemic issues that hinder the full realization of the rule of law:

- 1) Political interference in bureaucratic and judicial processes
- 2) Corruption at various levels of government
- 3) Unequal application of laws and regulations
- 4) Inefficiencies in the justice system leading to delays and denial of justice
- 5) Outdated legal frameworks ill-equipped to address contemporary challenges
- 6) Influence of extra-legal power structures on governance

Post-1997 Reform Efforts

While Thailand has made efforts to implement good governance principles following the 1997 economic crisis, the emphasis on rule of law has been insufficient. Challenges include:

- 1) Limited understanding of international rule of law standards among policymakers
- 2) Ambiguous directives and objectives in reform initiatives
- 3) Cultural differences among stakeholders leading to inconsistent implementation
- 4) Lack of coherent conceptual framework for integrating rule of law principles into governance structures

In conclusion, strengthening the rule of law in Thailand's public administration requires a multifaceted approach addressing institutional, cultural, and systemic factors. This necessitates sustained efforts in legal reform, capacity building, cultural change, and enhanced accountability mechanisms to create a more robust foundation for good governance and democratic development.

ENHANCING THE RULE OF LAW IN PUBLIC ADMINISTRATION

Thailand must prioritize the implementation of the rule of law due to its increasing international interactions and global concerns regarding public administration that lacks adherence to this principle. This necessity arises partly from the insufficient awareness among civil servants about the rule of law's significance in national development. Traditional public administration concepts imported and adapted to Thailand's bureaucratic system have proven inadequate in fostering social stability and economic prosperity.

It is imperative to expand the scope beyond efficiency and effectiveness, which have been the primary focus of public administration studies since the separation of administrative and political functions (Wilson, W., 1887: 197-222). A 1995 United Nations General Assembly report on legal and regulatory frameworks for public administration emphasized that administrative efficiency is futile and potentially dangerous without an appropriate rule of law framework.

Recent statements by the UN Secretary-General and others have reiterated the importance of the rule of law in peacekeeping practices (United Nations, 2024).

As Thailand progresses economically and politically, efforts to elevate rule of law standards in public administration are crucial, recognizing it as a foundational element of democratic governance and a prerequisite for attracting foreign investment. To enhance the rule of law in public administration, the following reforms and developments are proposed:

Restructure administrative systems to decentralize authority, empowering local entities in public affairs decision-making. Improve legislation regarding public information access through e-Government systems and artificial intelligence (AI) to enhance transparency and reduce procedural complexities.

- 1) Develop an administrative system that promotes a just and stable society through the rule of law, emphasizing equal and transparent law enforcement. This includes: a) enhancing transparency through public dissemination of government operations data; b) preventing abuse of power by limiting discretionary authority; c) facilitating public participation in policy-making processes; d) utilizing technology for transparency and efficiency; and e) ensuring legislation and enforcement respect human rights.
- 2) Instill awareness among justice system personnel about the rule of law in a global context, promoting acceptance and adherence to laws as frameworks governing interpersonal and international relations.
- 3) Foster values among civil servants that emphasize integrity, legal compliance, ethical courage, and good governance principles. Encourage transparency, efficiency, and fairness in administration, while supporting multi-stakeholder participation in oversight and development processes.
- 4) Develop moral foundations in society, recognizing the interdependence between the bureaucratic system and social resources. This involves moral education initiatives from early ages, coordinated by relevant ministries, social agencies, and religious institutions.

The rule of law in public administration is as crucial as efficiency and effectiveness principles that have guided administrative practices for over a century. The Thai government should implement measures to strengthen rule of law-based public administration by applying the five developmental measures outlined above and incorporating the rule of law as a key performance indicator for governmental agencies.

CONCLUSION

The administration of a nation constitutes one of the three branches of sovereign power operating within the framework of democratic governance. Thailand adopted this conceptualization in 1932, establishing itself as a constitutional state where the rule of law prevails, with the constitution serving as the supreme law in national administration. This system limits state power through legal mechanisms and adheres to the principle of the rule of law, which aims to create a society where all individuals are subject to the law equally, and the law itself must be just.

Currently, the United Nations has called upon member states to implement good governance as a guiding framework for national development and administration. One significant method of assessing a country's adherence to good governance principles is by evaluating the extent to which the rule of law is upheld in the execution of duties by the government, civil servants, and state employees.

An assessment of Thailand's public administration reveals that while there is adherence to the rule of law, it is insufficient. Civil servants and state employees possess knowledge and understanding of the rule of law, but this is inadequate for fulfilling their duties in a manner that would strengthen the rule of law in an international context. This insufficiency is attributed to various challenges, including a centralized bureaucratic structure, protracted administrative processes lacking effective oversight, negative values within the bureaucratic system, and a societal weakness in moral integrity that has long eroded the rule of law in public administration.

To overcome these challenges, the government, civil servants, state employees, and citizens must first recognize that the rule of law plays a crucial role in national development across multiple dimensions, including economic, political, social, scientific, and sustainability aspects. To strengthen the rule of law in public administration and maintain a steadfast commitment to justice, the government, public sector agencies, civil society, and relevant personnel should undertake reforms and develop the structure and systems of public administration. This includes cultivating awareness of the rule of law in an international context among personnel in the justice system, instilling values of

moral integrity, honesty, responsibility, and adherence to empowering laws among civil servants and state employees, as well as inculcating moral values in society from an early age.

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