

## **A Study of Problems and Solutions to Legal Problems Affects Injured Persons who are not the Victim of Criminal Case, Thailand**

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### **ABSTRACT**

A victim who is not a crime victim is a person who is not a direct victim, such as parents, grandparents, grandchildren, grandchildren of the true victim in a criminal case, including his legal wife. These individuals suffered damages but were not receiving the remedies required by law. Therefore, this research aimed to study the legal issues, and legal solutions for the effects of injured persons who are not crime victims under the Criminal Witness Protection Act 2003, Thailand. This study investigates documents, related laws, and gathers information on legal problems and solutions that affect individuals who are injured who are not criminal victims. The research tools were in-depth interviews with personnel from relevant departments, including Judges of the Constitutional Court, judges of the Court of Justice, prosecutors, police, lawyers as well as victims of criminal cases, both direct and indirect victims.

The study found that legal issues are the absence of statutory provisions to protect injured persons who are not criminal victims which is inconsistent with the current situation in which there is a large number of injured persons who are not criminal victims in the criminal justice system. Therefore, guidelines for improving the law so that the law can be enforced effectively and fairly to all parties by enabling mutual integration among relevant agencies to strengthen and cooperate in developing law enforcement capabilities. This leads to an effective solution to the problem of injured persons who are not criminal victims.

### **Keywords**

Criminal Case, Injured Persons, Solutions, Legal Problems

### **INTRODUCTION**

According to the democratic concept, the people have entrusted the power to govern and govern the society, so the state has the duty to secure the society, and the people, for example, the state have a direct duty to prevent crime. Therefore, when a crime occurs, the State is ineffective in its performance, the State must also take part in the responsibility for the damage inflicted on the society and the people who have been injured, in accordance with the principles of State responsibility (WutthioingWibunwong. 2013). Remedy for victims of criminal cases by requiring states to indemnify compensation is recognized both internationally and in foreign law as a remedial measure expressed by the state of its social responsibility and its members.

When a criminal offense is committed and someone is injured or damaged in property, reputation, or liberty, they are protected by law, whether it is a complaint to the police or court action. In addition, civil lawsuits can be filed in order for the offender to pay damages for him or her (NarongJaiharn. 2018). According to the principle of infringement liability in the Civil and Commercial Code, if you do not want to prosecute yourself, you may request compensation in cases where the prosecutor is the plaintiff and sue the defendant who committed a criminal offense to the Criminal Court under Section 44 / of the Criminal Procedure Code.

If the injured person dies before the prosecution is brought, determine whether the death was due to the commission of the offense (ChalermwutSarakit.2019) If due to such offense, Section 5 (2) of the Criminal Procedure Code, Require the spouse (who must be married by law), Parent (According to the bloodline), descendant (According to the bloodline) can be prosecuted for the victim who died as the victim has the power to act on behalf of the true victim. They are also able

to perform a number of actions required by law, including making indemnity claims for the deceased victim. However, if the death was not caused by an offense such as the owner of the car was embezzled or spoiled the property but had not yet filed a complaint with the police and died first. As follows, the Supreme Court has ruled that the heirs who are entitled to the inheritance of the owner of the vehicle that has been embezzled or spoiled the property can lodge a complaint with the inquiry official which is considered a right in relation to property that devolved to the heirs under the Civil and Commercial Code, Section **1599**, But cannot prosecute themselves because the prosecution is not a right to civil action (Judgment of the Supreme Court **206/1975**, and Judgment of the Supreme Court **11/1979**). In addition, another case is when the victim was damaged by the defamation case and died before the complaint, according to the Criminal Code, Section **333**, second paragraph, the parents, children or spouse of the injured person can be regarded as the complainant and may be regarded as the injured person in the criminal case (Ministry of Justice: **2019**). This shows that the law values such individuals that, if someone close to the family is damaged in reputation, it also affects the feelings and reputations of the family. The reality is so, because in Thai society if a family member is damaged or slandered, family members are more or less affected by neighbors or co-workers, even if he had not been slandered by himself.

The law requiring the person to act on behalf of the injured person directly has the basis of the involvement of the manager on behalf of the injured person which must be close to the injured person who has died or is affected by the commission of the offense, be it property-related rights or reputational impact, but if that person is not involved in such matters, he or she cannot undertake a criminal or civil case in connection with a criminal case, unless there is a right under the Code of Civil Procedure in regard to rights related to property or inheritance (AriyapornPhothisai. 2009).

Another problem is that even if it is a truly injured person if the injured person is involved, or commits or agrees to commit an offense such as allowing for more than the legal interest rate, allowing for bodily harm, or causing controversy. In these cases, the injured person is not a legally injured person and therefore may not prosecute a case which is in accordance with the interpretation of the Supreme Court of Judgment considered that not be injured person by law resulting in the effect that once the injured person is unable to prosecute himself, the above representative cannot prosecute (Political news:**2011**) such as a woman allows others to miscarriage, but she also dies, must be considered consensual and therefore not injured person. Therefore, the parent may not be able to prosecute a criminal case as well (Judgment of the Supreme Court **1281/1960** and Judgment of the Supreme Court **945/1959**). However, if it is an offense to protect a minor, such as an offense to a child under fifteen years of age, even if the child agrees to commit an offense, the law is still considered an injured person in a criminal case, and the legal representative can act on its behalf (Judgment of the Supreme Court **4147/2007**) and can ask the court to order the defendant to pay compensation under Section **44/1**.

The foregoing is a criminal proceeding in which the injured person, who is privately owned by law when damaged, can proceed with a criminal case. But in the criminal proceedings, to be broadened, those affected by the injured person's death or disappearance do not know how serious it is. In terms of the physical damage to the heir or family, it may not be obvious, but concern, anxiety, or sadness, or the fear of perils that may arise from the perpetrator threatening to not prosecute, this is a psychological and safety effect that should be covered in the event of the injured person's death, but not a direct result of the commission of the offense (BANGKOK BIZ NEWS: **2017**). Those affected in this case are not yet protected under the current Thai law, whether they are receiving safety protection from administrative or police officers or from

witness protection measures under the Criminal Case Witness Protection Act **2003**, It must be the person who will testify in a criminal case to be testified before the court and not in the case of receiving initial compensation from being an injured person. It is because the damage was not directly caused by the injured person, but by the indirect impact of the actual death of the injured person.

The international standards of the UN Declaration adopted in **1985** called “Declaration on the Principles of Fundamental Justice for an injured person in criminal cases and abuse of power” (Declaration of Basic Crime Principle for victims of crime and abuse of power, **1985**), it has required officers to treat an injured person in a criminal case in accordance with international principles, where laws in many countries follow this principle, such as United Kingdom, United States, United States of America, Germany, France, and Japan, etc. In addition, the International Convention on the Protection of Persons from Enforced Disappearance, which Thailand announced in June **2012**, and prepared to certify soon the importance of close relatives such as parents, descendants, husbands, and wives of the enforced disappeared to become the injured person. From such an offense as well, because it was seen that it was the affected person who had been carried away, but since the Thai Criminal Procedure Code has not yet required such persons to act on their behalf because they have not died (Judgment of the Supreme Court **10915/2015**), hence, it may not be operated and is not protected as a witness or an injured person as required by the Witness Protection Law (NirumonRattanasat. **2018**).

With such problems and obstacles, the rights of the affected person, but not the injured person, in this criminal case deserve to be considered and set forth in the Thai law in the Criminal Procedure Code, the Witness Protection in Criminal Cases Act 2003, the injured person Compensation and Compensation and Compensation Act 2001 and Amended (2nd Edition) 2016 that should be assisted by the effects of safety or psychological remediation or follow-up of a case, it is the person who is urgently affected by the offense which will benefit the person indirectly affected, and made Thai law evolving in line with the Declaration on the Principles of Fundamental Justice for injured persons in criminal cases and abuse of power (United Nations, Economic, and Social Commission for Western Asian.1985).

## **RESEARCH OBJECTIVES**

This research aimed to study legal issues, and legal solutions for the effects of injured persons who are not crime victims under the Criminal Witness Protection Act 2003.

## **RESEARCH METHODOLOGY**

Research sources were: **(1)** Legal documents and information on legal issues and the effects of non-injured person persons in criminal cases. **(2)** In-depth interviews from personnel in relevant departments, including the Constitutional Court judge, the judiciary, the prosecutor, the police, the lawyer, including the injured person in the criminal case, both the directly injured person and the indirectly injured person.

Data collecting: Analysis of relevant legal documents and In-depth interviewing personnel in relevant departments.

Data Analysis: The data obtained are analyzed by Content Analysis according to the questions generated and presented in Descriptive Research format.

## RESEARCH RESULTS

The research results were obtained from reviewing the legal documents and interviewing the stakeholders, which can summarize the legal issues and solutions as follows.

**1. Problems in the law:** According to research studies, problems in the law are as follows: **(1)** There is no law on the remedy of an injured person other than an injured person in a criminal case, whether it is in the dimensions of safety, or remediation or the follow-up of a case. **(2)** There are no other non-monetary provisions of the law relating to the prescription of compensation (By the satisfaction of the injured person) that the injured person, who is not the injured person in a criminal case, feels that he has been taken care of in remedies from the state. **(3)** The word "injured person" in the Criminal Procedure Code, should also be interpreted to those who suffered non-injured person in a criminal case as well. **(4)** "Investigator" under the Criminal Procedure Code, there should be the power to call anyone who has suffered non-injured person in a criminal case to investigate in order to secure or mentally healed or have a follow-up on a case. **(5)** "Public Prosecutor" under the Criminal Procedure Code, there should also be power to make indemnity or indemnification to persons injured who are not an injured person in a criminal case. **(6)** "Court" under the Criminal Procedure Code, there should be the power to judge a person injured who is not an injured person in a criminal case, to have the right to receive compensation, indemnity, or to receive mental and physical remedies, etc.

**2.2 Guidelines for solving legal problems:** From research studies, it is found that the methods for solving legal problems are as follows: the relevant agencies should work together in an integrated way to achieve the same direction and to create more stringent and effective law enforcement as follows: **(1)** Added provisions in the criminal procedure law. To the injured person who is not an injured person in a criminal case to have the power to lodge a complaint, or can prosecute yourself or prosecute the injured person. **(2)** Added provisions in the criminal procedure law that should give investigators the power to summon an injured person who is not an injured person in a criminal case to investigate in order to provide security, or have been mentally healed or have a follow-up of the case as well. **(3)** Add provisions in the section of the criminal procedure law that should give the public prosecutor the power to claim damages or indemnity for persons injured who are not injured person in a criminal case. **(4)** Add provisions in part of the criminal procedure law, the jurisdiction of the court should be empowered to adjudicate the injured person who is not an injured person in a criminal case, the right to receive remedies for damages, indemnity, or psychological and physical remedies. **(5)** Added provisions of the Criminal Witness Protection Act **2003** to cover the protection of injured persons who have not injured persons in criminal cases, whether it is a safety or mental remedial dimension or the follow-up of a case. **(6)** Add provisions to the Injured person Compensation and Compensation and Compensation Act **2001** and the Amendment (**2<sup>nd</sup>** Edition) **2016**, it also covers the protection of the injured person who is not an injured person in a criminal case, to be able to sue for compensation or indemnity, or maybe called in place of the truly injured person, or the prosecutor may make a claim on his behalf, and should also be paid as an injured person in a criminal case.

## DISCUSSION

The study of the legal problem of the injured person who is not the injured person in the criminal case found that there was a legal problem, namely the absence of provisions of law relating to the protection or remedy for the injured person who Not an injured person in a criminal case Because

of the current laws in force, including the Criminal Procedure Code, the Criminal Witness Protection Act **2003**, the Injured person Compensation Act, and Criminal Defense Compensation and Compensation Act **2001**, and its amendments (ed. No. **2**) **2016**, which does not contain any law to protect persons who are injured who have not injured person in criminal cases. Such law protects only the true injured person or the authorized representative on behalf of the truly injured person, this makes certain individuals who are injured, not injured person in criminal cases, unable to file a complaint or prosecute for the truly injured person, or unable to sue for damages or compensation, causing misleading in reality and in litigation.

The researcher has suggested, amended, and revised the law so that it can be enforced effectively and fairly according to current reality. such amendments could mean that Thailand fully complies with the Universal Declaration on the Principles of Fundamental Justice for injured persons in criminal cases and abuse of power under which Thailand has become a partner.

## SUGGESTIONS

### **1. Suggestions for amendments to the law:**

1.1 It is deemed appropriate to revise the Criminal Procedure Code as follows: (1) Amendment to Section 2 (4) for the following effect: "injured person" includes persons injured who are not injured person in a criminal case, in order to cover all types of the injured person to be addressed, be it safety, psychological remedies, case follow-up, or claims. (2) Amendment to Section 16 to produce the following results: the jurisdiction of the court, the power of the public prosecutor, the power of the inquiry official to comply with the provisions of this Code must comply with all laws and regulations governing the authority of judges, the authority of public prosecutors, the powers and duties of any investigative officer, it also includes the handling or protection of the injured person who is not an injured person in a criminal case. (3) Amendment to Section 17 to have the following effect: Administrative or police officers have the power to conduct criminal investigations of persons injured who are not injured person in criminal cases. (4) Amendment to Section 18 for the following results: The inquiry official shall have the power to investigate the criminal case of the injured person who is not an injured person in a criminal case. (5) Amendment to Section 22 for the following effect: The Court shall also have the power to settle criminal cases of persons injured who are not injured persons in criminal cases. (6) Adjusted Section 28 to result in the following results: the prosecutor's Office shall have the power to prosecute the injured person who is not an injured person in a criminal case. (7) Amendment to Section 44/1 to have the following results: The prosecutor is the plaintiff to file a claim for the injured person who is not an injured person in a criminal case.

**1.2** It is deemed appropriate to amend Section **3** of the Witness Protection Act in Criminal Case **2003** to produce the following results.

**1.3** It is deemed appropriate to amend the Injured person Compensation and Compensation and Compensation Act **2001** and the Amendment (No. **2**) **2016**, Article **22** to produce the following results. The term injured person also covers the protection of the injured person who is not an injured person in a criminal case which allows for self-sue or indemnity, or in lieu of the actual injured person, and should also be paid as an injured person in a criminal case.

**2. Suggestions for integration:** The recommendations for proactive policy formulation to increase the effectiveness of the criminal justice system are as follows: **(1)** there should be proactive policies in many departments to increase the effectiveness of the criminal justice system, be it the judiciary, the prosecutor's office, the Royal Thai Police, the Lawyers Council. **(2)** It is deemed appropriate to establish policies and plans for an integrated criminal justice management

program, in order to ensure effective and fair protection and remedial measures for injured persons other than the injured persons in criminal cases.

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