

<b>THEMATIC TITLE</b>	PROBLEMS OF ENFORCING DRUG LAWS: A CASE STUDY OF IRREBUTTABLE PRESUMPTION IN ACCORDANCE WITH NARCOTICS ACT B.E. 2522
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### **ABSTRACT**

This independent study aims to explore the approach to solve problems in using irrebuttable presumption in drug-related cases. Because narcotics act B.E. 2522 determines that “irrebuttable presumption” is used as the criteria for separating offences of drug possession against drug possession for sale; therefore, irrebuttable presumption is considered a tool that allows officials to conduct their operations faster and more conveniently in charging a convict of drug-related crimes. However, using irrebuttable presumption in drug-related cases could result in many problems in terms of enforcing drug laws.

According to the case study, obligation of the Single Convention on Narcotic Drugs 1961 states that state parties must determine that drug possession is a criminal crime and requires a prison sentence. However, for narcotic drugs, state parties can specify that people involving in drug abuse can receive proper care, rehabilitation and treatment. This is a clear separation in practices in order to solve problems that occurs between drug dealers and drug addicts. Since proving an intention for the offences of drug possession between drug dealers and drug addicts can be difficult to achieve, the United Nation has provided a guideline for state parties in using presumption as a tool to separate the intention of drug dealers against drug addicts based on the

amount of narcotic drugs as appropriate. In addition, state parties are not forced to use irrebuttable presumption. Nevertheless, Thailand has used irrebuttable presumption as a tool to separate offences between drug possessions and drug possessions for sale, making those who commit drug-related crimes not able to prove their intentions or rebut their accusations. As a result, regulation of presumption is considered focusing on drug enforcement that separates drug dealers against drug addicts based on the goal of the United Nation's recommendations. Other states use rebuttable presumption, or does not determine the amount of narcotic drugs in laws as this is under judicial discretion, or does not determine offences of drug possession or number of prison sentences based on the amount of drug possession. Additionally, the study found that using irrebuttable presumption in drug-related cases results in many problems. One of them is to not allow witnesses or evidence to rebut accusations and to present the actual intention of a defendant, creating injustice in the trial. Determining offences and sentences from the amount of drug possession without considering the intention of a defendant results in punishment that is not consistent with severity of conviction and objectives of the punishment, especially when a defendant is only a drug addict. Also, this limits judicial discretion in adjudicating such cases.

In conclusion, using irrebuttable presumption in drug-related cases is a measure that focuses on strictly preventive justice without concerning defendant's rights and justice. Therefore, the author proposes the approach to solve the problems by repealing irrebuttable presumption but using rebuttable presumption instead as this could provide an opportunity to defendants to prove their intention or rebut their accusations in drug-related crimes, bringing more justice to the defendants.