

THESIS TITLE	PROBLEMS ON WHO IS AUTHORIZED TO APPOINT A FACT FINDING COMMITTEE ON WRONGFUL ACT LIABILITIES AND TO MAKE AN ORDER TO PAY COMPENSATION IN CASE THE CHIEF OF A STATE AGENCY COMMITTED A WRONGFUL ACT
KEYWORDS	A PERSON WHO IS AUTHORIZED TO APPOINT A FACT FINDING COMMITTEE ON WRONGFUL ACT LIABILITY/ A PERSON WHO IS AUTHORIZED TO MAKE AN ORDER TO PAY COMPENSATION/ THE CHIEF OF A STATE AGENCY COMMITTED A WRONGFUL ACT
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ABSTRACT

This Thesis aims to study and analyze who will be a person who is authorized to appoint a fact finding committee on wrongful act or tortious liability and to make an order to pay compensation in case the chief of a state agency committed a wrongful act or tort by studying relevant concepts, theories and principles under Thai law comparative with foreign laws.

According to the findings, the criteria on determination of a person who is authorized to appoint the fact finding committee on the wrongful act liability and to make an order to pay compensation in case the chief of a state agency committed a wrongful act, are unclear. Practically, the state agency will consult with the Office of the Council of State if there is any question thereon. The Office of the Council of State always rules that the General-Director of the Ministry or Bureau or the Minister who is the superintendent of the chief of the stage agency who committed the wrongful act is authorized to appoint the fact finding committee by adopting Clause 12 of the Notification of the Office of Prime Minister Governing Practical Criteria on Wrongful Act Liability of the Officials B.E. 2539, mutatis

mutandis. In respect of an authorized person who is entitled to make an order to pay the compensation, both the Act on Wrongful Act Liability of Officials B.E. 2539 and such Notification previously did not clearly specify such matters. Formerly Section 12 of the Act on Wrongful Act Liability of Officials B.E. 2539 provided only that in the case where an officer is bound to pay compensatory damages due to committing a wrongful act against the state agency, the state agency shall be entitled to issue an order demanding him to make the payment thereof within the specific period.

When I started conducting the research, Clauses 12, 12/1 and 18 of the Notification of the Office of Prime Minister Governing Practical Criteria on Wrongful Act Liability of the Officials B.E. 2539 had been amended by the Notification of the Office of Prime Minister Governing Practical Criteria on Wrongful Act Liability of the Officials (No. 2) B.E. 2559.

Even though Clauses 12, 12/1 and 18 of the Notification of the Office of Prime Minister Governing Practical Criteria on Wrongful Act Liability of the Officials B.E. 2539 have been amended, such amendment does not comply with the hierarchy of laws. It is considered as the amendment to the subordinate legislation which may beyond the scope of the Act on Wrongful Act Liability of Officials B.E. 2539 which is the primary law.

In order to comply with the principle of the hierarchy of laws, I recommend that Sections 12 and 13 of the Act on Wrongful Act Liability of Officials B.E. 2539 be amended as follows:

“Section 12 In the case where the official is bound to pay compensatory damages which the state agency has already paid to the injured person under Section 8 or in the case where the official is bound to pay compensatory damages because such official has committed a wrongful act to the state agency under Section 10 and Section 8, the state agency that suffers such damages shall have the power to issue an order to such official for payment with a fix period of time provided that the superintendent or supervisor or regulator of such state agency has been empowered to issue such order instead of the state agency if the chief of the state agency ignores or delays in doing so.”

Section 13 the Council of Ministers shall set up rules for the liable official under Section 8 and Section 10 to be allowed to pay instalments the amount of damages due by considering his income, wealth, family status and the relevant circumstances, and any regulations authorizing the chief of the state agency or a competent chief to call or order or do any action in order for the official to make the payment of compensation to the state agency.

The above suggestion would be clear and protect the superintendent or supervisor or regulator of the injured state agency for the appointment of the fact finding committee for the wrongful act and giving an order to pay compensation in case the chief of such state agency committed a wrongful act in an effective and efficient way which would benefit to the administration of the State.