

THEMATIC TITLE	PROBLEM OF ORGANIZATIONAL STRUCTURE AND POWER AND DUTIES UNDER THE ORGANIZATION OF MILITARY COURT ACT B.E. 2498
KEYWORDS	STRUCTURE OF MILITARY COURT, EXAMINATION MECHANISM, QUALIFICATIONS OF MILITARY JUDGE TRIBUNAL
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YEAR	2019

ABSTRACT

This thematic paper is aimed at studying historical background, concept, theory and nature of problems of the military court's structure, the independence in examining performance of military judges and the qualifications of military judges associating tribunal in trial and judgment. This research studied the Organization of Military Court Act B.E. 2498 (1955) in comparison to related laws of United Kingdom, Federal Republic of Germany, French Republic and Swiss Confederation.

A study of the military court's structure under Section 5 of the Organization of Military Court Act B.E. 2498 (1955) found that the military court is still subordinate to Ministry of Defense whose minister is responsible for its administration. In consideration of its independence, at present the military court is not independent pursuant to the principle of absolute separation of power from the executive/government. Taking into account of examining performance of military judges, it is not pursuant with the check and balance principle. Qualifications of military judges between two categories are different which may affect to public's confidence in proceeding of the military court.

The researcher suggests that there should have an amendment to Section 5 paragraph one of the Organization of Military Court Act B.E. 2498 (1955) for having the military court's structure been independent concretely by stipulation that the military court is a state agency regulated by Ministry of Defense and separated from the Judge Advocate General's Department. In respect of examination mechanism which relates to Ministry of Defense's Regulation of Military Court Judge (No. 3) B.E. 2552 (2009), clause 6 in subject of the Military Court Judge Commission or "MCJC", it is found an internal mechanism in which the Military Court Judge Commission are wholly senior military officials and that is not complied with the check and balance principle. Thus, the Regulation should be revised to include some external qualified civilians in such Commission. Besides, qualifications of military judges under the Military Court Judge Commission's regulation on qualifications, rules and means of appointment and removal of judge B.E. 2561 (2018), clause 5 should be revised to stipulate the same qualifications among two categories of military judges. In addition, a provision of law allowing any person who has knowledge's in specific case associate with the tribunal in trial and judgment should be added in the Organization of Military Court Act B.E. 2498 (1955) and additional requirement for inclusion of such person to express opinion or to associate with trial on case-by-case basis.