

THEMATIC TITLE	PROBLEMS OF DETERMINATION OF COMPENSATION FOR THE EXPROPRIATION OF THE IMMOVABLE PROPERTY: A STUDY OF DETERMINATION OF COMPENSATION FOR THE PERENNIAL PLANT
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STUDENT	WATCHAREENA TATIYANUNTAKUL
THEMATIC ADVISOR	DR. TRIPETH JITMAHUEMA
LEVEL OF STUDY	MASTER OF LAWS PUBLIC LAW
FACULTY	SCHOOL OF LAW SRIPATUM UNIVERSITY
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ABSTRACT

This paper aims to study a problem in determining of the compensation on perennial plant for the expropriated. When the State is necessity to acquire an immovable property, the State has to expropriated the immovable property located in the requested area to be used for public interest by expropriating the owner of immovable property. According to the Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 37 paragraph three provides that the expropriation of immovable property shall not be lawfully executed, except by the virtue of law specifically enacted for the purpose of public utility, national defense or the acquisition of natural resources, or other public interest, and shall pay fair compensation within a reasonable time to the owner of expropriated property, as well as all the rights holders those have been damaged by expropriation with consideration of public interest, impact of the expropriated as the owner of immovable property including the benefits which the expropriated may be received from the expropriation. In addition to the provision of the Constitution, there is the specific law: the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019) which has been promulgated as the primary law of the immovable property for expropriation of State Agencies

that exercise the power in the expropriation of immovable property by determination of compensation that shall pay fair compensation to the expropriated.

The Constitution of the Kingdom of Thailand B.E. 2560 (2017) provides the protection for the personal property by acknowledging the property rights of the individual as well as other rights under the Constitution. The expropriation of immovable property affects the property rights of people; therefore, the State has to use the method of the expropriation by paying fair compensation to the owner who has been damaged by expropriation. For the expropriation of immovable property, the State has to perform the expropriation in accordance with the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019) that provide the State shall pay fair compensation as remedy and mitigation the expropriated who has obtained the damage from execution of the State. The owner or the rights holder as the expropriated of immovable property is restricted the right of using his own property for public interest. Therefore, this sacrifice and right limitation should be received the appropriate and fair compensation compared to damage obtained from expropriation. The expropriation of land as immovable property usually consists of the perennial plant growing on that expropriated land regardless of by nature or land's owner planting on such property.

The expropriation of immovable property under Section 40 (3) of the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019) determines that a person who is an owner of perennial trees growing on land on the enforcement day of the Act of Expropriation or the Royal Decree, is a person who has the rights for receiving compensation. Nevertheless, the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019) has not adequately and clearly determined the criteria used in providing compensation for damage of perennial plants which causes inconsistency and inequality of criteria and consideration that each state agency used for expropriation and determining compensation for the perennial plants. The problems of paying compensation for the perennial plants growing on the expropriated land are different in each State agency that set up its own criteria and usually follows the precedent measures. This reason causes the difference and inequality of compensation that State agencies are paying for the same category of the expropriation for the perennial plants under the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019).

For the most benefit and fairness, as well as the reduction of difference and inequality to all the expropriated who have been damaged by expropriation from various State agencies exercising the power of immovable property expropriation. Therefore, the researcher considers to propose the amendment of rule on determining of perennial plant compensation legislated in the provision of the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019) by amending a new section providing a specific part of criteria on determination of compensation for the perennial plant as Section 38/1 to provide clarity of execution for State agencies in considering a compensation for the expropriated perennial plant.

The amendment of Section 38/1 as mentioned above will cause the most systemic and effective enforcement of the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019), as well as the providing of central standard in determining the compensation for perennial plant of every State agency, regardless of State agencies or State enterprise.

The amendment of this Act following the proposed Section 38/1 will reduce the difference and inequality arisen from non-standard rule, on the other hand, the said Section will lead to equality and fairness for the expropriated property's owner or rights holders including to provide the benefit for State officials by applying central standard in determining the compensation for perennial plant. Section 38/1 will be a central standard causing unity and clarity of the rule regarding determination of compensation for perennial plant, and also a basis of standard rule for all State agencies applying this rule with the same circumstance of expropriation method leading to efficiently working in the same direction. Moreover, the proposed rule truly produces fairness and the most benefits to the owner of land which perennial tree growing on or the rights holders as the expropriated of expropriation. Furthermore, the apparent rule is genuinely consistent with current social condition and general will of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019).