

THEMATIC TITLE	LEGAL PROBLEMS ON MONEY LOANING OF THAI POLITICAL PARTIES
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ABSTRACT

This research aims to analyze into the legal problems associated with loans of Thai political parties. According to the Constitutional Court of Thailand' Ruling No. 5/2563 dated February, 21st 2020, which the Election Commission of Thailand (OECT) filed a petition for dissolution of the Future Forward Party, there is an question of whether a political party can legally loan money under the Organic Act on Political Parties, B.E. 2560. Pursuant to the Organic Act, B.E. 2560, a political party's operations have to rely on the sources of incomes provided under the Section 62. Therefore, any money expended by political party in political activities that had not been obtained from a source and method specified by law would be deemed as money that had been unlawfully obtained pursuant to the Section 62. Even though the Act does not obviously prohibit money borrowing of political parties, the Act does not recognize it as lawful. The Court ruled that a political party is a juristic person under public law, and the loan was political budget. Any obtaining and spending of political parties must be transparent and examinable. Moreover, political parties must be independent, and must not be dominated by any groups or individuals through money, properties, or benefits. Henceforth, the Court deemed that money loaning of political parties must be compliant with the spirit of Constitution and related laws.

According to the excerpt above, it shows that money loaning by a political party is not legally recognized under Thai law. Money loan is interpreted as a donation under Section 66 of

the Organic Act on Political Parties, B.E. 2560. Meanwhile, money borrowing by a political party is allowed under the law of United States of America and other nations. In the United States, a borrowing party must return the money within the fixed period of time, unless the money shall be deemed as the financial support which is limited under the certain amount. Section 66, Paragraph 2, of the Act, B.E. 2560, is applicable to the case of a party loans money intentionally to avoid the term “donation” as stipulated therein. As the Future Forward Party has received benefits and property knowing that such receiving is unlawful under the Section 72, the Court ruled for dissolution of the party in accordance with the Section 92 Paragraph 1 (3) and Section 92 Paragraph 2. In this case, the Court also, in accordance with the Section 92 Paragraph 2, annulled the party executive committee’s election-running right for 10 years since the date of ruling. Also, pursuant to the Section 94 Paragraph 2, the Court imposed the prohibition to the annulled-right persons from establishing, including involving with establishing, of new political party within 10 years. Compared to the United States, if a political party excessively receives money exceeding the financial support limitation, the court shall impose merely fine penalty.

The researcher has conducted the insightful study and concluded the solutions to the matter. Currently, the Organic Act on Political Parties, B.E. 2560 does not apparently mention about money loaning by political parties. The Act then should be amended to cover the term “money loaning by a political party” as a part of the term “donation” enumerated within the Section 4. Hence, “donation” should be defined as “contributing of money or properties to a political party, including loan or any other financial values as prescribed by the committee, besides fees and subsidies.” Moreover, the Act should exceptionally express that any loan from financial institutions shall not be regarded as donation if the party can return the fund back within the certain limited duration. The Act should contain a measure to deal with lawful loan exceeding the donation limit as mentioned in Section 66, e.g. keeping the excessive amount for next election. The Act should impose fine penalty on excessive money borrowing. The Act should allow a coalition to fundraise and donate to a political party as same as the United States’ Political Action Committee (PAC). This measure will encourage political participation of low-income-earning population; it will also create the bargaining power to people. The Act should force political parties to disclose the total amount of donated funds. The Act, Section 62, should provide loan as a source of income in order to allow political parties to loan money lawfully.

However, the Act is supposed to clearly provide that the loaning must be made in a written document based on the reliability that the party shall be able to pay the debt. In this regard, guaranty or surety-ship must be provided. The researcher truly believes that the proposal as described shall be useful in solving the matter of money loaning of political parties. Moreover, the measures shall create opportunities for emerging parties that obtained no supportive funds to fundraise for the election in time. Finally, the measures shall prevent against domination of political capitalists.