

THEMATIC TITLE	LEGAL PROBLEMS OF ADMINISTRATIVE ORDER: A CASE STUDY OF PROTECTION OF HUMAN RIGHTS FROM ALIEN DETENTION ORDER
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ABSTRACT

The objective of this research is to study legal measures regarding the protection of human rights from the detention orders of alien in comparison to Thailand's immigration laws. It also aims to find appropriate solutions to the problems associated with such detention orders, as the Immigration Act of 1979, which serves as the legal basis for these orders, has led to practical issues regarding the duration, location, and alternative options to detention. The lack of adequate measures may infringe upon human rights.

The study divides the issues into three parts: (1) Problems regarding the duration of detention under the Immigration Act of 1979 reveal that the law grants detention powers without a specified time limit. Although there is a Supreme Court judgment, No. 2379/2542, suggesting that the law will be amended, no revisions regarding the duration of detention have been made to date. However, it is not a matter of arbitrary detention, as indicated by the Southern Bangkok Criminal Court's ruling in Case No. CB 4/2566, which may lead to a request for release from custody. Nevertheless, if the detention order is based on an administrative order, the court has no authority to review it and the case must be filed with the administrative court, which may take an indefinite amount of time to decide, like a regular case. (2) Problems regarding the determination of appropriate detention facilities indicate that the Supreme Court ruling in Case No. 1181/2564 stated that police station detention cells are not suitable places for detention. However, according to the Order of the Immigration Bureau No. 89/2562, if there are no detention cells at immigration

checkpoints, individuals should be taken to police stations for detention. Furthermore, there are no laws providing alternative options to detention, except for temporary accommodation for bonded ship crews without requiring collateral. (3) Problems regarding the use of alternative measures instead of detention for alien show that the Immigration Act of 1979 only offers one alternative measure, which is a bond agreement, to be used after the issuance of a detention order. The act does not provide for alternatives such as allowing individuals to reside in a designated community while reporting regularly. Some aliens who have been temporarily released in criminal cases have been subjected to re-detention, limiting their freedom of movement. When compared to the laws of Canada, Belgium, and Malaysia, it is evident that these countries have various alternative measures, such as periodic review of detention orders until release, providing accommodation within the community, guaranteeing bonds without requiring collateral, and allowing residence in non-locked residential facilities with specified entry and exit times.

The research suggests legal solutions by further amending the Immigration Act of 1979, Article 54, Para 3, to allow individuals to request the court for detention with a maximum duration of 90 days. Additionally, the definition of appropriate detention facilities should be specified in Article 4, excluding police station detention cells or similar places. Furthermore, Chapter 6/1 should be added to introduce alternative measures to detention based on Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-seekers and Alternatives to Detention, along with Community Assessment and Placement or CAP model. The conditions for ending these measures should be specified, and further amendments should grant the Immigration Commission the authority to appoint a joint committee like that of Malaysia. This joint committee should have the power to examine, monitor, and evaluate alternative measures to detention and make recommendations to the parliament while resolving disputes related to these measures, including the establishment of additional measures.