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| <b>THEMATIC TITLE</b>   | PROBLEM ON CONTROL OF ISSUING OF BY-LAWS AND EXAMINATION OF BY-LAWS BY THE ADMINISTRATION                         |
| <b>KEYWORDS</b>         | ADMINISTRATIVE ACTIONS/BY-LAWS/ISSUING OF BY-LAWS/CONTROL AND EXAMINATION OF BY-LAWS ISSUED BY THE ADMINISTRATION |
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### **ABSTRACT**

This thematic paper aims to study and analyze legal problems from the administration that issues the illegal by-laws. According to the study, it was found that the Administrative Procedure Act B.E. 2539 (1996) and the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999) only defined the “by-laws”. They still did not provide criteria for controlling the issuance or examination of by-laws. The administration authorizes the provision of by-laws, and the administrative judicial organization is empowered to examine the legality of by-laws in compliance with the principles of model laws, concepts, and theories, as well as considering legal principles regarding issuing and examining by-laws. This may not guarantee that existing or forthcoming by-laws will be lawful. Moreover, this may adversely affect the rights of individuals and restrict or deprive them of their rights and freedoms. Therefore, this vital problem is worth studying to provide solutions to ensure the legality of by-laws. In this research, there is a comparative study of several concepts, theories, and criteria related to the issuance of by-laws according to foreign law and Thai law.

To offer a solution for such problems, it is indispensable to stipulate an unambiguous statute in the Thai legal system by enacting an act, which may be called the Act on Issuance and Scrutiny of Administrative Rules. The Act shall encompass principles and reasons to serve as a standard law that is applicable for controlling the issuance and examination of by-laws by

specifying criteria and procedures for implementation similar to those in many countries, as well as the Thai legal system recognizing vital fundamental principles in issuance by-laws. The purpose of the establishment of the “Administrative Dispute Adjudication Committee” is to examine the legality of by-laws in the examining or reviewing process. The Administrative Dispute Adjudication Committee shall authorize the power and duty to deliberate on by-laws, particularly if stakeholders involved in or under the control of by-laws believe that such rules are not legal or deprive them of their rights and liberties. After the Administrative Dispute Adjudication Committee makes a decision, stakeholders involved or under control by by-laws who still suffer or may suffer damage from such rules still have an opportunity to exercise their rights to challenge the decision of the Administrative Dispute Adjudication Committee. He or she allows filing a case with the Administrative Court to reconsider and decide on the legality of by-laws.

The problems of issuing illegal rules and the process of examining by-laws shall be amended with concrete solutions in the Thai legal system by enacting an act specifying criteria for controlling the issuance and examination of by-laws, ensuring the legality of by-laws, and not depriving people of their rights and freedoms. Furthermore, it is consistent with the essence of the Constitution of the Kingdom of Thailand and creates more efficiency in implementing the laws in state administration. More importantly, the principles of administrative law in the Thai legal system shall develop in comparison with those in civilized countries, which will ultimately provide a good image to the Thai administration branch in the future.