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An Analysis of the Determination of Penalty Rates under Criminal Code and the Dhammavinaya

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Abstract

The purposes of this research were 1) to study the determination of penalty rates under the criminal code, 2) to study the determination of punishment in the Dhammavinaya, 3) to analyze and compare the determination of penalty rates between the criminal code and the Dhammavinaya, and 4) to propose guidelines for solving legal problems according to the criminal code. A documentary research method was conducted and the data were analyzed by content analysis and comparative method. Results were shown that 1) the determination of penalty rate under the criminal code is a punishment for offenders who are criminal cases, with both penalties aimed at life and liberty of individuals and penalties aimed at enforcing property according to the criminal code in section 18. There are 5 penalties for offenders in order of severity of the offence which were death, imprisonment, confinement, fine, and forfeiture of property whereas the death penalty is a punishment imposed upon the liberty of the offender and is the most severe punishment followed by imprisonment, which is a type of punishment, bringing the prisoner to the prison as specified within the period of judgment of the court. The next penalty is detention, which is taken to detain or detain in a place other than prison which restricts the rights and liberties of the prisoners. Subsequently, the fine is a punishment aimed at the offender's property by requiring the offender to pay the amount specified in the judgment, and confiscation of property is the forfeiture of that property to the state. The assets forfeited by the court's judgment shall belong to the state. 2) The determination of punishment in the Dhammavinaya, a monk who violates the precepts is called "criminal offense" divided into Garukāpatti, which means a serious offense, and is an offense that is severely punishable. Labukāpatti means a slightly offense which does not have a serious offense as Garukāpatti, which includes both uncorrectable offenses called "Atekitcchā" and the type of offense that can be corrected is called "Satekitcchā". The penalty for violating the Vinaya has 3 types: severe punishment causing a monk to lose his status as a monk, medium punishment causes a monk to live in karma by conducting some kind of conduct to torture oneself, and slightly offense by the monks must punish him lightly in the presence of the monks and together to be released. There are seven groups of offenses: 1) Parājika, 2) Saṅghādisesa, 3) Pacittiya, 4) Patidesaniya, 5) Thullaccaya, 6) Dukkaṭa, and 7) Dupbhāsita. 3) Results of the comparison of the determination of penalty rate between the criminal code and the Dhammavinaya found that the highest order of determine punishment in criminal code is death penalty equivalent to Parājika in the Dhammavinaya in the type of Garukāpatti (heavy offense) of Atekitcchā type which is considered a heavy punishment. For the determination of penalty rates under the criminal code, in the second order, imprisonment is equivalent to a fine for an offense in the Dhammavinaya namely, Saṅghādisesa, which is a guard offense. Satekitcchā type, which is considered a moderate penalty (middle offense). For determining the next penalty according to the criminal code, namely confinement, fine, and forfeiture of property, it is equivalent to the determine punishment in the Dhammavinaya that is a light penalty (light offense) consisted of 5 types which are Thullaccaya, Pacittiya, Patidesaniya, Dukkaṭa, Dupbhāsita, all are Labukāpatti that should propose the offense in order to be released from the offense. 4) Guidelines for solving legal problems according to the criminal code from the results of this study proposed that Thailand still needs the death penalty because it is the most severe punishment, even though it is a violation of basic human rights. In addition, this research has trend to propose the process of changing punishment in some cases if it possible. It is proposed to consider not having a confinement penalty as it is only an additional punishment and a replacement punishment from other punishments. However, it is also proposed that imprisonment be imposed to make people afraid of committing offenses against others including proposing that the penalty of fines and forfeiture of property be enforced against the offender's property to make the offenders aware and afraid of the wrongdoing due to the imposition of this penalty.

Keywords: Determination of Penalty Rates, Criminal Code, Dhammavinaya

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Introduction

Humans when living together as a society will set up a pattern in society as a consensus which includes culture and civilization and implementing rules in society, which are called “rules”. Human civilization has created rules so that human beings can live together well when someone commits a crime. That person must be punished in different ways according to social conditions and eras whereby the injured person cannot inflict punishment on his own. The state must take action on behalf of the injured person in punishing the offender. Punishment is based on the idea of taking revenge for the victim, but nowadays the purpose of punishing offenders has changed. It is a punishment for treatment, correction, so that offenders can return to society and not come back to commit crimes again. The history of criminal law, regardless of its legal system. It will be found that the notion of wrongdoing and punishment exists from primitive societies because it is part of human common sense that when someone commits a crime, they should be punished such common sense exists in the common sense of people in society, concepts, forms and methods of punishment.

Both Thai and foreign can be divided into 4 main characteristics: monetary punishment, punishment acting on the body; punishment by exclusion from the group and; contemptuous punishment or reduce social status. Criminal punishment in Thai law, according to Section 18 of the Criminal Code, stipulates five types of penalties for offenders: death, imprisonment, confinement, fine, and forfeiture of property, but the punishment at what rate must be determined from the offense in each base. These are organized into categories based on the nature of the seriousness of the offense, [1] punishable by death, imprisonment or, confinement. It is a criminal offense aimed at the torso of the offender, which is the main objective of the criminal penalty being a property penalty which is only a supplementary measure to criminal penalties.

Criminal code each section has been revised to be in line with social conditions and culture according to the era which the current edition is divided into 3 parts consisting of: [2] Part 1 General Part is divided into 2 categories, namely Title 1 Provisions used for general offenses divided into 9 chapters and Title 2 Provisions used for petty offences Part 2 Offenses divided offenses are divided into thirteen categories. Part 3, Misdemeanors, is a provision on petty offenses separated into specific chapters provided in the Criminal Code has been amended, added, improved in some sections that do not cover all acts that should be defined as offenses to keep up with the times which in various criminal provisions. There will always be what the law wishes to protect as an underlying part. It is not a physical thing or an object or a person but a desirable condition that the law seeks to insure against abuse, namely “legal interest”, which legal virtue, whether in the Criminal Code or other criminal laws. They are all legal virtues that are important and necessary for the coexistence of human beings in society [3]. Determining the penalty rate is also important because the penalty rate to be imposed on the offender is appropriate to the offense and offender will make the offender remember help prevent offenders from repeating the same mistakes, the appropriate punishment will allow the offender to return to live with his family, and society happily. However, the punishment that is currently practiced will be the behavior, background history of offenders as an important element in determining more punishment in addition to considering the seriousness of the offender’s behavior. Due to facts about the offender’s background, it is known that the offender committed the first offense or repeat the offense and also make known the cause of the offense including behavior and the environment of the offender as well which will make the punishment more suitable for the offender. [4]

In Buddhism, the law is Vinaya, in the sense of Buddhism, simply translated as “the establishment of a system of patterns” [5] when the time of the Buddha had been prescribed to apply to the monks before, called “Vinaya” occurred from the combination of the monks in Buddhism because there are believers bowing their bodies to be ordained as monks conducting celibacy in religion arises as a monastic society. Ordained people have different backgrounds, character, and behavior. Therefore, it is necessary to have a

practical framework for religion to be sustainable. The Buddha prescribes a discipline for governing monks to behave in the same way according to this discipline. The Vinaya is a rule about conduct, etiquette, and customs. The highest point of practicing Dhamma is liberation from defilements for liberation from Saṃsāra. If the monk violates or breaking the precepts which is the major discipline of the monastic order. Therefore, the main principle of precepts is to enable the monks to practice and maintain a full concentration of virtues. It also covers the behavior so that it doesn't go in a way that is not helpful. The Vinaya is divided into two parts: [6] 1) Brahmachariyakasikkhā, which means the principles of education and training in the field of law; There are 2 types: 1) Basic statutes or early statutes, and 2) Sub-statutes, meaning statutes added later in order to strengthen the precepts to be more concise or to allow the shaft to come down more conveniently for compliance. [7] The Buddha had considered by laying out the rules and regulations, rules and practices to govern the monks to behave in good order. It is regarded as the root of Buddhism, known as “Vinaya or 227 precepts” [8], which is the subject of monks who come to become ordained in Buddhism. If there is no framework for the practice of all monks, they will not go in the same direction.

It is necessary to have criteria that will support the administration to prevent misbehavior that will occur in the future to suppress and eliminate people who have inappropriate behavior. [9] If the monks violate, the Vinaya will be punished, i.e. fines, severity and light, as appropriate to the offence. There are 3 levels: 1) Severe punishment causing the violator to vacate the status of a monk, called Pārājika to exonerate oneself, called Saṅghādisesa; The group or individual is thus acquitted, called Thullaccaya, Pācittiya, Pātiesaniya, Dukkaṭa, Dupbhāsita.[10]

The Buddha prescribes the Vinaya to govern the Saṅgha will prescribe when a monk causes damage. It is a censure of the Saṅgha and the people, both Buddhists and non-Buddhists. The penalty is punishable by the state also fined obedience according to the way of the country, for example, the country fined the offender in that matter. Even to death, he fined the monk who committed the same offense to abstain from being a monk. [11] At present, the state has assigned the Saṅgha to be the ruler of the entire sangha. In the Saṅgha Act of 1962 (amended in 2018), Chapter 4, Colonial Estates and Monastic Ceremonies, Section 25, stipulates that the Saṅgha Council's authority to enact the “Saṅgha's rules” by prescribing criteria and methods carry out so that the exhibition is accurate, convenient, fast and fair. It is similar to the procedural law, set up a mechanism for notifying that a monk has committed an offense, specify details about who has the authority to enter the estate and the process of setting up an estate for monks and it shall be deemed to be legitimate that the Saṅgha Council will prescribe in the Saṅgha's rules for the Saṅgha's Council or a monk who rules any position to have the power to enter the estate or punishment according to the Dhammavinaya to the monks who violate the Dhammavinaya with the determination that the determination of the industrial estate shall be terminated at any level as well. [12] As mentioned above, it can be seen that living together in a society of laymen and monks requires a framework, rules and punishment, where everyone must act according to their own framework.

If someone commits an offense or breaks the rules, that person must be punished in a different way. In a secular society there is a necessary framework for social coexistence so that human beings can coexist peacefully, called “Criminal Law”, there are punishments such as death penalty, imprisonment, detention, fine and confiscation of property. As for the monks' society, known as the Saṅgha, there is a framework for governing monks to behave in good order, called “Vinaya”, conduct and condemned himself to the monks. A monk who violates the discipline, in addition to being punished according to the discipline must also be punished according to the law of the country.

In this research, the researcher has studied the theory of penalty rate determination under the Criminal Code, Section 18, and foreign criminal laws including judgment discipline. The researcher has studied the scriptures, texts, and laws related to foreign monks, then analyzing the determination of penalty rates

under the Criminal Code in comparison with the Dhammavinaya to propose guidelines for solving legal problems according to the Criminal Code which will benefit the monastic society and Thai society.

Research Objectives

The purposes of this research were 1) to study the determination of penalty rate under the criminal code, 2) to study the determination of punishment in the Dhammavinaya, 3) to analyze and compare the determination of penalty rate between the criminal code and the Dhammavinaya, and 4) to propose guidelines for solving legal problems according to the criminal code.

Research Method

This research conducted “An Analysis of Determination of Punishment Rates under the Criminal Code and Buddhist Disciplines” is documentary research with the following research methods: Studying, researching, and collecting documents related to the determination of penalty rates under the Criminal Code, such as textbooks, books, and academic articles. Research reports, theses, Supreme Court judgments, legal texts, provisions in the Criminal Code act, rules and regulations as well as electronic media analyze data with content analysis. Studying, researching, and collecting documents related to the adjustment of offenses in the Dhammavinaya, including the Thai-language Tipitaka of Mahachulalongkornrajavidyalaya University, 1996, textbooks, books, and academic articles. Research report, thesis, the Saṅgha Act, B.E.2505 and the Saṅgha Act revised in B.E. 2535 (amended version), rules and regulations as well as electronic media, analyze data with content analysis, analyze and compare the determination of penalty rates according to the law code by analyzing and comparing the punishment rates according to the Criminal Code in 5 categories and 3 levels of fines in the Dhammavinaya to find the essence use the comparative method for legal research, analyze and propose solutions to legal problems according to the Criminal Code.

Research Results

Results of the study entitled on “An Analysis of Determination of Punishment Rates under the Criminal Code and Buddhist Disciplines” were shown as follows:

1. The determination of penalty rate under the criminal code is a punishment for offenders who are criminal cases, with both penalties aimed at life and liberty of individuals and penalties aimed at enforcing property according to the criminal code in section 18. There are 5 penalties for offenders in order of severity of the offence which were death, imprisonment, confinement, fine, and forfeiture of property whereas the death penalty is a punishment imposed upon the liberty of the offender and is the most severe punishment followed by imprisonment, which is a type of punishment, bringing the prisoner to the prison as specified within the period of judgment of the court. The next penalty is detention, which is taken to detain or detain in a place other than prison which restricts the rights and liberties of the prisoners. Subsequently, the fine is a punishment aimed at the offender's property by requiring the offender to pay the amount specified in the judgment, and confiscation of property is the forfeiture of that property to the state. The assets forfeited by the court's judgment shall belong to the state.
2. The determination of punishment in the Dhammavinaya, a monk who violates the precepts is called "criminal offense" divided into Garukāpatti, which means a serious offense, and is an offense that is severely punishable. Lahukāpatti means a slightly offense which does not have a serious offense as Garukāpatti, which includes both uncorrectable offenses called “Atekitcchā” and the type of offense that can be corrected is called “Satekicchā”. The penalty for violating the Vinaya has 3 types: severe punishment causing a monk to lose his status as a monk, medium punishment causes a monk to live in Kamma by conducting some kind of conduct to torture oneself, and slightly offense by the monks must punish him lightly in the presence of the monks and together to be released. There are seven

groups of offenses: 1) Pārājika, 2) Saṅghādisesa, 3) Pācittiya, 4) Pātidesaṇīya, 5) Thullaccaya, 6) Dukkaṭa, and 7) Dupbhāsita.

3. Results of the comparison of the determination of penalty rate between the criminal code and the Dhammavinaya found that the highest order of determine punishment in criminal code is death penalty equivalent to Pārājika in the Dhammavinaya in the type of Garukāpatti (heavy offense) of Atekitcchā type which is considered a heavy punishment. For the determination of penalty rates under the criminal code, in the second order, imprisonment is equivalent to a fine for an offense in the Dhammavinaya namely, Saṅghādisesa, which is a guard offense. Satekicchā type, which is considered a moderate penalty (middle offense). For determining the next penalty according to the criminal code, namely confinement, fine, and forfeiture of property, it is equivalent to the determine punishment in the Dhammavinaya that is a light penalty (light offense) consisted of 5 types which are Thullaccaya, Pācittiya, Pātidesaṇīya, Dukkaṭa, Dupbhāsita, all are Lahukāpatti that should propose the offense in order to be released from the offense.
4. Guidelines for solving legal problems according to the criminal code from the results of this study proposed that Thailand still needs the death penalty because it is the most severe punishment, even though it is a violation of basic human rights. In addition, this research has trend to propose the process of changing punishment in some cases if it possible. It is proposed to consider not having a confinement penalty as it is only an additional punishment and a replacement punishment from other punishments. However, it is also proposed that imprisonment be imposed to make people afraid of committing offenses against others including proposing that the penalty of fines and confiscation of property be enforced against the offender’s property to make the offenders aware and afraid of the wrongdoing due to the imposition of this penalty.

Knowledge from Research

An analysis of the determination of penalty rates under the criminal code and the Dhammavinaya is a study of the determination of punishment rates under the criminal code, penalty adjustment according to the Dhammavinaya, comparison of penalty rates under the criminal code and the Dhammavinaya, and propose guidelines to solve legal problems according to the criminal code. Results of the research are related findings that are linked together as shown in the figure.

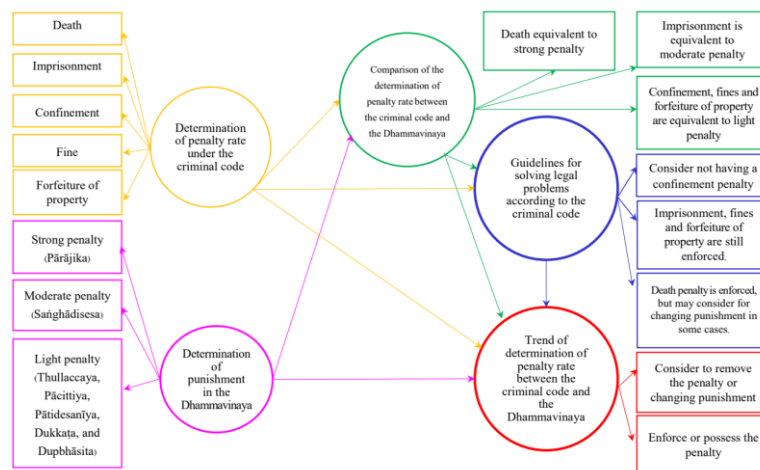


Figure 3. Knowledge from Research

Source: Phrakhrusophonarophat (Apiwat Thitasāro) (2023)

Recommendations

A. Recommendation for Policy

1. According to the results of the study, it was found that imposition of the death penalty and makes people afraid of committing crimes against others because it is the most severe punishment. However, although in many countries it has been abolished, but Thailand still needs and still has the death penalty. However, in some cases it has been proposed that the commutation of the sentence be a process by which sentences are replaced by the death penalty. It is a less severe punishment such as imprisonment.
2. According to the results of the study, it was found that the detention was the detention or detention being a restriction of the rights and liberties of the prisoners and just being detained in a place other than a prison, looks like an additional penalty considered having the opportunity to return to society, therefore, should be considered to avoid imprisonment in determining the penalty rate under the Criminal Code.

B. Recommendations for Practices

1. From the results of the study, it was found that imprisonment was considered a penalty against the freedom of the offender. As a result, the offender must be detained in various places as required by law. This makes people afraid of committing offenses against others. The advantage is that it will be a punishment to correct the rehabilitation of the offender and bring the offender back to society. Therefore, imprisonment should be imposed in determination the penalty rate under the Criminal Code because it will make people aware and afraid of wrongdoing against others in society.
2. From the results of the study, it was found that the penalty for fines and forfeiture of property. Whereas the fine is a penalty aimed at enforcing the property of the offender by requiring the offender to pay the amount specified in the judgment to the state, and the penalty for forfeiture is the forfeiture of that property to the state. The assets forfeited by the court's judgment shall belong to the state. Therefore, the penalty rate should be set according to the Criminal Code to make offenders aware and afraid of wrongdoing and to prevent repeat offenders.

C. Recommendations for Further Research

1. This research was qualitative research focusing on the analysis of punishment rates under the Criminal Code and Buddhist Disciplines. It is a comparative study to see the guidelines for determining the punishment of the part of the criminal law and the Dhammavinaya for further research. There should be a mixed method research design that links the findings from this research to the design of quantitative data collection to survey opinions about the determination of penalty rates under the Criminal Code and Discipline.
2. This research was a study of the determination of penalty rates under the Thai Penal Code and Buddhist Doctrine and Disciplines (Dhammavinaya), resulting in findings that were comparative analyses on the determination of penalty rates under the Thai Criminal Code and Buddhist Doctrine and Disciplines (Dhammavinaya) for further research multi-case studies should be researched in order to see the phenomenon of using punishment in real situations, both in criminal law and in Buddhist discipline.
3. The body of knowledge from the research has shown a connection with the Structural Equation Model (SEM) linking the relationship between the variables discovered in this research. Therefore, in the next research, it should be designed using quantitative research to survey opinions and verify the validity of the model, the direction of determining the punishment rate under the Criminal Code and the Dhammavinaya that has been developed in the future.

Conclusion

This research conducted the analysis of determination of penalty rate under the criminal code and the Dhammavinaya. The determine punishment in the Criminal Code is a punishment for offenders who are criminal cases, with both penalties aimed at life and liberty of individuals and penalties aimed at enforcing property according to the Criminal Code in Section 18. There are 5 penalties for offenders in order of

severity of the offence which were death, imprisonment, confinement, fine, and forfeiture of property. The determination of punishment in the Dhammavinaya, a monk who violates the precepts is called "criminal offense" divided into Garukāpatti, which means a serious offense, and is an offense that is severely punishable. Lahukāpatti means a slightly offense which does not have a serious offense as Garukāpatti, which includes both uncorrectable offenses called "Atekitcchā" and the type of offense that can be corrected is called "Satekicchā". The penalty for violating the Vinaya has 3 types: Severe punishment causing a monk to lose his status as a monk, medium punishment causes a monk to live in Vinayakamma by conducting some kind of conduct to torture oneself, and slightly offense by the monks must punish him lightly in the presence of the monks and together to be released. There are seven groups of offenses: 1) Pārājika, 2) Saṅghādisesa, 3) Pācittiya, 4) Pātiesanīya, 5) Thullaccaya, 6) Dukkaṭa, and 7) Dupbhāsita. The highest order of determine punishment in criminal code is death penalty equivalent to Pārājika in the Dhammavinaya in the type of Garukāpatti (heavy offense) of Atekitcchā type which is considered a heavy punishment. For the determination of penalty rates under the criminal code, in the second order, imprisonment is equivalent to a fine for an offense in the Dhammavinaya namely, Saṅghādisesa, which is a guard offense. Satekicchā type, which is considered a moderate penalty (middle offense). For determining the next penalty according to the Criminal Code, namely confinement, fines and forfeiture of property, it is equivalent to the determine punishment in the Dhammavinaya that is a light penalty. Guidelines for solving legal problems according to the criminal code from the results of this study proposed that Thailand still needs the death penalty because it is the most severe punishment. It is proposed to consider not having a confinement penalty. However, it is also proposed that imprisonment be imposed to make people afraid of committing offenses against others including proposing that the penalty of fines and confiscation of property be enforced against the offender's property to make the offenders aware and afraid of the wrongdoing due to the imposition of this penalty.

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