



## สรุปผลการวิจัย

การวิจัยเพื่อศึกษารูปแบบการทุจริตเชิงนโยบาย

**Research for Studying Forms of Policy Corruption**

ทุนสนับสนุนการวิจัยประเภทกำหนดเรื่อง ประจำปี พ.ศ. ๒๕๕๑

โดย

ผศ. ดร. นนทวัชร นวตระกูลพิสุทธิ หัวหน้าคณะผู้วิจัย

รศ. ดร. บรรเจิด สิงคะเนติ นักวิจัยอาวุโส

นางสาวอุษราณ์ ไทยวัฒน์ นักวิจัย

นายรัฐปกรณ์ นิภานันท์ นักวิจัย

นายวัชรพงษ์ ชื่อตรง นักวิจัย

ร่วมกับ

สถาบันวิจัยและให้คำปรึกษาแห่งมหาวิทยาลัยธรรมศาสตร์

พฤษภาคม ๒๕๕๕

## Research Synopsis

### Office of the National Anti- Corruption Commission

**Name of the Project:** Research for Studying Forms of Policy Corruption

**Researchers:**

Ass. Prof. Nontawat Nawatrakulpisut	Project Leader
Assoc. Prof. Banjerd Singkaneti	Principal Researcher
Ms. Risara Thaiwat	Researcher
Mr. Ratpakorn Nipanun	Researcher
Mr. Vatcharapong Suretrong	Researcher

**Origins/ problems for the research study**

In the past years, the forms of corruption in Thailand have rapidly developed. There has been a corporation in corruption between civil servants, businessmen and politicians while such corruption is systematically designed such as using the Cabinet’s powers to determine policies to facilitate one particular group or using the international relationship as a tool to have facilitating policy for one particular group. Since such corruption comes from using the power to determine policies, such form of corruption is called “policy corruption” or “corruption in the level of policy”. This uses “policies” as a starting tool for corruption.

Determining policies by the Cabinet may not illustrate that the corruption has happened, however, such policies are to facilitate corruption. Thus, it is not obvious whether or not such government policies are in accordance with the law and how to judge whether such corruption is a result of an abuse of public power for private benefit, one which is a systematic cooperation between politicians, civil servants and businessmen.

The study was conducted in order to understand the characteristics and changed forms of corruptions which would lead to new cognitive knowledge. Such knowledge is to build an understanding between related parties and the general public. This is especially to build the clarity of how to judge whether the use of public power in one particular matter could lead to policy corruption by having a clearer framework for considering relevant government’s operations and by conducting relevant case

studies to assess whether the current law is able to tackle an abuse of public power and different forms of policy corruption. It is also appropriate to consider an amendment in law including case studies from foreign countries in terms of their anti- corruption experience which may be used as measures to prevent and anti- corruption.

### **Purposes of the study**

1. To study and research forms, procedures, methods and tactics which lead to policy corruption.
2. To critically analyse problems, obstacles and legal limitation or inspection limitation.
3. To recommend measures, mechanism and legal issues to prevent and overcome corruption.

### **Study methods**

This research is a Qualitative Research consisting of documentary research and seminars as follows:

1. Collecting and studying data from documentary research namely research studies and articles on relevant laws and regulations, court judgments, opinion of council of state, foreign laws including other published materials such as articles or news in the magazine or newspapers including IT and internet researches.
2. Conducting 2 seminars for public hearing from representatives of relevant departments or organizations from both public and private sectors and 1 seminar on a presentation of the study result.

#### **These have been conducted under the following methods:**

1) Collecting and studying laws and regulations, Court judgments, opinion of legal Departments and articles on the characteristics, methods and forms of corruption in order to understand its characteristics and forms and measures or tolls in preventing and vanquishing policy corruption.

2) Collecting special documentary data such as the Court judgments, opinions of the legal Departments including relevant articles and news in accordance with this research which is a case study for policy corruption. Cases which could lead to policy corruption are as follows:

- 2.1) the case of waste water treatment project at Klong Darn
- 2.2) the case of distributing documents of land rights Sor-Por-Gor 4-01
- 2.3) the case of issuing and amending laws related to telecommunication
- 2.4) the case of purchasing fire trucks and fire boats of Bangkok Metropolitan Authority

2.5) the case of selecting the board members of the Bank of Thailand and Board members of Office of the Securities and Exchange Commission.

The selection of mentioned case studies was considered from the undebated fact, for instance, the case of waste water treatment project at Klong Darn and the case of distributing documents of land rights Sor-Por-Gor 4-01, which the Court has already had decisions on such cases. Moreover, there are opinions of the relevant organizations such as the case of issuing and amending laws related to telecommunication and the case of purchasing fire trucks and fire boats of Bangkok Metropolitan Authority. Such cases have been examined and reported by the relevant organizations while the fact is no longer debated. Thus, they can be, to a certain extent, used in the analytical study. For the case of selecting the board members of the Bank of Thailand and Board members of Office of the Securities and Exchange Commission, it was selected in accordance with the recommendation of the sub-committee on this research study. Such case is a present case of the abuse of executive power which may lead to policy corruption.

3) Conducting seminars for public hearing from representatives of the relevant organizations as follows:

**The 1<sup>st</sup> seminar: on the 1<sup>st</sup>** of September, B.E. 2552 at Royal Princess Hotel (Larn Luang) on specifying offences on “policy corruption”, the definition of “policy corruption” and specifying “the characteristics of policy corruption”

**The 2<sup>nd</sup> seminar: on the 2<sup>nd</sup>** of October B.E. 2552 at Room 221, Faculty of Law, Thammasat University on specifying the “policy corruption” offence.

**The 3<sup>rd</sup> seminar:** Research presentation on the 29<sup>th</sup> of January B.E. 2553 at Royal River Hotel (Sung-he)

4) Analyse the characteristics and forms of policy corruption and differences between policy corruption and general corruption, problems of policy corruption and the political system and society including the problem of understanding “policy corruption” and offences in accordance with the Penal Code. The result of the study was analyzed in order to recommend legal measures to prevent and overcome policy corruption.

### Study Result/ findings

1. According to the result of the case studies consisting of: (1) the case of waste water treatment project at Klong Darn (2) the case of distributing documents of land rights Sor-Por-Gor 4-01 (3) the case of issuing and amending laws related to telecommunication (4) the case of purchasing fire trucks and fire boats of Bangkok Metropolitan Authority (5) the case of selecting the board members of the Bank of Thailand and Board members of Office of the Securities and Exchange Commission, they can be analyzed in terms of forms, procedures and methods leading towards policy corruption and the research team has defined “policy corruption” as follows:

**“Policy corruption” means** “a search of benefits or benefit facilitation or conflicts of interests between individual and public interests which occurs from an abuse of executive power by the government or ministers when submitting or executing a project or any kind of operation which benefits him or her or causes damages to the state”

2. Policy corruption is corruption which consists of 3 main characteristics as follows; (1) it is an action through policy or any kind of action via abusing the government power or ministers’ power. (2) it is an abuse of power by the executive branch in order to execute policies which suits their benefits or facilitates particular people or has the characteristics of conflict of interests and (3) the executive branch or its relatives or cronies benefit from such action or such action causes damages to the state.

3. Experiences and measures to prevent and overcome policy corruption in foreign countries namely the US, the UK and South Korea which are significantly important data when considering means to prevent and overcome policy corruption in Thailand.

4. Problems, obstacles and limitations of legal mechanisms and mechanisms for preventing and overcoming policy corruption in Thailand are as follows;

4.1 Problems with the procedure to transparently inspect an abuse of the cabinet power. There is no procedure for examination of such matter whether the governmental agency has proposed the project in accordance with the law and whether the cabinet has exercised its power in accordance with the relevant laws. To make matters worse, submission of the additional projects or secret matters renders the inspection limited and

4.2 Problems with abuse of the cabinet power is the case which the cabinet may involve in the policy corruption. The following cases must be inspected: the arrangement of the government project, law

making and law amendment processes and the appointment of the cronies of political party members to important positions.

4.3 Specifying penalties in accordance with the subjective law on policy corruption since using the provision in the Penal Code on the offences conducted while being in the civil servant position (Part II offences on the public administration Chapter 2 Offences towards the government position (from Section 147 to Section 166) and the provision related to Section 157 in accordance with the Penal Code) has a number of limitations while applying them with policy corruption.

4.4 Problems with receiving penalties of the organization and whether the cabinet will have to receive the penalty in the case where the cabinet abuses its executive power or in the case where it is the offence made in the form of organization or committee.

4.5 Specifying political responsibility on policy corruption by stipulating that the cabinet shall jointly take responsibility towards the Parliament in the general policies of the Cabinet as the current responsibility lacks of clarity and an efficient mechanism while the Parliamentary mechanism fails to reflect the efficiency principle.

5. This research recommends means to prevent and overcome corruption by suggesting to solve the 2 main problems as follows: (1) legal measures and (2) political measures in order to solve problems, obstacles and limitations of legal mechanism in respect of preventing and overcoming policy corruption. Such measures are as follows:

### **5.1 Legal measures**

5.1.1 **Measures to prevent policy corruption:** specifying that if a governmental agency wishes to propose a large project in a development project or issues a new law or amends the existing law, it shall submit the detailed project proposed for an approval of the cabinet to Office of the National Anti- Corruption Commission and Office of the Auditor General of Thailand or explanation attached with the draft law and analysis of the benefit parties to Office of the National Anti- Corruption Commission or Office of the Auditor General of Thailand as the case may be. This is to draw an opinion attached for consideration. In the case which the proposal is submitted as an inserted agenda, Office of the National Anti- Corruption Commission or Office of the Auditor General of Thailand shall consider subsequently. In the case where it is related to corruption, such project shall be reconsidered or the new draft law or amended law must be reconsidered immediately before other procedures can be done.

### 5.1.2 Measures to overcome policy corruption

(1) **Main measures** are as follows: specifying responsibilities in accordance with substantive law related to policy corruption by specifying the law on offence of persons in political position in the same characteristics as those specified in Section 100 of the Organic Act on counter corruption and amendment of the Organic Act on counter corruption.

(2) **Complementary measures** are as follows: specifying a law for legal measure in order to prevent and stop policy corruption, to have a practical measure in protecting those who provide information to the agencies inspecting the use of state power related to corruption of politicians or state officials. This shall be done by creating a law on protection of the informant or information revealer on corruption following the idea of whistleblower in the US.

### 5.2 Political measure

5.2.1 **Specifying joint political responsibilities of all the ministers who have agreed upon** by amending Article 178 of the Constitution of the Kingdom of Thailand B.E. 2550 as follows: “in the public administration, if the cabinet executes in contradictory to the Constitution or law, the Minister who are involved in such action, it shall be considered as a gross violation or failure to practice in accordance with moral standard and shall be a reason for removing such Minister from office”.

5.2.2 **Specifying penalties in the case in which politicians violate ethics or public administration.** This is for political office holders to realize ethics of political office holder. When there is a corruption allegation, it shall be considered as a gross violation of ethics. In the case where it falls outside of a criminal case, the National Anti- Corruption Commission shall consider whether or not it is a gross violation of ethics and shall submit the case to Office of the Attorney General to sue in the Supreme Court of Justice Criminal Division for Political Office Holders or other organizations which has responsibilities to tackle such matter.