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ADMINISTRATIVE RESPONSIBILITY FOR WATER POLLUTION PREVENTION IN LAOS: LESSONS LEARNED FROM JAPAN

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Abstract

This research project investigates the administrative responsibility for water pollution prevention in Laos by referring to Japan. The main aim of this study is to answer three main research questions. First, how does the legal system in Laos fail to prevent water pollution? Second, what are aspects of other countries' legal systems worthy of reference for Laos? Lastly, how is administrative responsibility in Japan worthy of reference in order to find legal issues for Laos?

In order to answer these research questions, this paper consists of four chapters, an introduction, and conclusion. Chapter I attempts the reason for paying attention to the concept of responsibility, which is a "leading thread" of this study. This chapter compares the general differences between the Japanese and Laotian legal systems. Chapter II describes the history and characteristics of the water pollution prevention law in Laos. Chapter III analyzes the development of the water pollution prevention law in Japan in order to discover the problems of the Laotian legal system, as described in Chapter II. Based on this analysis, Chapter IV presents the problems of the water pollution prevention law in Laos.

The outline of this study describes the main points as follows. As far as the research's findings in this paper, in Laos, when a private company broke environmental law, instead of a civil law dispute resolution by the people's court, some administrative organs such as the Ministry of Natural Resources and Environment have sanctioned the violator. However, it can find a tendency not to exercise the expected regulatory powers in timely because the provisions of the law are not fully explicitly codified.

The result in the kind of opportunistic action or inaction of regulatory powers against the violators and therefore, in only some cases of low-impact of pollution conflict occurs, an organ at the village level may mediate the conflicting parties instead of exercising regulatory powers delegated by the laws to the responsibility of organs. Due to the difficulty of dispute resolution in civil law and proper administrative sanctions in any conflicts, the phenomenon of arbitration at the village level has arisen only in the same cases.

In this sense, it can find the specific characteristic of violators responsible for the state in Laos. Nonetheless, the common and serious harms to the residents' lives and health problem arisen in Japan that administrative agencies' inaction to exercise their regulatory powers for prevention of water pollution. In fact, one of the main reasons for an increase in water pollution crisis in Laos is related to attempt by the government to engage in rapid economic developments. Some state-owned and joint investment venture companies with the government have impacted the lives and health of residents as result of water pollution. Similar problems have been arisen and the administrative interventions have been expanded in Japan. In order to try the current analysis in a more objective way, a research approach is to analyze Laos from the "outside." The "outside" in this paper refers to the Japanese legal system. Because of the legal phenomenon that the victims pursue not only the violators, but also administrative responsibility is found in Japan.

It is the concept of administrative responsibility in Japan defines state redress of inaction and administrative case litigation of mandamus action as the concept of legal responsibility of administration. This concept determines to protect the residents' rights of lives and health caused by the inaction of legal regulatory powers by the administrative agencies such as the prefectural governors. Besides, even in the case where there is no legal power, there are cases where municipalities have tried to protect the lives and health of residents in order to supplement the prefectures in the case of inaction.

Of course, the legal systems of the two countries are entirely different. However, as mentioned above, the simultaneous experiences of economic developments and water pollution have raised the legal phenomenon of the pursuit of administrative responsibility. This legal structure can also be the hint for Laos. Because disputes of private persons are not resolved by the people's courts in civil law as in the West, but the victims require the administrative organs to exercise those regulatory powers in Laos.

The conclusions obtained as the result of this legal study are as follows. First, when serious water pollution results from rapid economic developments, the limits of the village level arbitration as in the past become clear. This study shows the "logic" that some structural transformation will be

born to the legal system in the future. Second, in order to demonstrate the logic, this study focuses on “responsibility” as the “leading thread.” By this, it can find an essential issue of the conceptual turn from violator responsibility (the regulated entity) to administrative responsibility (regulatory entity). It is the central theme of this study. As one of the essential conditions, the need for the substantive environmental law reform that clearly defines the missions of organs and requirements for administrative actions is obvious. As long as the substantive responsibility is vague, even if the legal system of litigation develops, this will not be enough.

However, third, concerning the reality that the village level arbitration conducts in Laos, the actual situation in Japan where municipalities even in the case without legal power have been tried to prevent water pollution also be helpful. In the long-term, it is logical that the structural transformation as described in the second point will occur but in the short-term, strengthening the responsibility for village level arbitration be the issue of this country. The efforts of municipalities in Japan can be evaluated as the unique foreign case for practice and theory in Laos.

In short, this is the study to clarify the legal issues for the development of the water pollution law in Laos. The author hopes that this work can contribute to the basis of fair, sound, and reasonable development in the future in Laos.

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Abbreviations

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
ACLA	Administrative Case Litigation Act
EIA	Environmental Impact Assessment
GDP	Gross Domestic Product
JICA	Japan International Cooperation Agency
SIDA	Swedish International Development Cooperation Agency
IMF	International Monetary Fund
UN	United Nations
UNDP	United Nations Development Program
WEPA	Water Environment Partnership in Asia
WHO	World Health Organization
WTO	World Trade Organization

Introduction

Laos is thought as one state typical of sociopolitical from the former Soviet Union.[1] Like China and Vietnam, Laos looked to the ideas of the Soviets to construct a socialist state. Laos has transferred into the socialist regime led by the Lao People's Revolutionary Party[2] (*Phak Pasason Pativat Lao* in Laotian, hereinafter Party) after abolishing the monarchy system in 1975.[3] On August 14, 1991, the first socialist Constitution (amended in 2003 and 2015) officially recognized a centralized state power within the "leading role" in the Party (*Phak* in Laotian). Article 3 of the present 2015 Constitution declares that the Party plays the significant roles in state administration.[4]

Laos experienced the Soviet-style centrally planned economy from 1975 to 1985.[5] Under the socialist model, the state based on the principle of common ownership, state-controlled over the economy, and administrative allocation of economic input. Laos introduced this system similar to China and Vietnam, where the economy mainly subjected to administrative decisions.[6] After economic crises, Laos was planned to transform from the centrally planned economy into the open-market economy in 1986 (same time with *Doi Moi* of Vietnam).[7] This transformation was called the

[1] Ministry of Education and Sports [ກະຊວງສຶກສາທິການ ແລະ ກິລາ], *Lao Studies 1* [ລາວສຶກສາ 1] (Vientiane: Ministry of Education and Sports and SHEP, 2016), 90.

[2] According to the 10th Congress of the Lao People's Revolutionary Party [ກອງປະຊຸມໃຫຍ່ຂອງ ພັກປະຊາຊົນ ປະຕິວັດລາວ ສະໄໝທີ 10] (held on January 18-22, 2016), 11 members of the Politburo [ກົມການເມືອງ] are elected by the fifty-three members of the Central Committee of the Party [ຄະນະບໍລິຫານງານ ສູນກາງພັກ]. Both Politburo and the Central Committee of the Party are elected at each its congress every five years.

[3] UNFPA, *Evaluation of UNFPA Support to Maternal Health Mid-Term Evaluation of the Maternal Health Thematic Fund-Country Report: Lao PDR*, New York (UNFPA, October 2012), 9.

[4] For further researches about the Party, see Central Committee of the Party, "Regulation of the Lao People's Revolutionary Party, the 10th Party Congress" [ກົດລະບຽບ ພັກປະຊາຊົນ ປະຕິວັດລາວ ສະໄໝທີ 10], no. 04 (Central Committee of the Party, March 22, 2016). Simon Creak and Keith Barney, "Conceptualizing Party-State Governance and Rule in Laos," *Journal of Contemporary Asia*, no. 48:5 (2018): 693-716.

[5] Suiwah Leung, Ben Bingham, and Matt Davies, "Globalization and Development in the Mekong Economies: Vietnam, Lao PDR, Cambodia and Myanmar," in *Globalization and Development in the Mekong Economies*, ed. Suiwah leung, Ben Bingham, and Matt Davies (Cheltenham and Northampton: Edward Elgar Publishing, 2010), 3.

[6] Kotaro Ishi, "The Lao People's Democratic Republic: Growth, Reform and Prospects," in *Globalization and Development in the Mekong Economies*, ed. Suiwah Leung, Ben Bingham, and Matt Davies (Cheltenham and Northampton: Edward Elgar Publishing, 2010), 111.

[7] People's Supreme Court of Lao PDR [ສານປະຊາຊົນສູງສຸດ ແຫ່ງ ສປປ ລາວ] et al., *Economic Dispute Resolution* [ປຶ້ມຄູ່ມືການແກ້ໄຂຂໍ້ຂັດແຍ່ງທາງ ດ້ານເສດຖະກິດ] (Vientiane: JICA, 2017), 3.

"New Economic Mechanism" (*Chin Tanakaan Mai* in Laotian).[8] This transition firstly proclaimed by the Party as stressed in the 4th Party Congress in 1986 that the state followed up "economic market."[9] Following up the Party, the present government has implemented the economic system. Under the market economic system, the state opened the door to the world and changed its roles in order to meet the growing demand.[10] Therefore, Laos became a member of the Association of Southeast Asian Nations (ASEAN) in 1997 within the commitment of the ASEAN Free Trade Area (AFTA) and the ASEAN Economic Community (AEC).[11] In 2013, Laos also became a full member of the World Trade Organization (WTO).[12] The state opened the investments from Southeast Asia, the West, and other nations across the world.

Currently, there are many investments by whom in Laos. Industrialization is one of the principal investments, such as paper mills, potassium salt, dyeing, and cassava factories. Another investment is mineral explorations in gold, copper, coal, gypsum, and potash. Agriculture investments are also increased for plantations of banana, rubber, cassava, sugarcane, and other cash crops from abroad through contract farming and land concessions approved by the government.[13] These activities add value for Gross Domestic Product (GDP) export-driven growth in investments. According to the Bank of the Lao PDR, GDP of Laos grew of 6.89 percent in 2017.[14] The World Bank highlighted that Laos remained the world's 116th largest economy in 2017.[15] The International

[8] UNDP, *Assessment of Development Results Evaluation of UNDP's Contribution: Lao PDR*, New York (New York: UNDP, May 2007), Executive Summary x-xi.
[9] Richard Slater and Khamlouang Keoka, *Trends in the Governance Sector of the Lao PDR*, Vientiane (Vientiane: Swiss Agency for Development and Cooperation, February 2012), 9.
[10] Government of Laos, *Lao People's Democratic Republic: Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development*, Vientiane (Government of Laos, July 2018), 2.
[11] ASEAN, "About ASEAN: Overview," *Association of Southeast Asian Nations*, accessed June 22, 2019 http://asean.org/asean/about-asean/overview/.
[12] WTO, "WTO | Lao People's Democratic Republic - Member Information," accessed June 22, 2019 https://www.wto.org/english/thewto_e/countries_e/lao_e.htm.
[13] World Bank, *Lao PDR Economic Monitor*, Vientiane (Vientiane: World Bank, November 2006), 24.
[14] Bank of the Lao PDR [ທະນາຄານແຫ່ງ ສປປ ລາວ], *Annual Economic Report 2018* [ບົດລາຍງານເສດຖະກິດ ປະຈຳປີ 2018], Vientiane (Vientiane: Bank of the Lao PDR, January 2019), 1.
[15] World Bank, "GDP Ranking (GDP) | Data Catalog," *World Bank*, accessed June 22, 2019 https://datacatalog.worldbank.org/dataset/gdp-ranking.

Monetary Fund (IMF) reported that GDP of Laos grew by 6.8 percent in 2018.[16] The Asian Development Bank (ADB) expects that GDP in Laos growth of 7.0 percent in 2019.[17]

At the same time, rapid development came with water pollution crises and environmental disruption. Those private economic activities have harmed the rights of residents. For instance, the government has joint venture investments with the private sectors in manufacturing (Lao Brewery, Lao Tobacco, and Lao Soft Drink companies), mineral exploration, and plantation.[18] Many companies pollute water resources and the environmental impact. Water pollution affects the lives and health of residents.

When water pollution, as described above, causes damages to the lives of residents in the West or other capitalist countries, the victims generally can bring civil lawsuits against the violators and damages will be compensated by the court decisions. However, under the current Laotian legal system, the victims face extreme difficulty for filling civil lawsuits against the violators because there is no specific law enabling the victims to sue them. It is not unique to Laos, but it is common in many socialist countries. Without specific laws that there is no room for judgment in the specific provisions, both people, and judges will not start any law implementation. Therefore, the National Assembly (legislature, *Sapha Haengsard* in Laotian) enacted the Law on Water and Water Resources in 1996 and other environmental laws later on in order to ensure the lives and health of residents and environmental protection from the activities of economic developments.

Even after the enactments of those laws, the Laotian legal system does not provide legal grounds for a suit because it is litigation against the violators, which is a joint investment venture with the state. In Laos, judicial review to protect the fundamental rights has not been established well. Besides, the administration has much more power than the judiciary. Many people in the state believe in administrative "authority" rather than the people's courts (*Sanpasason* in Laotian). In

[16] IMF, *2017 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Lao People's Democratic Republic*, Washington, D.C., 18/84 (Washington, D.C.: International Monetary Fund, March 2018), 33.
[17] ADB, *Asian Development Outlook 2018: How Technology Affects Jobs* (ADB, April 2018), 261.
[18] World Bank, "Lao PDR Economic Monitor," 25–26. For more research work of Laotian state-owned companies and joint venture investments with the state, see Pemasiri J. Gunawardana and Sommala Sisombat, "An Overview of Foreign Investment Laws and Regulations of Lao PDR," *International Journal of Business and Management* 3, no. 5 (May 2008): 33-34.

reality, the court system in Laos has not protected private lives and health of residents, but it has punished violators with criminal sanction.

Instead, when a conflict occurs, an administrative organ at the local level mediates between the conflicting parties. However, it is not the duty, and it depends on a servant's personal motivation belonging to the local organs. In this regard, any kind of "responsibility"[19] of administrative organs is not recognized.

As noted above, the fact that attention should be paid for this study is that many people in Laos prefer to mediate at village levels rather than the people's courts.[20] In this way, it has become an essential issue for society to make clear the various levels of responsibilities of administrative organs, which should serve human rights protection and environmental protection. It is because of the new laws have delegated regulatory powers to some administrative organs since 1996, and the responsibility of the newly authorized administrative organs becomes a future legal problem in Laos.

With such consideration of the legal problems as mentioned above, the purpose of this doctoral dissertation is to find legal issues in Laos by referring to Japanese experiences. Of course, Japan and Laos are distinct from basic legal systems that will discuss in the coming chapters. However, environmental problems and water pollution crises generate the same kind of problems. Both countries have common developmental features. Indeed, environmental protection is a universal problem, and despite a significant difference in development over time.

Besides, Japan has a lot of experiences at multi levels for water pollution prevention; therefore, this study selected Japan as a reference. Furthermore, there has been a history in Japan in which not only violators, but also administrative responsibility has been pursued through trials since 1970 (see Chapter III). This history is the most important point for considering the future issues of Laos as mentioned above.

In order to find the problems and make reforms in the present Laotian legal system, this study tries to answer three main research questions: (1) How does the legal system in Laos fail to

[19] "Responsibility" is one of the significant words in this research project. In Chapter I of this doctoral dissertation, it will be described the concept of responsibility in more depth.
[20] UN, *Country Analysis Report: Lao PDR-Analysis to Inform the Lao People's Democratic Republic-United Nations Partnership Framework (2017-2021)* (Vientiane: UN, November 11, 2015), 18.

prevent water pollution? (2) What are aspects of other countries' legal systems worthy of reference for Laos? (3) How is administrative responsibility in Japan worthy of reference in order to find legal issues for Laos?

In order to answer these questions, this paper is divided into four chapters. Chapter I attempts the general concept of responsibility because this concept is an indispensable "leading thread" for this study. Three sections provide the grounds for argument in this chapter. Section one opens up with the general concept of responsibility. Section two surveys the unique concept of violators' responsibility for the state in Laos. Administrative responsibility in Japan shows in the third section.

Chapter II describes the legal system, organs, and its actions for water pollution prevention in Laos. Section one reviews the historical developments and the legal system for water pollution prevention in Laos. Section two discusses the centralized system of administrative organs and their relations as well as the difficulty of administrative responsibility. Final section describes allocation of powers and administrative actions: plans, standards, operation licenses, and administrative sanctions as opportunism of administrative actions.

Chapter III proposes the necessity for references of different types of the legal systems and experiences for water pollution prevention. Three sections consist in this chapter. Section one reviews the history and the legal system in Japan concerning water pollution prevention. This section also considers the meanings of a watershed event that is the National Diet session called "pollution session" (*Kogai Kokkai* in Japanese) in 1970 for a historical environmental law system progress. Section two attempts to find the concept of administrative responsibility for agencies at both national and local levels. After 1970, in order to enforce the environmental laws as national statutes, court cases have subsequently appeared. At the same time, local administrations have tried to protect the rights of residents in order to complement that new legal system. After this point, the guidelines and ordinances for water sources protection have been come to try in many places. Finally, after 1990, the so-called administrative reform era, the important court decision was appeared in the state redress of inaction case and administrative case litigation of mandamus action was codified.

As the results of the above analyses, Chapter IV tries to pose the legal problems in Laos. Three sections provide the arguments in this chapter. Section one discusses the differences and similarities between the legal systems of the two countries as analyzed in Chapters II and III. The medium and long-term legal issues in Laos will be discussed in section two. The legal conditions for becoming unlawful of inaction of the administrative organs to which the regulatory powers have delegated pointed out. Here, it argues a kind of variant of discretionary shrink or contraction in Japan (see Chapter III) will eventually appear as the similar problem in the future in Laos. However, in the meantime, administrative organs at the local levels are required to mediate the conflicting parties. As municipalities' efforts in Japan, it has complemented the regulatory powers of prefectures (see Chapter III). It can be said that the arbitration at village levels will continue to attempt for the time being. In this point, the research results of this paper may refer to the practices in Laos.

In sum, the research's findings pose fundamental legal issues of the conceptual turn from violators' responsibility to administrative responsibility. In the future, judicial review of administrative actions in Laos may be established to protect human rights such as lives and health of residents as well as pay compensation to private individuals. However, it may take a little long time. At the same time, the role of mediation (*Khai Khia* in Laotian) keeps for the same purpose. Therefore, the broader concept of administrative responsibility in which legal responsibility and wider responsibility coexist in Japan is referred for environmental protection in Laos.

Chapter I: Concept of Administrative Responsibility

Introduction

Administrative responsibility is a broad concept in the field of administrative law. One term of this concept defines as a mission of a government and its public body to the general public. For instance, when administration rendered illegal act, the state is required for legal liability such as compensation for past damage. In this way, responsibility and liability have to go along with each other. Such actions of state legal liability might lead by judicial review. Administrative responsibility is supposed to balance three powers in the state and human rights protection.

In many countries around the world today, administrative responsibility can be found in typically state redress (also known as state compensation and state liability) and administrative case litigation as the concept of "legal" responsibility of administration. This concept determines to protect private rights against the administration by court rules. At the same time, in a case of administration does not have legal power from the legislative branch, some "non-legal" or de-fact actions render, and this concept as a tool to protect the people's rights. This tool has no legal effect because it has no legal delegation power. However, this is one concept that uses in the term administrative responsibility and it is the purpose of this study.

In the context of Laos, "responsibility" defines as the administrative sanctions and criminal punishment as the concept of violators' responsibility for the state. In this sense, the government may punish a violator who violates a law as a national statute. In Laos, the legal system of state redress and administrative case litigation has not been introduced. In a minor impact case, an administrative organ at the local level may mediate the conflicting parties and it does not consider as the responsibility of local administration. This organ has not have independency because the local autonomy has not been guaranteed.

This chapter addresses the basic concept of responsibility in Japan and Laos. Those two legal systems in the two countries are totally different. In order to show the basic differences of the legal systems in two countries, this chapter is divided into three sections. Section one will survey the

concept of responsibility as the "leading thread." Section two will examine the concept of unique violators' responsibility for the state in Laos. Section three will end with the concept of administrative responsibility in Japan.

Section 1: Concept of Responsibility in General

Two main parts will be pointed out in this section. The distinction and continuity of liability and responsibility will be described in the first part. In the second part, it will highlight a significant concept of responsibility regarding an environmental protection case in Laos.

1. Legal Liability and Responsibility Distinction and Continuity of Both Concepts

The terms "liability" and "responsibility" are closely related meaning in the legal terms. Both words sometimes use synonym and mention together because there are interactions. However, these words are distinct meaning in the legal term. Responsibility is broader meaning and scope than liability.[21]

One concept of "responsibility" in the West is defined by the founder of Black's Law Dictionary, namely Henry Campbell Black: responsibility is the "obligation to answer for an action done and to repair an injury it might have caused."[22] Bryan A. Garner still opines that responsibility is "the quality, state, or condition of being answerable or accountable."[23] The Oxford Dictionary further defines that responsibility is a "duty to deal with or take care of something," so it might blame if something goes wrong.[24]

[21] For further research works, see Raymond Gillespie Frey and Christopher W. Morris, *Liability and Responsibility: Essays in Law and Morals* (New York, Port Chester, Melbourne and Sydney: Cambridge University Press, 1991). H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford and New York: Oxford University Press, 1968 and 1973). C. T. Sistare, *Responsibility and Criminal Liability* (Dordrecht: Kluwer Academic Publishers, 1989).
[22] Henry Campbell Black, "Responsibility," Minnesota, *Black's Law Dictionary* (Minnesota: West Publishing Co., 1951), 1476.
[23] Bryan A. Garner, "Responsibility," Minnesota, *Black's Law Dictionary* (Minnesota: Thomson Reuters, 2014), 1506.
[24] Albert Sidney Hornby, "Responsibility," Oxford, ed. Margarent Deuter et al., *Oxford Advanced Learner's Dictionary* (Oxford: Oxford University Press, 2015), 1319.

On the other hand, "liability" is "the state or quality of being legally obliged or accountable."[25] The Cambridge Dictionary describes liability as "the fact that someone is legally responsible for something."[26] Liability still clarifies by the Macmillan Dictionary that liability is a "legal responsibility for causing damage or injury, or for paying something."[27] To take responsibility is to accept an obligation and admit a claim.[28] When a person fails to perform some task, the person needs to explain what happened and then provide some answer the allegation wrongdoing[29] and account for what one has failed to do.[30] The person who is unable to provide a satisfactory answer must subject to disciplinary sanction or criminal punishment. In many Western countries' history, it starts with criminal responsibility as a sanction by the state and develops into civil responsibility as a court remedy, and then administrative responsibility as the prevention of damages.

The core concept of responsibility is liability of violators to legal punishment for past wrong act.[31] In this sense, responsibility is the liability that a person's mental fitness for answering in a court for the person's acts.[32] Legal liability is state to be legally accountable or obligation and responsible for another person or society, which is firstly enforced by criminal punishment.[33] In the criminal responsibility, it is the past wrong act in the system of criminal law.[34] When a court found and concluded that a person commits a past wrong act, the court may convict the person of a crime for punishment.[35] In this regard, legal liability firstly finds in the criminal law system. In criminal law, a convicted person requires paying for society itself through the payment of fines, incarceration

[25] Bryan A. Garner, "Liability," Minnesota, *Black's Law Dictionary* (Minnesota: Thomson West, 2004), 932.
[26] Colin McIntosh, "Liability," Cambridge, *Cambridge Advanced Learner's Dictionary* (Cambridge: Cambridge University Press, 2013), 890.
[27] Michael Rundell, "Liability," Oxford, *Macmillan English Dictionary for Advanced Learners* (Oxford: Bloomsbury Publishing, 2002), 820.
[28] H. M. Kallen, "Responsibility," *The University of Chicago Press* 52 (1942): 373.
[29] V. Lee Hamilton and Joseph Sanders, *Everyday Justice: Responsibility and the Individual in Japan and the United States* (New Haven: Yale University Press, 1992), 16.
[30] Cathal J. Nolan, *Power and Responsibility in World Affairs: Reformation Versus Transformation* (Greenwood, 2004), 57.
[31] James Fitzjames Stephen, *A History of the Criminal Law of England*, 2nd ed. (New York: Burt Franklin, 1883), 96.
[32] Garner, "Responsibility," 1504.
[33] Garner, "Liability," 932.
[34] Francis G. Jacobs, *Criminal Responsibility* (London: Weidenfeld and Nicolson and London School of Economics and Political Science, 1971), Preface.
[35] Christine B. Harrington and Lief H. Carter, *Administrative Law and Politics: Cases and Comments*, 4th ed. (Washington, D.C.: CQ Press, 2009), 336–37.

in a jail, or a rare case for the crime.[36] Besides, when a person is an intention to injure another person, the person might be liable to criminal prosecution and punishment.[37] "Liability in such circumstances is in the modern systems of criminal law."[38]

Liability is common in all systems of civil law for a person who needs remedies for harm caused by others.[39] In tort law, negligence or intention holds wrongdoer play for damage that the person has caused.[40] For such consideration, the principle of liability is related to the penal theory of tort.[41] Liability is a part of the responsibility for injured victims.[42] Liability and responsibility exist between the wrongdoer and the remedy of the wrong.[43]

In the administrative responsibility to prevent harm, it has a broader meaning concerning the law than liability. For example, responsibility is suitable for the concept of criminal or civil liability, but it is limited to the ex-post accident. However, the ex-post treatment is not sufficient in water pollution prevention because of its serious harm to the lives and health of residents. In this case, the concept of liability should expand as administrative responsibility for prevention not ex-post treatments. For instance, administrative responsibility is to protect the environment through a regulatory system. Before granting a license, an environmental agency may screen function in order to ensure a company meets regulatory standards under the environmental laws and legal regulations such as wastewater treatment system or site of the company. When the company does not meet the standards required by the legal rules, the license application should be denied by the environmental agency. It is one type of administrative responsibility to prevent foreseeable harms brought from the activities of companies.

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[36] Raymond Gillespie Frey and Christopher W. Morris, *Liability and Responsibility: Essays in Law and Morals* (New York, Port Chester, Melbourne and Sydney: Cambridge University Press, 1991), 94.
[37] G. Jacobs, *Criminal Responsibility*, 1.
[38] H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law*, 2nd ed. (New York: Oxford University Press, 2008), 216.
[39] Ibid.
[40] Harrington and Carter, *Administrative Law and Politics: Cases and Comments*, 335.
[41] G. Jacobs, *Criminal Responsibility*, 4.
[42] John Bell, Sophie Boyron, and Simon Whittaker, *Principles of French Law* (Oxford: Oxford University Press, 2008), 189.
[43] Garner, "Responsibility," 997.

This part addresses the concept of responsibility in criminal, civil, and administrative cases in general. The next coming part will identify the unique concept of responsibility in Laos.

2. An Important Concept of Responsibility: An Environmental Protection Case in Laos

Legal liability and responsibility are connected in Western countries. In civil case, a person is legally responsible for something means under the legal rules where the person is liable for suffer and pay compensation for damage.[44] However, the distinction between liability and responsibility in Laos is unique. The distinction of three responsibilities and its continuity are not found. Instead, responsibility of violators is familiar with the people in Laos.

In general, legal liability in socialist countries is suitable for criminal punishment in Western countries. In Laos, the administration has much more power than judiciary. Judicial review of civil responsibility has not been fully established to review the violators past acts for compensation.

2.1 Difficulty of Civil Responsibility of Violators

As already noted, in many Western countries, civil responsibility of violators could be defined as the responsibility of the private individual or legal entity for another private person when any violation of rights caused by willfully or negligently actions. However, Laos is different from many countries in the West. For instance, a company pollutes a river and causes damages such as kill fish and shellfish, the company is always not liable and responsible for such damage, in particular, a joint venture investment with the state.

According to the Head of Civil Law Department, Faculty of Law and Political Science, National University of Laos, Vixay Syhapanya, civil responsibility is the result of an act that violates a law causing damage to life and health of another person.[45] The Ministry of Justice reports that the

[44] Hart, *Punishment and Responsibility*, 216.
[45] Vixay Syhapanya, Head of Civil Law Department, Faculty of Law and Political Science, National University of Laos [ຫົວໜ້າພາກວິຊາ ກົດໝາຍແພ່ງ, ຄະນະນິຕິສາດ ແລະ ລັດຖະສາດ, ມະຫາວິທະຍາໄລແຫ່ງຊາດ], interview by the author in Vientiane (January 18, 2018).

civil responsibility, a violator must be liable to compensate for damage.[46] The relief depends on the degree of each case. Nonetheless, in practice, there is no specific law in Laos regarding civil responsibility in environmental matters, including water pollution that is not civil responsibility. It is believed that the people's courts (*Sanpasason* in Laotian) have no general power to decide civil responsibility of private persons without any specific law. Therefore, the victims face many difficult problems for civil responsibility of violators.

On the other hand, many environmental laws impose administrative sanctions for violators. For example, Part XII (Arts. 95-100) of the 2017 Law on Water and Water Resources stipulates administrative sanctions against violators (administrative fines). However, these sanctions do not constitute civil responsibility. The Law on Chemicals Management of 2016 also prescribes administrative fines against violators in Part VIII (Arts. 73-79). Article 76 of this law provides that "individuals, legal entities or organs that violate the law shall be fined." Article 77 of this law also provides that an "individual, legal entity or organ violates the law causing damage to the state, collectives, and another individual may restore, rehabilitate, and compensate for such damage." For such consideration, the victims can report to the Ministry of Natural Resources and Environment or another organ to exercise its legal power against the violators based on the laws mentioned above.

In the small impact, the environmental laws impose administrative sanctions as mentioned above. Nonetheless, when the serious impact it is criminal responsibility that not civil responsibility. In this case, the victims can sue into the people's courts. According to the former Chairman of Law Committee of the National Assembly, Davone Vangvichit, administrative sanctions and criminal responsibility are connected to each other.[47] For instance, an administrative organ may investigate for criminal responsibility and when the actions of the violators are not serious enough as crime, the organ may impose the violators as an administrative sanctions under the law.

[46] Ministry of Justice [ກະຊວງຍຸຕິທຳ], *A Handbook on Civil Law* [ປຶ້ມແນະນຳກົດໝາຍແພ່ງ] (Vientiane: JICA, 2007), 263.
[47] Davone Vangvichit, *Civil Law* [ກົດໝາຍແພ່ງ], 2nd ed. (Vientiane: Faculty of Law and Political Science, National University of Laos, 2007), 8.

The Ministry of Justice further describes that many cases of responsibility cover criminal responsibility.[48] Criminal responsibility is the result of the actions committed by the violators that cause damages to society or the state.[49] For instance, if a company releases wastewater containing hazardous materials that impact rice fields, lives, and health of residents. The violator may hold criminal responsibility for losing lives.

For such consideration, the victims can claim for damages in three main ways. First, criminal responsibility may judge by the people's courts.[50] According to the Statistical Yearbook 2017 of the Lao Statistics Bureau, the total number of civil cases was 6,615 in 2017, but the execution was only 677.[51] However, there has been no any environmental case judged by the people's court.[52] Second, responsibility of violators might be arbitrated by administrative arbitration. Lastly, responsibility of administrative organs exercises regulatory powers such as the licenses revocation of violators' factories. Like this, many victims do not claim for civil responsibility against violators the same way as in the West. Therefore, most victims prefer to conciliate, mediate, or arbitrate as provided by administrative organs. In the next part, this fact will raise the problem of potential of administrative responsibility to supervision in Laos.

2.2 A Potential of Administrative Responsibility to Supervision

As mentioned in the following Chapter II, the laws provide the missions of the administrative organs such as the Ministry of Natural Resources and Environment and other environmental organs to protect the environment. In theory, any inaction or non-exercise regulatory authority powers to supervise sometimes causes lives and health of residents as well as water pollution problems.

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[48] Ministry of Justice, *A Handbook on Civil Law*, 263.
[49] Ibid.
[50] Khamphanh Bounphakom, Vice President of the People's Supreme Court of the Lao PDR [ธอງປะທาน สานปะชาชินสูงสุด แห่ง สปป ลาอ], interview by the author in Vientiane (January 25, 2018).
[51] Lao Statistics Bureau [สูนสะถิติแห่งชาด], *Statistical Yearbook 2017* [สะถิติปะจำปี 2017] (Vientiane: Lao Statistics Bureau, Ministry of Planning and Investment, 2018), 55.
[52] Chomphanh Chanthavy, Vice President of the People's Regional IV Court [ธอງปะทาน สานปะชาชิน เขด IV], interview by the author in Vientiane (February 8, 2018).

Apart from water pollution, in general, Part VII (Arts. 69-75) of the present 2015 Constitution stipulates the missions and obligations of the administration. The missions of the administration is included all state activities beyond the laws as well as drafting the environmental laws and making the legal regulations. Also, Part IV (Arts. 11-16) of the 2016 Law on the Government provides the legal powers and missions of the Prime Minister's Office, Ministers, and Deputy Ministers. In addition, Part X (Arts. 78-83) of the 2012 Environmental Protection Law prescribes the duties and obligations of the Ministry of Natural Resources and Environment as the supervision power to protect the environment.

The Law on Civil Servants of 2015 also determines the responsibility of supervisions. Article 9 of this law prescribes the "high-level leadership officials" (*Phanukngarn Kannum Ladubsoung* in Laotian) as the supervision powers. According to Article 22 (1-2), the high-level leadership officials' phrase covers the President of the State, Prime Minister, Vice President of the State, Deputy Prime Minister, Ministers, Governors, Deputy Ministers, Vice Governors, Chief of Districts, and other positions as the supervision levels.[53]

In theory, when any high-level leadership official fails to exercise regulatory powers or commits an illegal act, the Disciplinary Committee (*Khana Kummakan Vinai* in Laotian) may sanction the official. According to Article 77 of this law, there are three levels of the Disciplinary Committees: ministerial, provincial, and district levels. The Central Committee of the Party (*Khana Borlihanngan Sounkang Phuk* in Laotian) and Ministry of Home Affairs (also know as the Ministry of the Interior) also have missions as the secretaries to inspect the actions and behaviors of civil servants.[54] According to the Article 73 of this law, there are four types of administrative disciplines. The first type is warned. The Disciplinary Committee may be noted a wrong or violation of a civil servant for evidence in order to prevent the future violation. Second, re-education conducted by reporting a violation and noting in a "document of the background history of the civil servant" (*Samnao Akasanpavat Phanukngarn Latthakone* in Laotian) in a minor case. Third, suspension of increasing monthly salary, suspension of praised, reduction of work position or assign to work lower

[53] Law on Civil Servants [ภົດໝາຍວ່າດ້ວຍ ພະນັກງານ-ລັດຖະກອນ], art. 22 (2015).
[54] Ibid. art. 85.

position with noting the violation in the document of the background history of the civil servant. The last type is dismissal without any policy.[55] Article 74 provides that the Disciplinary Committee must be considered to sanction the violators within 15 to 90 days. The Disciplinary Committee might also order the violators liable and responsible for the damages affected by the civil servants. In the serious cases, the Disciplinary Committee may sue in the people's courts via civil or criminal law.

In other relevant mechanisms, the Civil Code of 2018[56] and Penal Code of 2017 provide the responsibilities of supervisions. According to the President of the Central People's Court, Somsack Taybounlack, the private persons and civil servants use the same civil and criminal law systems based on the private law rules.[57] Article 486 of the Civil Code prescribes the civil responsibility to employers that an employer has to be liable for compensation of damage that arises from an aciont of its employee in the performance of assigned tasks causing damage to another person. When any damage causes by the serious wrongful action of the employee, the employer may be liable to compensate for the damage. Nonetheless, the employer may first pay for compensation to the damaged person and then claims for reimbursement of payment from the employee.[58]

When the serious case occurs, it can be criminal punishment.[59] The Penal Code provides the criminal responsibility of supervision and its civil servants who commits the crimes. Section 11 (Arts. 367-369) declares the breaching responsibilities by civil servants (including supervision). Article 367 prescribes that "any civil servant intentionally to abandon their duty and affects the state or social activity may be punished by six months to three years of imprisonment or re-education without deprivation of liberty and may be fined from 1,000,000 to 10,000,000 LAK (about 13,300 to 133,300 JPY). Article 368 punishes that "a civil servant who fails to perform an assigned task, negligent to perform of an assigned task or guilty for lack of responsibility, and affects the state,

[55] Ibid. art. 73.
[56] This Code passed by the National Assembly in December 2018. According to Article 630 of this Code, it will effect after 365 days from the day when the President of the State issue a decree for its promulgation.
[57] Somsack Taybounlack, President of the Central People's Court [ປະທານ ສານປະຊາຊົນພາກກາງ], interview by the author in Vientiane (February 9, 2018).
[58] Civil Code [ປະມວນກົດໝາຍແພ່ງ], art. 486 (2018).
[59] Bouapha Kimanivong, President of the People's Regional III Court [ປະທານ ສານປະຊາຊົນ ເຂດ III], interview by the author in Vientiane (February 7, 2018).

society, the rights, and interests of another person may be punished by three months to three years of imprisonment or re-education without deprivation of liberty and may be fined from 1,000,000 to 5,000,000 LAK" (approximately 13,300 to 66,600 JPY).

As such consideration, the measure of supervision applies in general. In this regard, when supervision power has not been exercised under its mission, it may punish by higher organ for criminal responsibility. This system is different from Western society. In Western countries, it starts from civil responsibility. However, the Laotian legal system provides legal liability of violators. Therefore, it will be discussed this uniqueness clearly in order to find causes of unique feature or the structure that produces those causes.

Section 2: Concept of Violators Responsibility for the State in Laos

1. Overview of the Basic Legal System in Laos

Laos transferred into the socialist regime in 1975.[60] Under the socialist doctrine, the administrative law system in Laos was influenced by the ideas of the former Soviet Union. In this regard, separation of powers does not exist. The power of the people's courts is very weak. The people's court is not the final adjudicator of the legal disputes because the National Assembly occasionally reviews its decisions for accuracy when a person "petition[61] for justice" (*Khamhong Khor Khuam Pentham* in Laotian, also known as the "proposal") to the National Assembly.[62]

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[60] Ministry of Education and Sports, *Handbook on the Politics* [ປຶ້ມຄູ່ມື ກ່ຽວກັບການເມືອງ] (Vientiane: Ministry of Education and Sports, 2016), 150.

[61] Petitions are officially codified in Article 41 of the present 2015 Constitution and the 2016 Law on the Handling of Petitions. According to Article 2 (1-3) of the Law on the Handling of Petitions, a "petition" means "a document of a citizen or organ is presented to a relevant authority for considering and dealing with an action or decision of an individual or organ that is believed to infringe the laws and regulations and affects the interests of the state collectives or the rights and legitimate benefits of the petitioner." There are three types of petitions. First, a petition is presented to a state administration authority called a "request" [ຄຳສະເໜີ]. Second, a petition is presented to the investigation organ (police), the Office of the People's Prosecutor or the People's Courts called a "claim" [ຄຳຮ້ອງຝ້ອງ]. Third, a petition is presented to the provincial affair committee of the National Assembly or the affair committee of the National Assembly called a "petition for justice" [ຄຳຮ້ອງຂໍຄວາມເປັນທຳ]. As mentioned above, the Constitution Provision and law are officially translated in English: request, claim, and petition for justice. However, readers should be noted that the petition system in socialist Laos is originated from the former Soviet Union. This system is similar to China and Vietnam. Therefore, petitions should be noted as "application,"

1.1 Historical Background

This part briefly reviews the history of the Laotian legal system (1975-present). In December 1975, the Supreme People's Assembly (also known as the Supreme People's Council, presently the National Assembly) [63] changed the regime from French-written monarchical constitution (enacted on May 11, 1947) to the "Lao People's Democratic Republic."[64] The goal of the state was to develop socialism by adopting the policies of the former Soviet Union.

After formation as the socialist state led by the Party, "socialist law" was replaced the legal system of the Laotian Royal regime (French system).[65] Nonetheless, the state had no constitution from 1975 to 1990.[66] As no constitution and law existed in early stage, the executive branch issued a decree for the judicial system. The activities of the judicial branch were based on the policies of the Party and the Prime Minister's Decree, No. 53/PM, October 15, 1976.[67] Based on this Decree, Laos established three branches. First, the legislative power was in the People's Supreme Assembly. Second, the executive power was in the government. Lastly, the judicial power was in the people's courts. The three branches worked together as a centralized system. Judicial served as a part of the government appointed by the Ministry of Justice.[68] The justice system was based on the policies of the Party and administrative instructions unknown to the public.[69] Under this system, the power of judicial ruled by the Ministry of Justice.

The Ministry of Justice was influenced and exercised in legal developments. The judicial and administration tried to re-educate violators and arbitrated between conflicting parties in order to ensure justice based on the traditional system without any constitution, criminal law, and civil laws.

"complaint," and "proposal." However, this paper is used the terms "request," "claim," and "petition for justice" based on the official translation in English of the Laotian state.

[62] Law on the Handling of Petitions [ภົດໝາຍວ່າດ້ວຍ ການແກ້ໄຂຄຳຮ້ອງທຸກ], art. 2 (3) (2016)

[63] Supreme People's Assembly [ສະພາປະຊາຊົນສູງສຸດ] was replaced by the National Assembly in 1991.

[64] Martin Stuart-Fox, *A History of Laos* (Cambridge: Cambridge University Press, 1997), 168.

[65] Martin Stuart-Fox, "The Political Culture of Corruption in the Lao PDR," *Asian Studies Review* 30, no. 1 (2006): 69.

[66] Government of Laos, "Constitution of Lao PDR" [ລັດຖະທຳມະນຸນ ແຫ່ງ ສປປ ລາວ], accessed June 22, 2019 http://laogov.gov.la/pages/Constitution.aspx?ItemID=56&CateID=3.

[67] Boupha Phongsavath, *The Evolution of the Lao State*, 2nd ed. (New Delhi: Konark Publishers, 2003), 121.

[68] Ibid. at 122.

[69] Michael Bogdan, "Legal Aspects of the Re-Introduction of a Market Economy in Laos," *Review of Socialist Law* 17, no. 1 (1991): 108.

For criminal law, the state enacted an unpublished regulation in October 1978.[70] After that, this system developed so that serious criminal offenses were tried at the people's provincial and district courts (*Sanpasason Mueang* in Laotian, abolished),[71] while petty crimes were handled at the village levels.[72] A village chief (*Naiban* in Laotian) and its mediators were mediated both small impact of civil responsibility and petty crime among litigants at the village levels.[73] The legal system was previously in the form of orders, instructions, and regulations by the administration at both central and local levels.[74] However, local levels were lacked the legal authorities to deal with local issues.

Until January 1983, the People's Supreme Court was established to deal with civil and criminal cases as a people's court of appeals for reviewing judgments decided by the people's provincial courts.[75] In criminal punishment, it convicted an offender that not given to serve in prison, but depending on the progress the offender made in improving in which was an invitation to arbitrariness.[76] In civil responsibility, the people's courts tried to negotiate between plaintiffs and defendants to come to terms with each other, while the civil servants were re-educated to ensure justice and peace in socialist society.[77] Nonetheless, a person who was unhappy with a people's court decision or an administrative action could not review and no petition for justice (proposal) to the Supreme People's Assembly because a "petition" law did not enact.

Laos was absent of any constitution, criminal law, civil law, petition law, and formal judicial system for many years. In 1986, the government made market-oriented economic reforms.[78] This transition offered more opportunities to enact the constitution and reform the legal system. In this year, many Laotian scholars were sent to take law degrees in the former Union of Soviet

[70] Ibid. at 108-9.
[71] The district courts [ສານປະຊາຊົນເມືອງ] were abolished and replaced by the People's Regional Courts [ສານປະຊາຊົນເຂດ]. According to the President of the Central People's Court, Somsack Taybounlack, three districts are combined in one People's Regional Court. A later part will show a structure of the state organs in Laos, including the present court system in Laos.
[72] Bogdan, "Legal Aspects of the Re-Introduction of a Market Economy in Laos," 108.
[73] Marcus Radetzki, "From Communism to Capitalism in Laos: The Legal Dimension," *Asian Survey* 34, no. 9 (1994): 804–5.
[74] Kenneth L. Cochran, "The Legal System of Laos," in *Modern Legal Systems Cyclopedia*, vol. 9 (New York: William S. Hein and Co., Inc., 2001), 9.180.17.
[75] Stuart-Fox, "The Political Culture of Corruption in the Lao PDR," 69.
[76] Bogdan, "Legal Aspects of the Re-Introduction of a Market Economy in Laos," 108.
[77] Phongsavath, *The Evolution of the Lao State*, 121.
[78] OECD, *OECD Investment Policy Reviews: Lao PDR* (Paris: OECD Publishing, 2017), 23.

Socialist Republics (USSR).[79] With foreign advice (especially, East German advisers) and assistance, the constitution and legal foundations increasingly focused on events in the Soviet Union and Eastern Europe.[80] Therefore, the 2nd Ordinary Session of the second legislature of the Supreme People's Assembly enacted the first Penal Law on December 23, 1989[81] (amended in 2001, 2005, and presently 2017 Penal Code)[82] and the Law on Criminal Procedure at the same year (amended in 2004, 2012, and 2017).[83] On November 29, 1990, the Law on Civil Procedure (amended in 2004 and 2012) promulgated by the 2nd Ordinary Session of the fifth legislature of the Supreme People's Assembly.[84] Both civil and criminal laws assisted by the foreign legal advisers.[85]

Civil and criminal laws were introduced to take into account the market economy and the increased in private trade.[86] However, the state still had no constitution. In 1990, the Soviet Union collapsed. Hence, Laos had to open up to the states in Southeast Asia, East Asia, the West, and other nations across the world. In order to promulgate the constitution, the state firstly established an administrative committee to draft the constitution.[87] After that, the administrative committee submitted a draft constitution to the Peoples' Supreme Assembly. As a result, the 6th Ordinary Session (August 13-15, 1991) of the second legislature of the People's Supreme Assembly officially approved the first socialist Constitution on August 14, 1991.[88]

The Constitution introduced the petition system in Article 28 (presently Art. 41 of the 2015 Constitution) that the citizens have the rights to lodge "request" (*Kham Saner* in Laotian, also known as "application"), "claim" (*Kham Hongfong* in Laotian, also known as "complaint"), and "petition for justices" (*Khamhong Khor Khuam Pentham* in Laotian, also known as "proposal") with state organs (three branches) concerning the pertaining for the rights and interests of the state collectives

[79] Bogdan, "Legal Aspects of the Re-Introduction of a Market Economy in Laos," 109.
[80] Stuart-Fox, *A History of Laos*, 199.
[81] Supreme People's Assembly [ສະພາປະຊາຊົນສູງສຸດ], Resolution [ມະຕິຕົກລົງ], no. 29/SPA, December 23, 1989.
[82] The Laotian present 2017 Penal Code was supported and assisted by JICA.
[83] Supreme People's Assembly, Resolution, no. 30/SPA, December 23, 1989.
[84] Supreme People's Assembly, Resolution, no. 09/90/SPA, December 18, 1990.
[85] Stuart-Fox, "The Political Culture of Corruption in the Lao PDR," 69.
[86] Bogdan, "Legal Aspects of the Re-Introduction of a Market Economy in Laos," 119.
[87] Government of Laos, "Constitution of Lao PDR."
[88] Phongsavath, *The Evolution of the Lao State*, 106.

and their own legitimate benefits. However, even the Constitution Provision provided the petitions, but there was no any petition law enacted from 1991 to 2004. Therefore, the Law on the Handling of Petitions (amended in 2014 and 2016) was promulgated in 2005.[89] In this respect, there was no doubt that the socialist legal system in Laos inspired from the model of the Soviet Union. This system was also introduced the ideas of "rule-by-law of the people" similar to China and Vietnam.

Under the 1991 Constitution, it established the legislative (Arts. 39-51), executive (Arts. 56-64), and judicial (Arts. 65-74) branches. The Constitution had the socialist styles in the sense of its purposes, principles, and structures. For example, Article 72 (1) gave legal power to the people's procurators to control the government, all its instrumentalities, social organs, and the people implementation the laws. Indeed, Article 68 provided the people's courts were subjected only to the law and independent, but Article 5 formulated that "the National Assembly and all other state organs established and functioned under the principle of democratic centralism."

In 2003, the Constitution was amended to guarantee judicial independence. Even after amendment, Article 5 of the 1991 Constitution remained unchanged that "all organs in the state establish and function under the principle of democratic centralism."[90] Since 2015, the present Constitution has amended, but Article 5 has still remained. Under the current Constitution, the judicial system has still not entirely separated from the legislative and executive branches. The Ministry of Justice still involves itself in the court system. The administration still has more power than the judiciary. Indeed, the old custom mechanisms of mediation continue to be determined by the administration at the local levels. These legal systems will be described in a later part.

1.2 Legal System under the Socialist Constitution

Laos is similar to other socialist states that have the single-party regime. The Laotian Constitution adopted the centralized system from the model of the Soviet Union. Therefore, the separation of powers in Laos is interpreted differently from Japan and the West. According to the present 2015 Constitution, there are three branches as follows.

[89] National Assembly [ສະພາແຫ່ງຊາດ], Resolution [ມະຕິຕົກລົງ], no. 51/NA, November 9, 2005.
[90] Stuart-Fox, "The Political Culture of Corruption in the Lao PDR," 70.

First, the legislative power is vested in the National Assembly as the fundamental issues of the nation, and it declares as a supreme organ in the state.[91] Article 52 of the Constitution defines National Assembly as the organ of representatives of the rights and interests of the people. A person who is unhappy with a final judgment by the People's Supreme Court can petition for justice.[92]

Second, the executive branch is the government responded and approved by the National Assembly and the President of the State.[93] The government is implemented in all fields of state administration, such as the socio-economic management, natural resources utilization, and environment protection.[94] The government defines to be responsible for drafting laws, strategic development plans, and national budgets. The public administration runs up from the central and local levels: provincial, district, and village levels.

Third, the power of the judiciary is vested in the people's courts. There are five types of people's courts in Laos. (1) The People's Supreme Court is to supervise and examine the legal correctness of the proceedings of the local people's courts and military courts.[95] (2) The People's Appellate Courts have the roles of adjudicating appeals of the decisions of first instance of the People's Provincial, City, and Juvenile Courts.[96] (3) The People's Provincial, City, and Juvenile Courts adjudicate at first instance cases that are not under jurisdiction of the People's Regional Courts (*Sanpasason Khet* in Laotian).[97] (4) The People's Regional Courts are the lowest courts of the first instance and adjudicate small claims. (5) The Military Courts (*Santhahan*) adjudicate criminal cases involving offense in the military matters or that occur within the compounds of the army bases.[98] The following structure shows the link between the three branches of centralized state powers.

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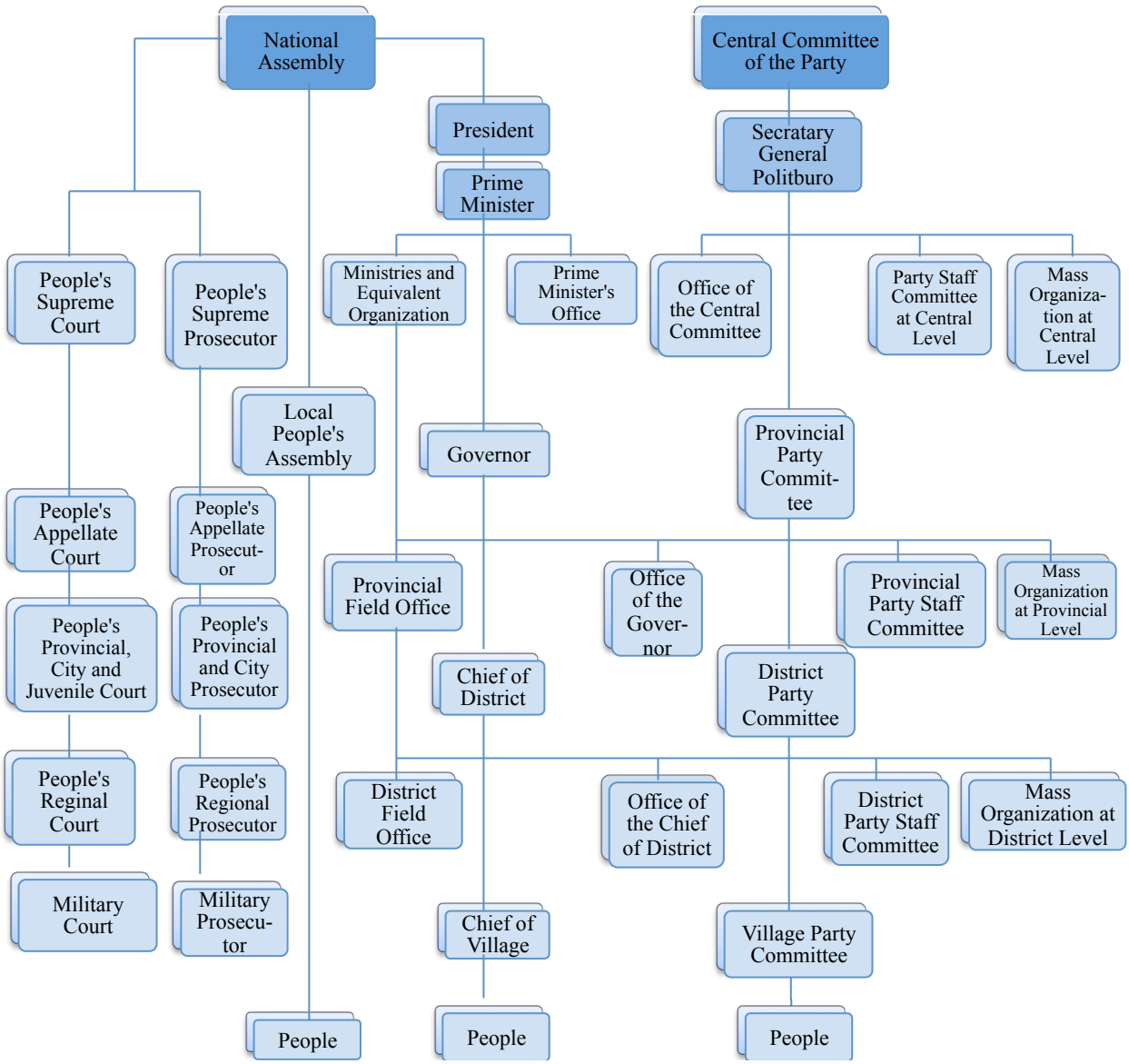
[91] Law on the National Assembly [ກົດໝາຍວ່າດ້ວຍ ສະພາແຫ່ງຊາດ], art. 8 (2015).
[92] Law on the Handling of Petitions [ກົດໝາຍວ່າດ້ວຍ ການແກ້ໄຂຄຳຮ້ອງທຸກ], art. 2 (3) (2016).
[93] Constitution of the Lao People's Democratic Republic [ລັດຖະທຳມະນູນແຫ່ງ ສາທາລະນະລັດ ປະຊາທິປະໄຕ ປະຊາຊົນລາວ], art. 69 (2015).
[94] Law on the Government [ກົດໝາຍວ່າດ້ວຍ ລັດຖະບານ], art. 3 (2016).
[95] Law on the People's Courts [ກົດໝາຍວ່າດ້ວຍ ສານປະຊາຊົນ], art. 21 (2017).
[96] Ibid. art. 22.
[97] Ibid. art. 24.
[98] Ibid. at arts. 27-28.

Table 1: Structure of the State Organs in Laos



Sources: Summarized by the author based on the present 2015 Constitution, present 2016 Regulation of the Lao People's Revolutionary Party,[99] and United Nations.[100]

As this table shows, the separation of powers in Laos does not exist. Judiciary is not separated from the legislative and executive branches. In this regard, the legislative branch has the

[99] Central Committee of the Party, "Regulation of the Lao People's Revolutionary Party, the 10th Party Congress" [ภิดละบรุบ พัภปะชาชิน ปะติอัดลาอ สะไพมที 10], no. 04 (Central Committee of the Party, March 22, 2016).

[100] UN, *Lao People's Democratic Republic-Public Administration-Country Profile* (UN, January 2005), 8. For further reports, see JICA, *Profile on Environmental and Social Considerations in Lao P.D.R* (Vientiane: JICA, December 2013), 1-16. SIDA, *Governance and Participation in Laos* (SIDA, 2003), 25.

legal power to supervise and oversee the activities of the executive and judicial branches.[101] Legislature is elected and can remove the President and Vice President of the State as well as the Prime Minister based on the National Assembly Standing Committee's recommendation.[102] In other words, legislature has the power for appointment and removal the President of the People's Supreme Court[103] and the President of the Office of the People's Supreme Prosecutor (procurator).[104]

Part X (Arts. 90-98) of the Constitution gives legal power to the people's courts for resolving disputes. The Law on the People's Courts of 2017 also guarantees judicial independence. In practice, the people's courts are not an independent body.[105] The People's Supreme Court is not the final adjudicator of legal disputes because it is under the hands of legal affairs committee of the National Assembly (as administrative body), which occasionally reviews its decisions for accuracy and sometimes returns cases when a person petitions for justice to the National Assembly.[106] Article 56 (4) of the Constitution declares the National Assembly Standing Committee as the final interpreter of the law. This Committee has the legal power to remove the president, vice president, and judges of the People's Supreme Court and other judges at lower people's courts.

The people's courts have no way to examine the constitutionality of actions of the legislative branch, as well as no way to check and control its activities. The executive branch has much more power than the judicial branch. Judicial review of administrative actions has never been established. Judiciary seems a part of the executive branch. Judges are controlled by the administration, and they serve as members of the judicial bureaucracy. To be noted that most of the government lawyers who work at the Ministry of Justice as the executive branch have become judges in the judicial branch. Also, the salary of judges is approved and provided for by the executive branch. For these many reasons, the powers of the people's courts are weak.

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[101] Law on the National Assembly, art. 13 (2015).
[102] National Assembly, "Status and Role of the National Assembly" [ທີ່ຕັ້ງ ແລະ ພາລະບົດບາດ ຂອງສະພາແຫ່ງ ຊາດ], *National Assembly of Lao PDR*, accessed June 22, 2019 http://www.na.gov.la/index.php?r=site/-detailcontent&id=41.
[103] People's Supreme Court of Lao PDR [ສານປະຊາຊົນສູງສຸດ ແຫ່ງ ສປປ ລາວ], "Journal of the People's Supreme Court" [ວາລະສານ ສານປະຊາຊົນສູງສຸດ], *People's Supreme Court* 1 (August 15, 2001): 11.
[104] Constitution of the Lao People's Democratic Republic, art. 53 (2015).
[105] L. Cochran, "The Legal System of Laos," 9.180.30.
[106] Law on the Handling of Petitions, art. 2 (3) (2016).

Significantly, there are some clamors for the court system in Laos among the bureaucrats, political control of the judiciary, and legal communities. To keep in mind that Laos is the socialist state where the three branches are in the "leading role of the Party."[107] As already stated, Article 5 of the present 2015 Constitution declares that the Party (*Phak* in Laotian) plays as the leading nucleus of the activities of the state administrations with centralized Party and state power. This Article provides that all state organs are established and functioned under the "principle of democratic centralism." [108] In this regard, the executive, legislative, and judicial branches are directly supervisions by the Party. These three branches are influenced by the decision-making of the Party. For instance, a judge is routinely reported an important case to the Secretary General Politburo and then to the Central Committee of the Party before being ruled on.

The Party plays the significant roles in leading the state organs, government officials, and general public by setting the rules of the Party.[109] For instance, Part VII (Arts. 33-34) of the present Regulation of the Lao People's Revolutionary Party, the 10th Party Congress (Regulation No. 04, March 22, 2016), the Party leads the state administrations based on the Party's policies and instructions.[110] Part V (Arts. 25-28) of this Regulation declares that the Party committees at the administration, people's courts, and people's procurators have leaded and guided the judges, people's procurators, and government officials at the state organs (legislative, executive, and judicial branches). These organs as mentioned above also regularly report to the Secretary General Politburo and Central Committee of the Party.[111]

However, the documents of the Party are not the documents for legally and are not readily available to the public. The Party controls pervasive caused by it cannot confine to provisions of a series of legal documents. Besides, in many state administrations, there is overlap among the Party and the government. For instance, the Party decides the ministerial appointments and the other, as

[107] As already noted, Party [ພັກ] refers to the Lao People's Revolutionary Party [ພັກປະຊາຊົນ ປະຕິວັດລາວ].
[108] Constitution of the Lao People's Democratic Republic, art. 5.
[109] Central Committee of the Party, "Regulation of the Lao People's Revolutionary Party, the 10th Party Congress," no. 04 (Central Committee of the Party, March 22, 2016), art. 33.
[110] For further considerations about the Party, see Lao People's Revolutionary Party, "9th Congress of the Lao People's Revolutionary Party" [ກອງປະຊຸມໃຫຍ່ຂອງ ພັກປະຊາຊົນ ປະຕິວັດລາວ ຄັ້ງທີ 9] (Vientiane: Alounmai Magazine, 2011).
[111] Central Committee of the Party, "Regulation of the Lao People's Revolutionary Party," art. 33.

the government members are not necessarily drawn from the National Assembly though some are deputies. The ministerial appointments appoint by the Party and then represent.[112] In this sense, it seems that the Party controls over the legal system in socialist Laos, and it is in many ways above the laws and legal rules. The state developments strategy is followed by the Party's orientation due to the Constitution is defined as the leading role of the state administrated by the Party. This part explores the legal system in Laos under the socialist Constitution. The next part will be explored the legal responsibility of violators for the state.

2. Violators Legal Responsibility for the State

As already showed at the Table 1, the higher organ especially located at the National Assembly and the Party may be designated to settle the conflicts or punished as the crimes based on the degree of each case instead of court rules. These types are in the form of legal responsibility of violators for the state. In the present part, it will concentrate on those legal systems.

2.1 Administrative Sanctions

One concept of administrative sanction defined by the former Deputy Minister of Justice, Ket Kiettisack, that is a system to fine or another measure taken by a state organ against a violator.[113] The former Director of the Cabinet, Ministry of Justice, Hui Phonsena, further opines that this concept is a type of sanction of an administrative organ with sanctioning competence to impose a sanction on a violator who commits a small impact.[114] In this point of views, the administrative organ has the power to impose sanction when someone breaches the law.[115] Administrative organ may issue a measure to sanction an export or import of a company.

[112] Stuart-Fox, "The Political Culture of Corruption in the Lao PDR," 65.
[113] Ket Kiettisak, Former Deputy Minister of Justice [ອະດີດ ຮອງລັດຖະມົນຕີ ກະຊວງຍຸຕິທຳ], interview by the author in Vientiane (February 16, 2018).
[114] Hui Phonsena, Former Director of Cabinet, Ministry of Justice, interview by the author in Vientiane (February 16, 2018).
[115] Bounkhong Phetdaohoung, Administrative Law Lecturer and Head of International Relation Department, Faculty of Law and Political Science, National University of Laos [ອາຈານສອນວິຊາກົດໝາຍປົກຄອງ ແລະ ຫົວໜ້າພາກວິຊາພົວພັນສາກົນ, ຄະນະນິຕິສາດ ແລະ ລັດຖະສາດ, ມະຫາວິທະຍາໄລແຫ່ງຊາດ], interview by the author in Vientiane (January 16, 2018).

The former Vice Dean of the Faculty of Law and Political Science, National University of Laos, Somphanh Chanthalyvong, mentions in the book "Fundamentals of Administrative Law" that any person who breaches a legal regulation that causes a low impact subject to sanction taken by a governmental organ.[116] Without any sanctions, the laws and legal regulations are written have no meaning that may be violated by anyone.[117] Administrative sanction is a part of consistency in law enforcement.[118] When any violation occurs, an administrative organ is required to identify the occurrence of any violation that is a law violation and then designates to issue an administrative sanction.[119] For instance, a factory breaches a regulation on wastewater quality standards, an organ may designate to suspend an activity of the factory or fine based on a law or regulation.[120]

The former Leader of the Law Committee of the National Assembly, Davone Vangvichit, also opines that administrative sanctions refer to violator responsibility.[121] In this regard, Vangvichit points out that the law, decree, order, and agreement issue the rules such as the prohibition to release wastewater into canal, stream, lake, and river without any treatment.[122] For example, Part 4 in Article 30 (2-3) of the Agreement on Pesticides Management (No. 0238, February 14, 2019) prohibits an individual or an organ throws the bottle of pesticides or other facilities using within the pesticides into the natural resources. In the event when any violation occurs, an administrative organ may re-educate, warn, issue a disciplinary sanction, fine, or take another measure against a violator based on the degree of each case.[123]

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[116] Somphanh Chanthalyvong, *Fundamentals of Administrative Law* [ຄວາມຮູ້ພື້ນຖານ ກ່ຽວກັບກົດໝາຍປົກຄອງ] (Vientiane: Faculty of Law and Political Science, National University of Laos, 2010), 90.
[117] Kiettisak, Former Deputy Minister of Justice.
[118] Phouvong Vilayseng, Vice Dean of the Faculty of Law and Political Science, National University of Laos [ຮອງຄະນະບໍດີ ຄະນະນິຕິສາດ ແລະ ລັດຖະສາດ, ມະຫາວິທະຍາໄລແຫ່ງຊາດ], interview by the author in Vientiane (February 14, 2018).
[119] Bouapha Kimanivong, President of the People's Regional III Court [ປະທານ ສານປະຊາຊົນ ເຂດ III], interview by the author in Vientiane (February 7, 2018).
[120] Somphong Soulivanh, Deputy Director General of the Industry and Handicrafts Department, Ministry of Industry and Commerce Phouvong Vilayseng, Vice Dean of the Faculty of Law and Political Science, National University of Laos [ຮອງຫົວໜ້າກົມອຸດສາຫະກຳ ແລະ ຫັດຖະກຳ, ກະຊວງຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ], interview by the author in Vientiane (February 14, 2018).
[121] Vangvichit, *Civil Law*, 10.
[122] Ibid.
[123] Ibid.

Vangvichit still opines that sanction generally includes suspension, removal, cancellation, and other measures.[124] When the constructors do not follow the standards required by the laws, the constructions can suspend their activities. Administrative organs may issue the orders to sanction the activities when they find out the wrongful or illegal actions.[125] The sanction is in the form of suspension or other measures taken by administrative organs against the violators.

Administrative sanctions are imposed when any violations of the legal rules as the small impacts, but in the event of serious impacts, administrative organs may prosecute the violators. Criminal punishment will be pointed out in the next part.

2.2 Criminal Punishment

One concept of criminal punishment in Laos clarified by the present Vice President of the People's Supreme Court, Khamphanh Bounphakom, that is a legal system to enforce the punishment for a person commits a criminal offense whether negligence or intention action causing lives and health of another person.[126] The President of the Central People's Court, Somsack Taybounlack, opines that is the penalty for an offender who convicts a crime deemed dangerous to society.[127] The book named "A Handbook on Criminal Procedure in Lao PDR" published by the People's Supreme Court and other organs mention that criminal responsibility is the system to designate the penalty for the offenders who breach the laws by a court rules.[128]

The Dean of the Faculty of Law and Political Science, National University of Laos, Viengvilay Thiengchanhxay, says that criminal punishment in Laos is mainly based upon on the 2017 Penal Code.[129] The President of the People's Regional III Court, Bouapha Kimanivong, also says that the criminal system in Laos is designed to responds to all crimes, including the offenses

[124] Ibid. at 11.
[125] Phetdaohoung, Administrative Law Lecturer and Head of International Relation Department, Faculty of Law and Political Science, National University of Laos.
[126] Bounphakom, Vice President of the People's Supreme Court of the Lao PDR.
[127] Taybounlack, President of the Central People's Court.
[128] People's Supreme Court of Lao PDR [ສານປະຊາຊົນສູງສຸດ ແຫ່ງ ສປປ ລາວ] et al., *A Handbook on Criminal Procedure in Lao PDR* [ປຶ້ມຄູ່ມື ການດຳເນີນຄະດີອາຍາ ຢູ່ ສປປ ລາວ] (Vientiane: JICA, 2014), 6.
[129] Viengvilay Thiengchanhxay, Dean of the Faculty of Law and Political Science, National University of Laos [ຄະນະບໍດີ ຄະນະນິຕິສາດ ແລະ ລັດຖະສາດ, ມະຫາວິທະຍາໄລແຫ່ງຊາດ], interview by the author in Vientiane (January 16, 2018).

against the lives and health of residents in theory.[130] Article 11 of the Penal Code addressed the basic of penal responsibilities that intentional or negligent actions deemed dangerous for the political system, economy, society, benefits of the state, rights, and benefits of citizens and organs on lives, health and other rights of citizens. Under this Code, punitive measures rank from capital punishment (death penalty), imprisonment, re-education without imprisonment, and fine to public criticism.[131]

Part IV (Arts. 45-62) of the 2017 Law on Criminal Procedure authorizes three organs responsible for criminal proceedings: investigative organs (police), the Office of the People's Prosecutor (*Aongkan Iyakan Pasason* in Laotian),[132] and the people's courts.[133] Article 47 of this law gives the primary responsibility of police organ for investigations. Police can issue an order to open an investigation and detain or release suspects. However, an arrest warrant might issue by a people's procurator (*Iyakan Pasason* in Laotian).[134] The people's procurator plays the significant roles as the supervision like in other socialist states (for example, China and Vietnam).[135] The legal power of the people's procurator in Laos is like powerful central organ originated by the Soviet legal theory.

The Laotian people's procurator has legal authority to participate in investigation instead to reply police for case information. Indeed, the people's procurator also orders lawsuits into a people's court and adherence to laws in places of arrest, detention, re-education centers, and prisons during the implementation of deprivation of liberty as well as enforcement of the court measures.[136]

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[130] Kimanivong, President of the People's Regional III Court.

[131] Penal Code [ປະມວນກົດໝາຍອາຍາ], art. 44 (2017).

[132] The term "people's prosecutor" [ໄອຍະການປະຊາຊົນ] is officially used in Laos, in particular, the present 2015 Constitution in Part X (Arts. 99-103) and the Law on the Office of the People's Prosecutor of 2017 because prosecutor (procurator) is the English term commonly used in Laos. However, readers should be noted that Laos is a socialist state and the Laotian prosecutor has considerably more power than public prosecutors in capitalist states. A characteristic of Laotian procuratorial system is similar to the procurators in socialist systems (China and Vietnam). Therefore, this paper is used the term "people's procurator."

[133] The investigative organs here include the investigation organs of police, military, customs, forestry, and other sectors as provided by the laws (Art. 46 of the 2017 Law on Criminal Procedure).

[134] Law on Criminal Procedure [ກົດໝາຍວ່າດ້ວຍ ການດຳເນີນຄະດີອາຍາ], art. 139 (2017).

[135] Xaysana Khotphouthone, Deputy of the Office of the People's Supreme Prosecutor of Lao PDR [ຮອງອົງການໄອຍະການ ປະຊາຊົນສູງສຸດ ແຫ່ງ ສປປ ລາວ], interview by the author in Vientiane (February 2, 2018).

[136] Law on the Office of the People's Prosecutor [ກົດໝາຍວ່າດ້ວຍ ອົງການໄອຍະການປະຊາຊົນ], art. 10 (2017).

According to the Deputy of the Office of the People's Supreme Prosecutor of Lao PDR, Xaysana Khotphothone, "the people's procurator in Laos has much more power than Japan and the West."[137]

Article 10 of the Law on the Office of the People's Prosecutor (Law No. 21 of 2017) declares that the people's procurators have legal power to "monitor the correct and uniform implementation of laws and regulations by all ministries, ministry-equivalent organs, organ attached to the government, companies, civil servants, and citizens" for monitoring compliance with the laws and take them into the people's courts for transgressions. In this sense, the people's procurators have exercised both procuratorial and supervisory powers.[138] This system and process seem that the legal system in Laos creates the supervision commission by using the people's procurator for legally supervisory powers. Criminal punishment does not punish only an offender, but also protects the lives and health of residents as well as hopefully ensuring peace in society.[139]

2.3 Violators Responsibility by Dispute Resolution in Local Levels

Unlike the two mentioned above, in fact, complaints to authoritative persons are common. As the case in Chapter IV later, especially in the case of water pollution, arbitration tends to be preferred. This is considered as one concept of violators' responsibility taken by an administrative organ at the local area in order to solve a conflict.[140] This is a traditional legal system to emphasize the reparative processes.[141] This system holds a violator responsible for compensation to a conflicting party. The petty crimes to bring for mediation are the small criminal offenses.[142] For such consideration, the disputes occur most of the social problems, including the conflicts of water pollution. This is the mechanism where the problems settle privately between families or individuals

[137] Xaysana Khotphouthone, Deputy of the Office of the People's Supreme Prosecutor of the Lao People's Democratic Republic, Interviewed by the Author, Vientiane (February 2, 2018).
[138] Khotphouthone, Deputy of the Office of the People's Supreme Prosecutor of Lao PDR.
[139] People's Supreme Court of Lao PDR et al., *A Handbook on Criminal Procedure in Lao PDR*, 8.
[140] Kiettisak, Former Deputy Minister of Justice.
[141] Joseph J. Westermeyer, "Traditional and Constitutional Law: A Study of Change in Laos," *ASIAN SURV* 11, no. 6 (June 1, 1971): 568.
[142] Minister of Justice [ກະຊວງຍຸຕິທຳ], "Agreement on Establishment and Activities of Village Mediation Units" [ຂໍ້ຕົກລົງ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງຄະນະແກ້ໄຂຂໍ້ຂັດແຍ່ງຂັ້ນບ້ານ], no. 404 (Ministry of Justice, April 28, 2016), art. 24.

and the chief of village, and its village mediation serve as the intermediary in those cases requiring public settlement.[143]

As already noted, Article 41 of the Constitution and Article 7 of the Law on the Handling of Petitions declare that the citizens can request the state organs for consideration in order to protect their rights and interests. In this regard, it includes the rights of citizens to request the administrative organs to deal with conflicts. The dispute resolution aims to rebuild relationships between the people, decrease the number of minor cases in the people's courts, maintaining peace, and justice in the socialist society.[144] In general, there are two main types of violators' responsibility in dispute resolution. First, mediation conducted by the Justice Offices of District and Justice Departments of Provincial and Capital under the Ministry of Justice. Second, mediation conducted by chief of village and Village Mediation Unit (*Nouy Khai Khia Kan Ban* in Laotian).[145]

According to the Swedish International Development Cooperation Agency (SIDA), most people in Laos prefer to mediate or settle conflicts in the privacy of villages rather than in arbitration or court system.[146] The United Nations (UN) conducted a survey in three provinces for legal disputes in 2015 that two-thirds of respondents submitted the grievances to village levels 65%, approach lawyers 22%, people's procurators 28%, and people's courts 43%.[147] The survey of UN has shown that a large number of litigants have considered village mediations even though the litigants did not have more confidence on village mediators. The Village Mediation Unit is the primary justice organ of the administration.[148] According to the Lao Statistics Bureau, the number of Village Mediation Units was 2,402 in 2017.[149] The activities of the Village Mediation Unit is supervised and inspected by the village administration, Justice Offices of Districts, and Justice Departments of Provincial and

[143] Westermeyer, "Traditional and Constitutional Law," 563.
[144] Prime Minister, "Agreement on Establishment of Village Mediation Units" [ຂໍ້ຕົກລົງຂອງນາຍົກ ວ່າດ້ວຍ ການສ້າງຕັ້ງຄະນະແກ້ໄຂຂໍ້ຂັດແຍ່ງຂັ້ນບ້ານ], no. 01 (Prime Minister's Office, January 6, 2016), art. 1.
[145] Radetzki, "From Communism to Capitalism in Laos," 803.
[146] SIDA, *Governance and Participation in Laos* (SIDA, 2003), 45.
[147] UN, "Country Analysis Report: Lao PDR-Analysis to Inform the Lao People's Democratic Republic-United Nations Partnership Framework (2017-2021)," 18.
[148] Prime Minister, "Agreement on Establishment of Village Mediation Units," art. 2.
[149] Lao Statistics Bureau, *Statistical Yearbook 2017*, 55.

Capital under the Ministry of Justice.[150] Since it has been no law regarding conflict settlements at the local levels, the Ministry of Justice has legal powers to issue regulations.[151]

The SIDA mentioned that this concept was based upon the traditional council of elders.[152] The Committees of the Village Mediation Unit (*Khana Kaekhai Khorkhatyaeng Khunban*, hereinafter the Committee) are the seniors based upon elected by villagers.[153] The Committee appoints by a chief of the district via a report of the Justice Office of the District.[154] The SIDA provided that "each village elects a body of about seven people to become a preliminary body for examination and make judgments concerning village problems." The UN also reports that the dispute resolution mechanism in Laos based on traditional or customary village forums that people have found to be much faster in dealing with disputes.[155]

The procedures of the village mediation are as follows. When the Committee receives a report from a litigant, the Committee must conduct a hearing within 30 days.[156] There are six processes of mediation. First, a leader (always as a chief of the village) of the Committee may announce the rules of village mediation and the conflict between the litigants. Second, the Committee might initiate open debate by the litigants or third parties. Third, the Committee may open the expressions of the litigants' conflicting views for dealing with such matters.[157] Fourth, in the event where the litigants are unable to agree, the Committee may conciliation the parties.[158] Fifth, in the event the litigants can agree, the Committee would be re-educated the parties in order to rebuild relationship and replacement or pay compensation to an objective litigant involved. Finally, the Committee may note and read the results of the agreement for the litigants signed by the mediators, litigants, representatives, witnesses, and third parties.[159]

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[150] Minister of Justice, "Agreement on Establishment and Activities of Village Mediation Units," art. 38.
[151] Radetzki, "From Communism to Capitalism in Laos," 804.
[152] SIDA, "Governance and Participation in Laos," 11.
[153] Minister of Justice, "Agreement on Establishment and Activities of Village Mediation Units," art. 12.
[154] Ibid.
[155] UN, "Country Analysis Report: Lao PDR-Analysis to Inform the Lao People's Democratic Republic-United Nations Partnership Framework (2017-2021)," 18.
[156] Minister of Justice, "Agreement on Establishment and Activities of Village Mediation Units," art. 27.
[157] Ibid. at 29 (1-2).
[158] Ibid. at 29 (3-4).
[159] Ibid. at 29 (5-6).

Mediation depends on the agreement of the conflicting parties. In the event when a conflicting party is unable to agree, the Committee may pass the case to the Justice Office of the District. After that, this Office may educate, reconcile, or arbitrate between the litigants one again based on the decision of the Village Mediation Unit. In the event when the Justice Office of the District is unable to mediate such dispute, it might be brought into a people's court for adjudication when a claim is filed. When the people's court receives the claim, the judicial tribunal might regain to mediate between the litigants.[160] In this respect, a plaintiff may have to wait of the period for a court hearing from many months to perhaps three years.[161] However, the court rule requires a small dispute that not a high value must firstly settled by the Village Mediation Unit as the Laotian traditional legal system requirement.[162] This system structures such parties may agree to the final decision.[163] The chief of the village and the Village Mediation Unit function as mediators and use their tact and stature to guide them, rather than forcing the decisions.[164]

In the conclusion of this section, it considered the concept of violators' responsibility for the state in Laos: administrative sanctions, criminal punishment, and violators' responsibility by dispute resolution in local levels. As a result, in the event when a violator commits a minor impact and petty crime, an administrative organ may designate to mediate the conflicting parties or sanction the violator under administrative regulations. However, when a serious impact, the administrative organ may prosecute the violator as the criminal responsibility under the 2017 Penal Code.

This concept is the Laotian legal system. There is the series of administrative arbitration, sanctions, and criminal sanctions. Such continuity seems difficult to understand from the legal system of Western Europe, including Japan. For this reason, the author has explained the general Laotian legal system in some details. Therefore, the next section will be attempted to describe the Japanese legal system in order to conduct the comparative study between the two societies.

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[160] Law on Civil Procedure [ภิดฆมายอ่าด้อย ภานดำเนินคะดิแผ่ง], art. 194 (2012). In a case of the high impact, the litigants can claim into a people's court directly.
[161] Westermeyer, "Traditional and Constitutional Law," 565.
[162] Law on Civil Procedure, art. 194.
[163] Westermeyer, "Traditional and Constitutional Law," 567.
[164] Ibid.

Section 3: Concept of Administrative Responsibility in Japan

In the previous section, it attempted the legal mechanism in Laos. In the present section, it considers the Japanese administrative responsibility in order to find out the current problems of Laotian legal system and tries to establish the legal responsibility of administration in Laos.

In Japan, administrative responsibility widely recognizes that the administration is responsible for responding appropriately to the outside citizens said by Muneyuki Shindo, who studies of the Public Administration that is not administrative law in Japan.[165] However, in the administrative law field, the concept of administrative responsibility exists in a narrower sense. For this study, it is meaningful to focus on two main concepts: "legal" responsibility of administration and administrative responsibility as "non-legal form." Both legal responsibility of administration and non-legal responsibility are objected in this part. This is different from Laos, but the concept of administrative responsibility also exists in multiple layers in Japan.

1. Overview of the Basic Legal System in Japan

1.1 Historical Background

The focus of this reminder is to concentrate on the concise history of modern Japan's administrative law from the nineteenth century to the present day. Modern Japan adapted the Western form of the legal system beginning in 1868 in the Meiji Restoration.[166] At the beginning of the Meiji period, Japan primarily referred to the continental theory of European legal systems in particular German and French administrative law models in the first instance.[167] In 1873, Japan employed eight legal advisers from the West to translate Western legal materials.[168]

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[165] Muneyuki Shindo [新藤 宗幸], *Thinking about Administrative Responsibility* [行政責任を考える] (Tokyo: University of Tokyo Press, 2019), 2.
[166] Carl F. Goodman, *The Rule of Law in Japan: A Comparative Analysis*, 4nd ed. (Alphen aan den Rijn: Wolters Kluwer, 2017), 13-14.
[167] Tom Ginsburg, "Dismantling the 'Developmental State'? Administrative Procedure Reform in Japan and Korea," *The American Journal of Comparative Law* 49, no. 4 (2001): 594.
[168] Yukio Yanagida et al., *Law and Investment in Japan: Cases and Materials*, 2nd ed. (Cambridge and London: Harvard University Press, 2000), 33.

Japan mainly referred to German laws as a model at later stages.[169] The concept of the German administrative law system became more influential in Japan after Hirobumi Ito travelled to Europe in the Meiji Era in 1882.[170] After that, the Constitution of the Empire of Japan (*Dai Nippon Teikoku Kenpo* in Japanese, hereinafter Meiji Constitution), based on the Prussian model, was promulgated on February 11, 1889 (effected on November 29, 1890). Japan applied some principles of German administration based on "*Gesetzmäßigkeit der verwaltung*" (legality of the administration).[171] German theorists, in particular "Otto Mayer," expanded the ideas of the administrative action ("*Verwaltungsakt*" in German).[172] Chapter V (Arts. 57-61) of the Meiji Constitution established the "Administrative Court" to examine the activities of administrative bodies influenced by the ideas of Europeans, especially from the German legal system.[173] In 1890, the Administrative Court Act (Act No. 48) derived from Article 61 of the Meiji Constitution to challenge administrative actions. On the contrary, it should be noted in Laos that among the various forms of administrative activities, the form of "administrative action" was centered and a special court established.

In Japan, after World War II, the Meiji Constitution was replaced by the new Constitution on November 3, 1946 (enforced on May 3, 1947) and the former model of Prussian was added by the pattern of Anglo-American (as the occupation force).[174] The Constitution determines the basic principle of sovereign power with the people, respect the basic human rights, pacifism, and establishing the separation of powers. Besides, under the new Constitution, it is guaranteed local self-government and dependence of local entities as provided in Chapter VIII (Arts. 92-95).

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[169] Yosiyuki Noda, *Introduction to Japanese Law* (Tokyo: University of Tokyo Press, 1976), 8.
[170] Yanagida et al., *Law and Investment in Japan: Cases and Materials*, 34.
[171] Yoshikazu Kawai, "A Gulf Between Constitutional and Administrative Law in Japan," *American Bar Association* 43 (1991): 249.
[172] John Owen Haley, "Japanese Administrative Law," in *Comparative Law: Law and the Legal Process in Japan*, ed. Kenneth L. Port and Gerald Paul McAlinn, 2nd ed. (Durham and North Carolina: Carolina Academic Press, 2003), 1003.
[173] For further research works, see Ichiro Ogawa, "Administrative and Judicial Remedies Against Administrative Actions," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: University of Tokyo Press, 1984), 217. Hitoshi Ushijima, "Administrative Law and Judicialized governance in Japan," in *Administrative Law and Governance in Asia: Comparative Perspectives*, ed. Tom Ginsburg and Albert H.Y. Chen (London and New York: Routledge, 2008), 82.
[174] Kawai, "A Gulf Between Constitutional and Administrative Law in Japan," 247.

However, the basic elements of Japanese administrative law were kept, even after the Constitution change on judicial from the perspective of administrative law. The Constitution under American influential prohibited the creation of a special court that means the Administrative Court was abolished and the judicial review of administrative actions transferred into the hands of ordinary courts.[175] Although jurisdiction was unified to an ordinary court, a special administrative case litigation procedure was enacted even after the constitutional change.

In modern Japan, the Anglo-American model did not fit the system of the traditional Japanese administrative law.[176] Therefore, Japan was turned to refer to the administrative law system of the German model for resolving the administrative law issues. Following the theory of German, Japan has created administrative law doctrine. Especially, administrative action or almost are the same concept of "administrative dispositions" such as orders imposing duties on private parties, licenses, approvals, exemptions, and others.[177]

This part briefly considers the historical background of the legal developments in Japan. The next part will attempt to focus on the basic legal system in the present situation in Japan.

1.2 Legal System under the Modern Capitalist Constitution

The Japanese Constitution adopted the system of decentralized constitution review that closely resembles the U.S model.[178] Japan provides for the democratic fundamental of separation of powers.[179] There are three particularly important in the current Constitution. First, the legislative power is vested in the National Diet as the sole law-making branch of the state.[180] Second, the

[175] Carl F. Goodman, *Justice and Civil Procedure in Japan* (New York: Oceana, 2004), 454.
[176] Hitoshi Ushijima, "Administrative Law and Judicialized Governance in Japan," in *Administrative Law and Governance in Asia: Comparative Perspectives*, ed. Tom Ginsburg and Albert H.Y. Chen (London and New York: Routledge, 2008), 82.
[177] Owen Haley, "Japanese Administrative Law," 1003.
[178] Narufumi Kadomatsu, "Judicial Governance Through Resolution of Legal Disputes? A Japanese Perspective," *National Taiwan University Law Review* 4, no. 2 (September 2009): 145.
[179] Supreme Court of Japan [最高裁判所], *Justice in Japan*, Tokyo (Tokyo: Ichitaro Ono, October 1, 2003), 1.
[180] Constitution of Japan [日本国憲法], 1946, art. 41 [Japan].

executive power is provided in the Cabinet[181] and the final important branch is the power of the judiciary,[182] which is vested in the Supreme Court (*Saiko Saibansho* in Japanese) and in such lower courts as are established by the law.[183] According to the Supreme Court, the separation of powers in Japan is based on Western concepts.[184] The purpose of separation of powers is to have checks and balances among the three branches of the state.[185]

In Japan, the Prime Minister appoints the ministers of the state, including the Minister of the Environment; however, a majority of their members may be chosen from the National Diet's members.[186] The Prime Minister can suspend an administrative order or an official measure of an administrative office or pends action by the Cabinet.[187] According to Article 11 of the Cabinet Act (Act No. 5 of 1947, as amended), "no provisions to impose the obligations or restrict of the rights can make in the Cabinet Order unless authorized by law." In addition, the Cabinet is needed to exercise power collectively responsible for the National Diet;[188] however, the Cabinet can name the Chief Justice of the Supreme Court and appoints the judges.[189] In this sense, Japan adopted the system of the parliamentary Cabinet in which the organ and existence of it rest on the confidence in the National Diet and balance of state power.[190]

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[181] Ibid. art. 65. For a further research work, see Isao Sato, "The Cabinet and Administrative Organization" in Japan, in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: Institution of Administrative Management, 1984), 21-34.

[182] Supreme Court of Japan provides many books concerning the judicial system in Japan: Historical Background of Japanese Judicial System, Types of Courts and Their Jurisdiction, Justices, Judges, Court Officials, Judicial Proceedings and Participation of Lay Persons in Judicial Proceedings, see Supreme Court of Japan, *Justice in Japan* (Tokyo: Ichitaro Ono, October 1, 2003). Supreme Court of Japan, *Justice in Japan* (Tokyo: Hirotugu Koizumi, April 30, 2009). Supreme Court of Japan, *Court System of Japan* (Tokyo, 1997). Supreme Court of Japan, *Court System of Japan* (Tokyo, 2003).

[183] Constitution of Japan, 1946, art. 76.

[184] Supreme Court of Japan, "Judicial System in Japan," accessed July 25, 2019 http://www.courts.go.jp/english/judicial_sys/index.html.

[185] Ministry of Internal Affairs and Communications [総務省], *Statistical Handbook of Japan* (Tokyo: Statistics Bureau, Ministry of Internal Affairs and Communications, 2018), 187.

[186] Constitution of Japan, 1946, art. 68.

[187] Cabinet Act [内閣法], 1947, art. 8 [Japan].

[188] Ardath W. Burks, *The Government of Japan*, vol. 65 (London and New York: Routledge, 2010), 105.

[189] Ministry of Internal Affairs and Communications, *Statistical Handbook of Japan*, 191.

[190] Ibid. at 190.

The power of judicial resides in the courts.[191] The Constitution admits the independence of the judiciary from the executive with the power of judicial review.[192] Article 76 of Constitution prescribes "the whole of judicial power is vested in the Supreme Court and in such inferior courts as established by law." "The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act" as prescribed in Article 81 of the Constitution. The Constitution is prohibited for establishing of any extraordinary tribunal.[193] In this regard, the Constitution is prohibited to establish any special court such as administrative court.[194] In Japan, all judges are independent to exercise their conscience, and the Constitution guarantees the status of judges.[195] The Cabinet is no disciplinary action against judges.[196] The court is the final adjudicator for all legal disputes and also the dispute between the state and citizens arising out of administrative actions.[197]

Article 3 of the Court Act (Act No. 59 of 1947) stipulates "courts decide on all legal disputes and have other powers that are specifically provided for by law." Judiciary also has empowered to review the acts of executive and legislative branches. The three branches are independent where none of them might be excessed in the exercise of their powers.[198]

As mentioned above, the Japanese courts have important roles as the last resort of human rights protection to make it possible to pursue legal responsibility for administration in Japan. It is extremely important when considering the current situation in Laos. Therefore, the next following part will indicate the administrative relief system under the present Constitution of Japan.

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[191] Yasuhei Taniguchi, Pauline C. Reich, and Hiroto Miyake, *Civil Procedure in Japan*, 2nd ed. (Juris Publishing, Inc., 2009), 3–2.
[192] Constitution of Japan, 1946, art. 76.
[193] Ibid.
[194] John Owen Haley, "Japanese Administrative Law," in *Comparative Law: Law and the Legal Process in Japan*, ed. Kenneth L. Port and Gerald Paul McAlinn, 2nd ed. (Durham and North Carolina: Carolina Academic Press, 2003), 1004.
[195] Supreme Court of Japan, Court System of Japan, Tokyo (Tokyo: Supreme Court of Japan, 1997), 15.
[196] Constitution of Japan, 1946, art. 78 [Japan].
[197] Supreme Court of Japan, "Justice in Japan," April 30, 2009, 2.
[198] Supreme Court of Japan, *Justice in Japan*, Tokyo (Tokyo: Ichitaro Ono, October 1, 2003), 1.

2. Administrative Responsibility under Administrative Relief Systems

The object of this part is to survey the administrative relief systems in Japan. Two main concepts under administrative responsibility will be pointed out: state redress and administrative case litigation. In Japan, state redress and administrative case litigation are connected in the field of administrative law and they are determined to protect private persons against the state.

2.1 State Redress

One concept of administrative relief as the "state redress" (*Kokka Baisho* in Japanese) could be found in a legal system to compensate for past damage that a person suffers through an illegal act or inaction (also known as omission or non-exercise regulatory power) of the public entity or the state.[199] State redress in Japan has been understood as the words of governmental reparation or governmental liability.[200] Some theorists use the term administrative remedy;[201] however, this term could also call state compensation or state liability.[202] The viewpoint of these words emphasizes the standpoint of redress of aggrieved persons or relief of injuries.[203]

In Japan, the plaintiffs can bring tort claims into a court against the state or state legal entity as well as prefectural and municipal governments for compensation under the State Redress Act (*Kokka Baisho Ho* in Japanese, also known as the State Compensation Act and State Liability Act) that implements Article 17 of the Constitution.[204] Under this Act, it establishes the systems for relief of damage as provided in Article 1 that "when a public officer who exercises the public authority" of the state or a public entity has, in the course of his or her duties, "unlawfully inflicted damage" on

[199] Kenji Kamino, "Governmental Compensations in Japan," in *Comparative Studies on Governmental Liability in East and Southeast Asia*, ed. Yong Zhang (The Hague, London and Boston: Kluwer Law International, 1999), 95.
[200] Ibid. at 95.
[201] Hitoshi Ushijima uses the term "administrative remedy" in "Administrative Law and Judicialized Governance in Japan," in *Administrative Law and Governance in Asia: Comparative Perspective*, ed. Tom Ginsburg and Albert H.Y. Chen (London and New York: Routledge, 2008), 86-87.
[202] For more recent Japanese perspective of "state redress," see Katsuya Ichihashi [市橋克哉], Hidenori Sakakibara [榊原秀訓], Takio Honda [本多滝夫] and Kazuichi Hirata [平田和一], *Actual Administrative law* [アクチュアル行政法], 2nd ed. (Kyoto: Horitsu Bunkasha, 2015). Colin P. A. Jones and Frank S. Ravitch, *The Japanese Legal System* (Minnesota: West Academic Publishing, 2018), 352 (2018).
[203] Kamino, "Governmental Compensations in Japan," 95-6.
[204] Colin P. A. Jones and Frank S. Ravitch, *The Japanese Legal System* (Minnesota: West Academic Publishing, 2018), 352.

another person intentionally or negligently, the state or public entity shall assume the responsibility to compensate therefor.

The State Redress Act is a special type of tort liability arising as a result of willful conduct or negligent in the exercise of public officers by national or local public officers.[205] According to a Japanese scholar, the word of "exercises the public authority" originally defined as targeting "administrative action" but then cover all actions of public administration, except for private economic actions.[206] However, the core of the concept is an administrative action or administrative disposition. This is a relief system as a centered on "administrative action."

Another important issue is that what is the illegality under the State Redress Act. It is rare case when the law unambiguously codifies requirements for an administrative agency, and there are many cases where administrative agencies have a lot of room for judgment. This issue discusses as a matter of administrative "discretion." It would be illegal only when it exceeded the scope of administrative discretion. Some cases and theories will be discussed in the following Chapter III, and those are not described detail here.

Tort liability of the state is not only provided in Article 1, but also Article 2.[207] It is not only a statutory basis for state redress in a case of willful conduct or negligent in an exercise of public authority, but also for any "defect" (*Kashi*) in the management of public facilities.[208] Article 2 is to protect the individual rights from management and establishment the facilities of public that when damage to a person has caused due to defect a placement or administration such as a river or other structures of the public, the state, or public entity shall assume the responsibility to compensation therefor. Inaction for prevention of a flood is known as an example in Article 2 litigation.

Nevertheless, this paper will not focus on illegality in Article 2 of this Act because this study is concerned an excess of discretion of administrative agency exercising public authority of the state or a public entity to the private persons or violators. Especially, an exercise of the authority of the state is not only an illegal act suffers damage to a victim, but also inaction or non-exercise

[205] Owen Haley, "Japanese Administrative Law," 1005.
[206] Kamino, "Governmental Compensations in Japan," 99.
[207] Ibid. at 98.
[208] Owen Haley, "Japanese Administrative Law," 1005.

regulatory authority such as inaction for not using regulatory powers.[209] The inaction of administrators having regulatory powers to the violators may suffer damage or possibility suffers damage to victims. Therefore, this paper will only discuss Article 1 of this Act.

2.2 Administrative Case Litigation

State redress is a system for relief of an illegal act or inaction of a public entity or the state, but it is not enough for relief. State redress is a compensation system for past damage. Monetary compensation does no provide a relief in the case of death or serious disability. It should particularly note in cases of serious water pollution. Therefore, administrative case litigation system has been essential to review an administrative disposition at present time to deny the legal effect of administrative disposition or to require an agency to render a new original administrative disposition.

Administrative case litigation system existed in the Meiji period and after postwar Japan, a new law enacted in 1948, but the current legal system is the Administrative Case Litigation Act (Act No. 139 of 1962 and amended in 2004, *Gyosei Jiken Sosho Ho* in Japanese, hereinafter ACLA). This Act provides a general mechanism to review administrative actions.[210] The Act purposes to protect the private rights through judicial review of unlawful administrative actions and inaction of administrative agency.[211] According to Article 2 of ACLA, there are four categories of litigations: action for judicial review of administrative dispositions, public law-related action, citizen action, and interagency action.[212] The first two types are called "subjective litigation" (*Shukan Sosho*) to protect

[209] For further research work, see Noriko Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," in *Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issue*, ed. Volker Mauerhofer (Cham, Heidelberg, New York, Dordrecht, and London: Springer, 2016), 189-201.
[210] Carl F. Goodman, *The Rule of Law in Japan: A Comparative Analysis*, 4rd ed. (Alphen aan den Rijn: Wolters Kluwer, 2017), 416.
[211] Conceptual frameworks, theoretical, and literatures of "administrative case litigation" in Japan are also found: Shuichi Sugai [須貝脩一] and Itsuo Sonobe [園部逸夫], *Administrative Law in Japan* [日本の行政法] (Gyosei, 1999), 107-112. Colin P. A. Jones and Frank S. Ravitch, *The Japanese Legal System* (Minnesota: West Academic Publishing, 2018), 355-358.
[212] Administrative Case Litigation Act [行政事件訴訟法], 1962, art. 2 [Japan].

the subjective rights and interests of the plaintiff.[213] Other two types call "objective litigation" (*Kyakkan Sosho*) characterized as public interest litigations.[214] Judicial review of administrative dispositions is one type of litigations in the subjective litigation is mainly objected in this part.

Judicial review of administrative disposition (*Kokoku Sosho*) could refer to an action to appeal against an "exercise of public authority" by "an administrative agency."[215] The activities of "exercise of public authority" are almost the same as administrative action. This form of action has been placed under control of courts by means of recourse to the forms of lawsuits.[216] Historically, this action has been thought of as the most important method of judicial relief.[217] As in Article 1 of the State Redress Act, German concept of administrative action (disposition) is a central concept.[218]

According to Article 3 (1-7) of ACLA, there are five main categories of actions for "judicial review of administrative dispositions: (i) actions for the revocation of the original administrative disposition and action for the revocation of an administrative disposition on appeal (both actions call as actions for revocation), (ii) action for the declaratory of nullity of administrative action, (iii) action for the declaration of illegality of inaction, (iv) mandamus action, and (v) action for an injunctive order.[219] These actions would be described in more depth as follows.

First, "action for revocation" (*Torikeshi Sosho*) is one of the typical types of litigation for judicial review of administrative dispositions.[220] Article 3 (2) of ACLA declares action for revocation. This action is mainly after administrative actions are in force (effective). In the case of administrative actions have not been rendered yet, there was no action before the 2004 amendment of ACLA. For instance, when an improvement of drain quality was ordered by an administrative

[213] Toshiro Fuke, "Judicial Review of Administrative Action in England and Japan: A Comparative Perspective," in *Comparative Studies on the Judicial Review System in East and Southeast Asia*, vol. 1 (The Hague, London and Boston: Kluwer Law International, 1997), 17.
[214] Ibid.
[215] Administrative Case Litigation Act, art. 3 (1).
[216] Mitsuo Kobayakawa, "Judicial Review in Japan," in *Comparative Studies on the Judicial Review System in East and Southeast Asia*, vol. 1 (The Hague: Kluwer Law International, 1997), 6.
[217] Ichiro Ogawa, "Judicial Review of Administrative Actions in Japan," in *The Constitution of Japan: Its First Twenty Years, 1947-67* (Seattle and London: University of Washington Press, 1968), 187.
[218] Narufumi Kadomatsu, "Taking 'Regulatory Courts' Seriously-A Perspective from Japanese City Planning Law," in *Comparative Perspectives on Administrative Procedure*, ed. Russell L. Weaver et al., vol. 3 (Durham and North Carolina: Carolina Academic Press, 2017), 217.
[219] Administrative Case Litigation Act, arts. 3 (1-7).
[220] P. A. Jones and S. Ravitch, *The Japanese Legal System*, 357.

agency to a factory, and it was obligated to do, the factory could file a lawsuit to seek revocation the improvement order. However, even the improvement order is delegated to the administrative agency and draining the water illegally, mandamus type of lawsuit case was not specified before the 2004 amendment of ACLA.

Second, "action for the declaratory of nullity of administrative action" (*Muko Kakunin Sosho*) is "an action to seek the declaration of an existence or non-existence, validity or invalidity of an original administrative disposition or administrative disposition on appeal."[221] This action is a "method for litigation that demands affirmation of the absolute nullity of actions."[222] When an administrative action is unlawful concerning the null or void by an administrative agency, an interested party can assert the nullity or void of the act regardless of the expiration of the laws and regulations filing period.[223]

Third, "action for the declaration of illegality of inaction" (*Fusakui Noiho Kakunin Shosho*) is "an action to seek the declaration of illegality of an administrative agency's failure to make an original administrative disposition or an administrative disposition on appeal which is should make within a reasonable period of time in response to an application filed under laws and regulations."[224] It would be illegality when an administrative agency does not carry out an act or perform its mission.[225] An administrative agency must take some action when inaction confirmed by a court rule.[226] However, this limits to a case in an application when a person applies for a license, it must be made an administrative disposition to approve or reject an application within the appropriate period time.[227] When an application disapproves or rejects, the applicant can appeal to the court to vindicate

[221] Administrative Case Litigation Act, art. 3 (4).
[222] Ichiro Ogawa, "Outline of the System of Administrative and Judicial Remedies Against Administrative Actions," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: Institution of Administrative Management, 1982), 240.
[223] Ibid.
[224] Administrative Case Litigation Act, art. 3 (5).
[225] Ichiro Ogawa, "Administrative and Judicial Remedies against Administrative Actions," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: University of Tokyo Press, 1984), 220.
[226] Ogawa, "Outline of the System of Administrative and Judicial Remedies Against Administrative Actions," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: Institution of Administrative Management, 1982), 240.
[227] Ogawa, "Judicial Review of Administrative Actions in Japan," 188.

his rights for such as administrative disposition. When the court finds out disapproval or rejection illegal and revoke, the administrative agency concerned may be approved the application.[228]

Fourth, mandamus action (*Gimuzuke Sosho*) is "an action seeking an order to the effect that an administrative agency should make an original administrative disposition or administrative disposition on appeal in the following cases."[229] There are two categories of a suit under this action.[230] (i) "Where the administrative agency has not made a certain original administrative disposition, which it should make."[231] This action is to sue to seek regulatory action when a plaintiff could show that agency inaction can cause loss to the plaintiff.[232] A court may order the agency to issue an administrative disposition when a failure to act is an abuse of discretion.[233] (ii) "Where an application or a request for administrative review has been filed or made under laws and regulations to request that the administrative agency make a certain original administrative disposition or administrative disposition on appeal, but the administrative agency has not made the original administrative disposition or administrative disposition on appeal which it should make."[234]

Fifth, "action for an injunctive order" (*Sashitome Sosho*) is "an action seeking an order, in case where an administrative agency is to make a certain original administrative disposition or administrative disposition on appeal which it should not make, to the effect that the administrative agency should not make the original administrative disposition or administrative disposition on appeal."[235] This action is to prevent an administrative agency from taking action when the administrative agency has no legal authority to act.[236]

As already stated, historically, administrative law in Japan has given an "administrative agency" the power to render of "administrative disposition." It has also established a system for remedies for rights and "after" this administrative disposition has been carried out. Therefore, one of

[228] Ogawa, "Administrative and Judicial Remedies against Administrative Actions," 220.
[229] Administrative Case Litigation Act, art. 3 (6).
[230] Goodman, *Justice and Civil Procedure in Japan*, 464.
[231] Administrative Case Litigation Act, art. 3 (6 (i)).
[232] Goodman, *Justice and Civil Procedure in Japan*, 464–65.
[233] Ibid. at 465.
[234] Administrative Case Litigation Act, arts. 3 (6 (ii)).
[235] Ibid. art. 3 (7).
[236] Goodman, *Justice and Civil Procedure in Japan*, 466.

the main litigation is an action for judicial review of administrative disposition codified in Article 3 of ACLA. Besides, it has the main action of revocation as the review (so-called a post-check by the court) and as a prior-check by the court, mandamus, and injunctive order was newly enacted in 2004 amendment of ACLA.

When an action for judicial review of administrative dispositions is filed legally, the main issue is illegality of administrative disposition as in the State Redress Act in Article 1. Indeed, Article 30 of ACLA also provides that a court might revoke an original administrative disposition by an administrative agency at "its discretion only in case" where the administrative disposition has made "beyond the bounds of the agency's discretionary power or through an abuse of such power." In other words, in administrative case litigation, the issue of whether or not there is discretionary administrative power and abuse of discretionary power is an important legal issue. This issue is found not only in the case of the revocation of administrative disposition, but also in the case of mandamus action due to the Article 37-2 (5).

However, in the case of state redress substantive issue is whether or not the need for monetary compensation regarding the past damages. In the case of administrative case litigation, the court extinguishes the legal effect of administrative disposition or order to an administrative agency to render new administrative disposition. One of the two primary issues of administrative law is the relationship or superiority relationship between administrative power and judicial power in the state. In this sense, the current state of the case litigation, especially mandamus action can be said to be a tested stone of the current status of the relationship between two state powers in Japan.

2.3 Administrative Responsibility in Municipalities

In the previous part, the "legal" form of administrative responsibility considered. However, in Japan, even when a national statute does not delegate an administrative agency to regulatory power, but some administration may make non-legal efforts. In the case of water pollution prevention in this study, there are cases of municipalities. Even though the national statutes delegate prefecture agency to disposition such as improvement order, the agency tended inaction in fact and

ACLA did not codify mandamus action before 2004 amendment. Therefore, the residents have required municipal level to render some actions for protection of their lives and health.

As this study will discuss in Chapter III, the Acts for water pollution prevention delegate regulatory powers to the ministers and prefectural governors, but some municipalities have fulfilled in this type of "non-legal" responsibility in many cases. Therefore, a non-legal existence form of the administrative responsibility of municipalities as the local entities to protect lives and health of residents can be found in this part.

In general, many countries around the world today, administrative responsibility in local levels play an essential role in public administration in the states.[237] In Japan, local entities have comprehensive administrative powers within their jurisdictions.[238] Local entities in Japan are two tiers: prefectures and municipalities. There are forty-three prefectures, including the special standing of Tokyo metropolis, Hokkaido, Osaka, and Kyoto in total remaining of "forty-seven" (47 prefectures).[239] On the other hand, municipal levels are cities, towns, and villages. Municipal levels constitute the basis of local levels handing issues are closely connected to the local people's lives.[240] According to the Council of Local Authorities for International Relations, there are current total of 1,718 municipalities (790 cities, 745 towns, and 183 villages) as of October 1, 2016, excluding six villages in the Northern Territory and twenty-three special wards of Tokyo.[241] The prefectures administrate by governors, while cities, towns, and villages are mayors.[242]

[237] There are many research works on local autonomy system and local administration in Japan. See, Shinichi Nomura, "Problems of Local Administration: The Case of Tokyo Metropolitan Government," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: University of Tokyo Press. 1984), 121-138. Ministry of Home Affairs, "Local Administration and Finance," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: University of Tokyo Press, 1984), 87-107. Michio Muramatsu, Farrukh Iqbal, and Ikuo Kume, *Local Government Development in Post-War Japan* (Oxford and New York: Oxford University Press, 2001).
[238] Council of Local Authorities for International Relations [一般財団法人自治体国際化協会], *Local Government in Japan* (Tokyo: CLAIR, 2006), 5.
[239] Ibid. at 2.
[240] Council of Local Authorities for International Relations, *2016 Local Government in Japan* (Tokyo: CLAIR, 2017), 7.
[241] Ibid. at 7 and 56.
[242] Council of Local Authorities for International Relations, *Local Government in Japan*, 5.

As a modern state, local levels have been recognized as an important part of democracy and establishment in a part of the system of national governance.[243] First, Article 92 of the Constitution clarify the basic "principle of local autonomy" or principle of local self-government that "regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy." Next, Article 93 still provides "the local public entities shall establish assemblies as their deliberative organs, in accordance with the law." "The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities."[244] Lastly, Article 94 declares administrative power in local entities and the right of autonomous legislative power within the scope of the Act.[245]

The Local Autonomy Act of 1947 derives from the Constitution Provision as the fundamental act for local self-government. This Act mainly deals with the basic matters concerning organization and operation of local levels like their types, legislative assemblies, powers, residents, financial affairs, and the relation between national with local entities as well as their relations itself among local entities.[246] Since the Constitution guarantees the system of local level, the national statute cannot abolish all local authorities or create a single centralized state without the amendment of the Constitution.[247]

Accordingly, local autonomy is based on the separation of powers, balances of powers, and internal checks to ensure democratic of local administration.[248] In addition, the executive organ recognizes the idea of pluralism.[249] In order to prevent the concentration of power in one place in the local entities, the executive organ includes a number of administrative communities independent of

[243] UN, *Japan: Public Administration Country Profile*, (UN, January 2006), 7.
[244] Constitution of Japan, 1946, art. 93 [Japan].
[245] Council of Local Authorities for International Relations, *2016 Local Government in Japan*, 1.
[246] Ibid. at 2.
[247] Ibid. at 1.
[248] Council of Local Authorities for International Relations, *Local Government in Japan*, 44.
[249] Council of Local Authorities for International Relations, *2016 Local Government in Japan*, 9.

the governor or mayor.[250] Prefectural governors and municipal mayors are directly elected by the public votes.[251]

Administrative responsibility in municipalities would be found in many matters in Japan. Nowadays, the number of constructions has been increased such as houses, apartments, hotels, or high-rise buildings. Some constructions cause of such conflicts among residents because they may block the ventilation and sunlight from surrounding buildings. The concept of the "right to sunshine" emerged in 1960.[252] "With the emergence of high-rise buildings, neighborhood residents sometimes suffered from deprivation of sunlight that could be caused health problems as well as giving the humid atmosphere in particular air-conditioning facilities were not widespread."[253]

In general, the courts created the sunlight's right to afford the "protection of minimal against undue effective injunctive relief is rarely available, interference, and damages are always the law."[254] After that, the national government addressed the national standards for instructing of houses by enacting the Building Standards Act in 1976.[255] This Act requires a builder to submit a complex set of plans and blueprints to the construction supervisor or local entity in order to guarantee health and safety as well as protection of local residents.[256] It is required for the contractors or developers to obtain the construction permitted by the local entity.[257] Thus, the courts and National Diet intervene at the end that one of the characteristics of Japan is that the local entities often play the big roles at the beginning of the law making process. Local officials who have the ability to serve whole community can mediate the disputes between the parties when they cannot reach an accord.

Here is one such example case. In planning permission, a developer and neighboring residents had a conflict over a high building. To respond to such dispute, when an administrative

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[250] Ibid.
[251] Ibid.
[252] Kadomatsu, "Taking 'Regulatory Courts' Seriously-A Perspective from Japanese City Planning Law," 214.
[253] Ibid.
[254] Michael K. Young, "Judicial Review of Administrative Guidance: Governmentally Encouraged Consensual Dispute Resolution in Japan," *Columbia Law Review* 84, no. 4 (1984): 926.
[255] Owen Haley, "Japanese Administrative Law," 1030.
[256] Ibid. at 1031.
[257] Akio Morishima, Koichiro Fujikura, and Julian Gresser, *Environmental Law in Japan* (Massachusetts and London: Massachusetts Institute of Technology Press, 1981), 145.

agency withheld for a building permit until a dispute had solved, the developer (building owner) often filed a lawsuit based on the State Redress Act of 1947 in Article 1 for delay of permission. It is the legal issue that lawfulness of delay for the purpose of avoidance of serious dispute.[258] Another case is the Demand Compensation in Nakano ward. This ward reserved the accreditation for approximate five months in order to avoid the danger of forceful collision between inhabitants in the vicinity who dissenting against the construction of the building by using administrative guidance. Under Article 1 of the State Redress Act, the Supreme Court pointed out that Nakano ward had not illegality on April 4, 1982.[259]

Similar efforts above noted, water source protection is discussed in the following Chapter III. There are many cases where municipalities have been tried to fulfill administrative responsibility in many disputes, such as high building constructions and other cases. The author finds here one form of administrative responsibility in Japan. This section describes the general description for the purposes. Therefore, the specific analysis will be done in Chapter III.

Conclusion: Differences and Commons in Two Societies

Under the above examinations, there are many differences between the two countries; however, some points are common values. Both of some different and common values provide in this part as follows.

In the different point of views, there are two main contexts found in this chapter. First, the historical development of the legal systems in Japan and Laos is the difference. In Japan, the legal system primary refers to the German model. Following the Western legal concept, the democratic fundamental of separation of powers has been recognized. The power of courts is guaranteed and the "Supreme Court is the court of last resort."[260]

[258] Supreme Court Third Petty Bench [最高裁判所第三小法廷], Judgment [判決], July 16, 1985, 39 Minshu [民集] (5) 989 (access: http://www.courts.go.jp/app/hanrei_jp/detail2?id=52658&fbclid=IwAR1-bZV7xK2ThZAt2Kv_NaQRsQHuY8B79sUj2qaGmcQ4rudEbfYlHEFVzgVQ) [Japan].
[259] Supreme Court Second Petty Bench [最高裁判所第二小法廷], Judgment [判決], April 23, 1982, 36 Minshu [民集] (4) 727 (access: http://www.courts.go.jp/app/hanrei_jp/detail2?id=54256) [Japan].
[260] Constitution of Japan [日本国憲法], 1946, art. 81 [Japan].

In contrast, the socialist legal system in Laos has adopted the ideas of the former Soviet Union. Under the present socialist Constitution, Laos has implemented a centralized of state power led by the Party. The separation of power has not existed. Judicial power is very weak, and the People's Supreme Court is not the final adjudicator of the legal disputes due to it is under the legal affairs committee of the National Assembly to review its judgments.[261]

The second different context between two countries is the concept of responsibility. In Japan, the concept of responsibility could be found the legal responsibility and non-legal responsibility. In the legal responsibility, it covers state redress and administrative case litigation. In the non-legal responsibility, it calls administrative responsibility in municipalities as another concept that counts in the form of administrative responsibility.

On the other hand, the concept of responsibility in Laos refers to violator legal responsibility for the state: administrative sanctions, criminal punishment, and violator responsibility by dispute resolution in local levels are continuous and those distinctions are not so clear.

There are not only differences in both societies, but also some common values. In the viewpoint of common value, there is one main similarity found in this chapter. In both Japan and Laos, administrations have regulatory powers, but they have been often the cases that administrations in two countries inaction to exercise regulatory powers have been problems.

In Laos, the Village Mediation Units as the lowest levels try to mediate the conflicting parties as well as holding the violators liable and responsible for the damages. Even the local levels have no legal authorities, but they try to protect the villagers. In the context of Japan, administrative responsibility in municipalities without legal power is found in environmental protection field such as the city planning.

In summarize, this chapter deals with the concept of administrative responsibility in general. As a result, the concept of responsibility in Japan and Laos is understood in the different contexts, but some are common values.

[261] Law on the Handling of Petitions, art. 2 (3) (2016).

Therefore, the main common values of both states could be discussed. This is water pollution problem. With regard to water pollution, Japan determined the priority of economic development rather than prevention of water pollution in the past. In the present situation in Laos, it seems similar to Japan discovered in the past. In the next coming chapter before referring to Japan, it will be identified the legal system in Laos holding the missions to prevent water pollution. The legal mechanism and administrative actions will also be pointed out.

Chapter II: Legal System, Organs, and Actions for Water Pollution Prevention in Laos

Introduction

In the previous chapter, it examined the usefulness concept of administrative responsibility for this study. From the present chapter, it will begin the specifically attempt for water pollution prevention in Laos. Water pollution has caused damage to human lives and health as well as environmental disruptions. In general, the National Assembly has enacted and amended many environmental laws in order to protect water resources from investment projects such as mineral exploration and industrial activities. Under those laws, the Ministry of Natural Resources and Environment and its organs at both central and local levels have legal powers to implement the laws based on the top-down system. These organs may set administrative plans and standards. Any factory or investment project intends to operate its activity, it must be met those plans and standards provided by the laws and legal regulations before granting any license. Of course, the environmental organs have legal power to issue any sanction when any violation has occurred. However, the law implementations and enforcements of those administrative actions are insufficient in fact. The current legal system for water pollution prevention will describe as follows.

Section 1: Historical Developments of the Legal System for Water Pollution Prevention

The legal system in Laos was reformed when introduced the New Economic Mechanism in 1986. The first socialist Constitution promulgated in 1991 by introducing the petition system of the Soviet-type for dealing with the conflicts of water pollution. In 1996, the Law on Water and Water Resources in charge of water pollution prevention enacted. Since then, other environmental laws also stipulated with economic reforms. For understanding the historical development of Laotian laws, the economic transition within water pollution crises will be pointed out. The literature of legal analysis will mainly object in this section.

1. History of Economic Transformation and Water Pollution Problems

Economic development is a priority in Laos. With the encouragement and promotion by the government, there are many foreign investments in Laos from different nations across the world. The investment has produced rapid economic growth, but it is accompanied by water pollution.

1.1 History of Transformation from Centrally Planned Economy into Market Economy

From 1975-1985, Laos experienced the centrally planned economy.[262] Industrial and foreign trade sectors nationalized and introduced in agricultural sectors by consulting with the Soviet Union and its allies.[263] ADB reported that Laos remained extremely poor under the centrally planned system during its early establishment time of 1980.[264] With long time of economic crisis continuing, Laos introduced the market economy, namely the "New Economic Mechanism" in 1986.[265]

In order to encourage and promote the investments, the National Assembly passed the Law on Foreign Investment in 1988 (revised in 1994 and 2004, and replaced by the Law on Investment Promotion in 2016). This Law has allowed investors for investments in all sectors, except those deemed for the environment, national traditions, or national security.[266] The state also permits 100 percent foreign ownership in many business sectors (hotels and restaurants) if they register capital of at least 20 billion LAK (approximately 2.5 million USD).[267] With the investment, Laos introduces independent companies, private sectors, prices determined by the market, wages under the performance, and foreign investments.[268]

On the contrary, Laos has practiced the socialist system, so what would be a contradiction to the liberal theory of the market economy in Laos. This contradiction is the definitive characteristic

[262] Radetzki, "From Communism to Capitalism in Laos," 800.
[263] Economic Research Institute and Economic Planning Agency, "Transition to Market Economies in Asia," Keizai Bunseki, no. 137 (Japan Economic Research Institute and Economic Planning Agency, December 1994), 174.
[264] ADB, *ADB Economics Working Paper Series - the Lao Economy: Capitalizing on Natural Resource Exports*, no. 330 (ADB, January 2013), 1.
[265] OECD, *OECD Investment Policy Reviews: Lao PDR* (Paris: OECD Publishing, 2017), 23.
[266] ADB, "ADB Economics Working Paper Series - the Lao Economy: Capitalizing on Natural Resource Exports," 3.
[267] OECD, *OECD Investment Policy Reviews: Lao PDR*, 114.
[268] Radetzki, "From Communism to Capitalism in Laos," 800.

of Laos. Some scholars debate that Laos has used some basic legal concepts of the West that exist from the free market economy system due to Laos has been dealing with private rights.[269] However, the scholars still argue that the freedom in the economic sectors in Laos do not mean corresponding freedom like Western societies. The scholars also debate that "Laos is struggling to create the foundations such as private ownership and most importantly are the legal institutions."[270] Such an order is similar one found in China and Vietnam.[271]

Laos became a member of ASEAN on July 23, 1997.[272] As the member of ASEAN, the state participates in cooperation with AFTA and AEC for transferring its nations into one region with free movement of investments, goods, and services.[273] In addition, the state gained full membership into the WTO on February 2, 2013.[274] Under the WTO, Laos has assigned a series of free-trade agreements with Japan, the EU, the U.S., and China among other countries.[275] With this transition, Laos aims to move from least developed country statutes by 2020 and become an upper-middle-income country by 2030.[276] The state further strives to achieve GDP growth of at least 7.5 percent each year.[277] However, the historical characteristics of centralized governmental functions such as regulatory power remains, but it appears in a different form. For instance, a mixed form of the old and new political-economic system is found in the agriculture sectors.

According to the World Bank, Laos is rich in natural resources such as "forest, agricultural land, mineral, and water resources, which together comprise more than half of the state's total

[269] Ibid. at 800-801.
[270] Ibid. at 799-800.
[271] Ibid. at 801.
[272] ASEAN, "About ASEAN: Overview," *Association of Southeast Asian Nations*, accessed June 22, 2019 http://asean.org/asean/about-asean/overview/.
[273] ASEAN, "ASEAN Economic Community," *ASEAN | One Vision One Identity One Community*, accessed June 22, 2019 https://asean.org/asean-economic-community/.
[274] WTO, "WTO | Lao People's Democratic Republic - Member Information," accessed June 22, 2019 https://www.wto.org/english/thewto_e/countries_e/lao_e.htm.
[275] UN, "Country Analysis Report: Lao PDR-Analysis to Inform the Lao People's Democratic Republic-United Nations Partnership Framework (2017-2021)," 10.
[276] Ministry of Planning and Investment [ກະຊວງແຜນການ ແລະ ການລົງທຶນ], *8th Five-Year National Socio-Economic Development Plan (2016-2020)*, Vientiane (June 1, 2016), Foreword.
[277] Ibid. at 104.

wealth."[278] World Bank still reports that Laos is one of the most biodiversity-rich nations in Southeast Asia.[279] Japan International Cooperation Agency (JICA) also concluded that "Laos has an abundance of natural resources."[280] The Water Environment Partnership in Asia (WEAP) also mentioned that "Laos has rich water resources and good quality fresh water."[281] According to the UN, the forest in Laos covered around 9.5 million hectares or an established 40 percent of the area of the state in 2012.[282] The Laotian government believes that 162 million tons of copper, 38 million tons of tin, and 7 million tons of coal are available in Laos.[283]

The United Nations Development Program (UNDP) reports that the investments come from the external sources about 70 percent.[284] According to the Ministry of Planning and Investment, the number of domestic and foreign investments in 2017 for mining and quarrying totaled 135,189, while industrialization was 406,615.[285] The investments from China can more expand when the President of China, Xi Jinping visited Laos on November 13, 2017.[286] Xi is quoted in the Laotian Daily Newspaper Vientiane Times as stating that the direct investment from China exceeded 6.1 USD billion on hydroelectricity, mining, trade, and other sectors.[287] Vietnam is the second largest state investor in Laos. The Vietnamese General Secretary, Nguyen Phu Trong stated when the Prime

[278] World Bank, *Lao PDR Development Report 2010-Natural Resources Management for Sustainable Development: Hydropower and Mining*, no. 59005-LA, (ADB, 2010), 1.
[279] World Bank, *Lao PDR - Environment Monitor*, Vientiane, Working Paper no. 40065 (Vientiane: World Bank, 2005), 22.
[280] JICA, *Profile on Environmental and Social Considerations in Lao P.D.R.*, Vientiane (Vientiane: JICA, December 2013), 2–1.
[281] WEPA, "State of Water Environmental Issues: Laos," *WEPA*, accessed June 22, 2019 http://www.wepa-db.net/policies/state/laos/overview.htm.
[282] UN, *From Millennium Development Goals to Sustainable Development Goals: Laying the Base for 2030*, Vientiane (UN, 2017), 25.
[283] Ministry of Natural Resources and Environment [ກະຊວງຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ], *Second National Communication on Climate Change of Lao PDR*, Vientiane (Ministry of Natural Resources and Environment, March 2013), 16.
[284] UNDP, *Assessment of Development Results Evaluation of UNDP Contribution: Lao PDR*, (UNDP, July 2011), ii.
[285] Lao Statistics Bureau, *Statistical Yearbook 2017*, 139.
[286] Oliver Tappe, "On the Right Track? The Lao People's Democratic Republic in 2017," in *Southeast Asian Affairs 2018*, ed. Malcolm Cook and Daljit Singh (Heng Mui Keng Terrace: ISEAS Publishing, 2018), 176.
[287] Xi Jinping, "China and Laos: Working Together for a Community with a Shared Future and Strategic Significance," Vientiane, *Vientiane Times*, November 13, 2017.

Minister of Laos, Thongloun Sisoulith, visited in Hanoi on October 3, 2017, that Vietnam promoted investments in Laos.[288]

1.2 Water Pollution Problems and Its Characteristics

Water resources are an essential part of lives and contributed to socio-economic development in Laos.[289] According to the WEPA, sixty percent of the urban population and fifty-one percent of the rural population have access to clean water.[290] The World Health Organization (WHO) concludes that "Laos is undergoing rapid economic growth that boom in development and infrastructure projects impact the environment, pollution, health, and well-being of the people."[291] The UNDP also reports that "the health and nutrition outcomes of unsafe water and inadequate sanitation are serious" in Laos.[292] The WEPA further reports that the most common types of water pollution in Laos are industrial sectors, mineral exploitation, agriculture, and urban areas from varied community use.[293]

In general, many activities cause water pollution in Laos, but this paper attempts four main types as follows. First, industrialization observes to be one of the main problems to pollute water resources. The growing number of industries has increased pollution.[294] In Laos, the largest companies are cassava processing plants, paper mills, the timber industry, cement factories, and garment manufacturing.[295] Many factories limit and far from being perfect for reducing wastewater. The Ministry of Natural Resources and Environment reports that these activities release wastewater

[288] Tappe, "On the Right Track? The Lao People's Democratic Republic in 2017," 177.
[289] WEPA, "State of Water Environmental Issues: Laos."
[290] Ibid.
[291] WHO, "Health and Environment," *WHO*, accessed June 22, 2019 http://www.wpro.who.int/laos-/topics/environmental_health/en/.
[292] UN, "Clean Water and Sanitation," *UN*, accessed July 24, 2019 http://www.la.one.un.org/sdgs/sdg-6-water-and-sanitation.
[293] WEPA, "State of Water Environmental Issues: Laos."
[294] Ministry of Natural Resources and Environment, *National Pollution Control Strategy and Action Plan 2018-2025, with Vision to 2030*, Vientiane (Vientiane: Ministry of Natural Resources and Environment, December 2017), 13.
[295] Ibid.

without treatment before discharging into rivers, canals, ponds, and marshes.[296] Such wastewater from dyeing, detergent, and food processing industries create water pollution.[297]

Second, mining exploration is another problem. Mining projects for gold, copper, and gemstones are also linked with water pollution. In the Copper Mining Case, the firm CNP Exploration Mining and Import-Export Company dug for copper at Sawang village, Namo district, Oudomxay province in 2015. This company created runoff in the water that made a stream in this area dirty and muddy caused of the digging for coppers. The company polluted water, impacted the environment, and destroyed the livelihoods of local residents.[298] Other instances of cases are MMG Sepon and Phu Bia Mining that joint investment venture contributing around 95 percent of government also polluted water.[299]

Third, agriculture activities also cause the quality of water. Agriculture chemicals such as pesticide, weed killer, and herbicide used by farmers in rural areas for protecting crops and plants are one of the polluted water sources.[300] Chemicals contain in fish, shellfish, fruit, vegetable, and other crops. As such, chemicals impact not only the surface water system, but also groundwater, which are the major source of drinking water in rural areas. Chemicals have negative consequences to lives and health of residents. In the Caosu Dak Lak Rubber Plantations Company (a state-owned company of Vietnam) Case at Laongam district in Saravan province, the rubber plantation started to grow by using agriculture chemicals in 2005.[301] The company was granted a land concession of 7,000 hectares for a period of 50 years approved by the Laotian government.[302] According to the UNDP and United Nations Environment Program, the chemicals from this company killed livestock, and caused the disappearance of shrimp, fish, snails, and crabs in the natural water (streams and

[296] Ibid. at 12–13.
[297] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," 3–11.
[298] Ounkeo Souksavanh and Joshua Lipes, "Pollution From Copper Mining in Northern Laos Destroying Local Livelihoods," accessed June 22, 2019 https://www.rfa.org/english/news/laos/laos-mining-0724201-5151423.html.
[299] Tappe, "On the Right Track? The Lao People's Democratic Republic in 2017," 173.
[300] World Bank, "Lao PDR - Environment Monitor," 40.
[301] UNFPA, "Evaluation of UNFPA Support to Maternal Health Mid-Term Evaluation of the Maternal Health Thematic Fund-Country Report: Lao PDR," 7.
[302] Ibid.

ponds).[303] The villagers were no longer consuming water from the river, and several villagers became ill after eating some fish near farms.[304]

Fourth, the major urban areas from varied community use such as restaurant, guesthouse, clinic, hotel, hospital, and market pollute water.[305] According to the UN, water pollution in Laos is caused by "waste and sewage from growing population and urbanization."[306] Most urban areas limit wastewater treatment facilities.[307] On this point, an illustrative example is the That Luang Marsh Case. This marsh is the largest to remain wetland in Vientiane Capital.[308] Population growth and urban expansion have impacted the marsh.[309] Such wastewater from households polluted the marsh, especially from Hong Ke and Hong Xeng villages. The households on water flush latrines and containment of excreta.[310]

Generally, there are not only four types pollution of water resources, but also other activities such as dumping and construction runoff. For instance, some parts of tunnel constructions site of the railway project of the Chinese "One Belt One Road" project (also known as Belt and Road Initiative) in Laos discharged polluted runoff into the Xong River at Pha Tung village in Vang Vieng district, Vientiane province in November 2018.[311] However, those four types have been highlighted and legislative reform has started to promulgate environmental laws in order to ensure lives and health of residents as well as prevention of water pollution as stated above.

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[303] UNDP and UNEP, *Assessment of Economic, Social and Environmental Costs and Benefits of Dak Lak Rubber Plantations: Case Study in Saravan Province*, Vientiane (Vientiane: UNDP and UNEP, January 2011), 23.
[304] Ibid.
[305] Ministry of Natural Resources and Environment, "National Pollution Control Strategy and Action Plan 2018-2025, with Vision to 2030," 12.
[306] UN, "Country Analysis Report: Lao PDR-Analysis to Inform the Lao People's Democratic Republic-United Nations Partnership Framework (2017-2021)," 77.
[307] Ministry of Natural Resources and Environment, "National Pollution Control Strategy and Action Plan 2018-2025, with Vision to 2030," 13.
[308] Pauline Gerrard, *Integrating Wetland Ecosystem Values into Urban Planning: The Case of That Luang Marsh, Vientiane, Lao PDR*, Vientiane (Vientiane: IUCN-The World Conservation Union, 2004), 7.
[309] Ibid. at 8.
[310] Ibid. at 24.
[311] Lao National Radio [ວິທະຍຸກະຈາຍສຽງແຫ່ງຊາດລາວ], "Chief of Vang Vieng of Vientiane Province Reports on Problems of Xong River in Dark Color" [ເຈົ້າເມືອງວັງວຽງ ແຂວງວຽງຈັນຊີ້ແຈງກ່ຽວກັບບັນຫານ້ຳຊອງ ຂຸ້ນເປັນສີດຳ], Lao National Radio, accessed March 10, 2019 https://lnr.org.la/.

2. Historical Developments of the Legal System for Water Pollution Prevention

Currently, the environmental laws determine to guarantee human rights such as lives and health, but in an abstract manner. There is no specific law for water pollution prevention in Laos, as the same with the Water Pollution Prevention Act of Japan. This problem has caused the insufficient implementations of water pollution prevention in practice.

2.1 History of Legal System

Although it should be evaluated as insufficient on any specific law on water pollution prevention, there are general and abstract the legal system concerning the field. With the economic development, Laos discovered some conflicts regarding water pollution around 1976. While Laos had no specific legal rule in charge with water pollution, the legal system of petitions was introduced in 1975. As noted in Chapter I (see Section 2: 1.1), the legal system of petitions was codified in Article 28 of the 1991 Constitution, but there was no petition law enacted from 1975-2004 (Law on the Handling of Petitions was enacted in 2005). Even there was no petition law, but the residents were used the petition system based on the Constitution Provision and custom. This kind of custom was similar to China and Vietnam that originated from the Soviet Union.

The petitions were included a request (*Kham Saner*), claim (*Kham Hongfong*), and petition for justice (*Kham Hongkhor Khuam Pentham*) as already noted. In this respect, it was included a requirement for an administrative organ to deal with environmental conflicts between the villagers and companies. For the conflicts, the mediators at village levels were tried to re-educate and warn polluters as well as mediation between the conflicting parties. The mediation mechanism was the traditional legal system used by village levels to rebuild relationship, replacement, ensure peace, and justice in the socialist society. However, mediation was depended on litigants and no force decision. In addition, the mediation system was vague because it lacks the laws to provide the duties and obligation of mediators.

In 1986, the state reformed the economy. Therefore, the economic transition was influenced by the legal system.[312] For such consideration, the ideas of human rights protection started to influence the Laotian legal scholars. Also, foreign legal experts gave some advice to draft laws. According to ADB, Laos seriously begun to reform the legal system to provide for the market economy in 1990.[313] As already noted, the National Assembly promulgated the first socialist Constitution on August 14, 1991. Article 17 of the previous Constitution (presently Art. 19) provided all organs and citizens must be protected natural resources and the environment.

In theory, the 1991 Constitution in Part III (Arts. 21-38) determined to protect the basic fundamental human rights. Article 28 (presently Art. 41) provided in the Constitution that "Laotian citizens have the rights to lodge request, claim, and petition for justice with state organs concerned with issues about the rights and interests of both state and individuals." The request, claim, and petition for justice of residents may be considered on the solutions as prescribed by the laws.[314] In this regard, the legal system in Laos is in the form of administrative complaint reviews, including the complaint concerning water pollution problems.[315]

Without an environmental law and specific rule for about twenty years, the state faced many water pollution conflicts and environmental problems caused by economic developments. Therefore, the former Prime Minister, Khamtai Siphandon ordered the ministers to draft the Law on Water and Water Resources and other relevant laws in 1995.

The Law on Water and Water Resources was aimed to implement the Constitution Provision (Art. 17). At first, the Ministry of Justice coordinated with line ministries.[316] The Science, Technology, and Environmental Agency (abolished, presently the Ministry of Natural Resources and Environment) in coordination with other ministries drafted the law and then submitted to the

[312] Pemasiri J. Gunawardana and Sommala Sisombat, "An Overview of Foreign Investment Laws and Regulations of Lao PDR," *International Journal of Business and Management* 3, no. 5 (May 2008): 31.
[313] ADB, "ADB Economics Working Paper Series - the Lao Economy: Capitalizing on Natural Resource Exports," 1.
[314] Constitution of the Lao People's Democratic Republic [ລັດຖະທຳມະນູນແຫ່ງ ສາທາລະນະລັດ ປະຊາທິປະໄຕ ປະຊາຊົນລາວ], art. 28 (1991).
[315] Phonsena, Former Director of Cabinet, Ministry of Justice.
[316] Prime Minister's Office, *Lao People's Democratic Republic: the First National Communication on Climate Change* 37 (Prime Minister's Office 2000).

Ministry of Justice. Next, it forwarded to the Prime Minister's Office for future consideration. After that, it forwarded to the National Assembly for consideration and promulgation. As a result, the 9th Ordinary Session of the third legislature of the National Assembly passed the first environmental law, namely the Law on Water and Water Resources on October 11, 1996 (amended in 2017).[317]

This law preserved the sustainability of water and water resources.[318] The law determined the volume and quality of water to ensure lives and health of residents.[319] The water quality standards provided in Article 32 that the environmental organs had duties to determine the quality standards of drinking water and water for used that drained into water resources. However, Article 43 prescribed the responsibilities of organs to monitor and inspect that "the organ responsible for water and other relevant organs have to regularly monitor and inspect of standards, volume, and quality of water." In this sense, the law did not provide what ministry or organ had missions to set the quality standards and what organ at both central and local levels responsible for such issues.

Besides, this law failed not to cover the volume of effluent and no imposed any penalty. In this regard, there were many problems caused by economic activities. The general law was considered as an ineffective legal system and a necessity of the specific laws was discussed in the government. Therefore, the Ministry of Justice, Ministry of Energy and Mines, and other line organs drafted a law on minerals in early 1997. After coordination between the ministries and the Prime Minister's Officer, they submitted to the National Assembly for enactment. Hence, the 10th Session of the third legislature of the National Assembly enacted the Mining Law on April 12, 1997 (amended in 2011 and 2017) in order to cover the specific field of processing the minerals.[320]

Next, to cope with environmental problems resulting from economic development, the 3rd Ordinary Session of the fourth legislature, Resolution, No. 02-99/NA of the National Assembly

[317] National Assembly [ສະພາແຫ່ງຊາດ], Resolution [ມະຕິຕົກລົງ], no. 005/NA, October 11, 1996.

[318] Law on Water and Water Resources [ກົດໝາຍວ່າດ້ວຍ ນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ], art. 1 (1996).

[319] Ibid.

[320] National Assembly, Resolution, no. 04-97/NA, April 12, 1997. Article 1 of this law prescribed "Mining Law has the function to determine the system of management, preservation, exploration, and procession of minerals into goods for local consumption and export by using the potential of natural resources, in order to contribute to the industrialization process and to improve the people's living conditions."

promulgated the Environmental Protection Law on April 3, 1999 (amended in 2012).[321] This law specified the principle of the environmental organs, measures, protection, and restore the environment.[322] This law was one of the significant laws to develop the environmental pollution prevention administration in the state. In order to implement Article 8 of this law, the former Prime Minister, Sisavath Keobounphanh issued the first Decree on Environmental Impact Assessment in 2000 to ensure the investment projects with adverse effects on the environment and society. Article 8 of this law also gave legal authorities to the Science, Technology, and Environmental Agency to consider the environmental impact assessment. However, this decree did not apply to all investment projects; therefore, the Prime Minister, Bouasone Bouphavanh upgraded this decree on February 16, 2010 (presently the Prime Minister's Decree, No. 21/PM, January 31, 2019).

The Environmental Protection Law was the general law. Therefore, the National Assembly enacted the Law on the Processing Industry (amended in 2013) under the Resolution, No. 01-00/NA on April 3, 1999 in order to control wastewater from industrial factories. On April 10, 2001, the Law on Hygiene, Disease Prevention, and Health Promotion (amended in 2011 and 2017) was passed.[323]

Although laws on water pollution prevention were enacted promptly in 1996. There were many problems with those environmental laws. For instance, Article 43 of the Law on Water and Water Resources provided that "the organ responsible for water and other relevant organs has to regularly monitor and inspect the standard, volume, and quality of water resources." In this regard, it is vague and unclear to provide the duty of such organ. The current legal system of the state will explore in a next part.

2.2 Present Legal System

Legislative reform in Laos has gone hand in hand with economic development. With economic reforms, the state has discovered four main caused water pollution: industrialization, mining exploration, agriculture activities, and urban areas, as mentioned in the previous part.

[321] National Assembly, Resolution, no. 02-99/NA, April 3, 1999. This law passed by the 3rd Ordinary Session of the fourth legislature.
[322] World Bank, "Lao PDR - Environment Monitor," 46.
[323] National Assembly, Resolution, no. 04/NA, April 10, 2001.

Therefore, the National Assembly amended the Constitution and passed six environmental laws to correspond four main types of water pollution. The environmental laws have been promulgated by the legislative branch has the purpose not only prevent water pollution, but also protect the rights of residents such as lives and health. Therefore, those Western ideas should be realized in a special way in Laos because the legal system is quite different as noted in Chapter I. This is different problem and it is not simple question as foreign NGOs such as "Human Rights Watch" point out.

In theory, the Constitution provisions guarantee the lives and health of residents. Article 19 of the present Constitution provides that "the state promotes environmental protection. All organs and citizens shall be protected the environment and natural resources: land, underground, forests, fauna, water sources, and atmosphere." This Article remains Article 17 of the first 1991 socialist Constitution, as mentioned in the previous part. Chapter IV (Arts. 34-51) also guarantees the fundamental rights of residents, including the rights to have good lives and health strong guarantee same as the previous Constitution in theory. Article 42 provides "the rights of citizens are inviolable for their lives, bodies, and honor."

The current legal system in Laos remains to allow private individual for petitions to the state organs (executive, legislative, and judicial branches) the same as the previous Constitution (Art. 28). The present Constitution in Article 41 stipulates residents have rights to "request" an administrative organ, "claim" into a people's court, and "petition for justice" to the National Assembly in connection with issues pertaining to the public interest or to their own rights and interests. Constitutional principles are embedded in national statutes.

For instance, Article 5 of the 2016 Law on the Handling of Petitions also stipulates that the state facilities citizens and organs to exercise the right to petition for petitioners to ensure transparency and effectiveness of the state administrative mechanism.[324] Article 7 stipulates a citizen who believes to infringe the law and affect the rights and legal interests of the residents can request, claim, or petition for justice to consider and deal with an act or decision of the state organ.[325] Under

[324] This law enacted on November 9, 2016 that guaranteed the rights of citizens. Petition system in Laos seems administrative complain review.
[325] Law on the Handling of Petitions arts. 2 and 7 (2016).

Constitution provision and law as mentioned above, a person who unhappy, suffers, legal effect, or believes an action made by another person can compliance to a relevant state organ for sanction, claiming of compensation, or punishment of any violator.

However, the petition system as a general law is not enough to deal with water pollution because it lacks of specific requirement of related organs. Therefore, six laws: Environmental Protection Law (2012), Law on Hygiene Prevention and Health Promotion (2011), Law on the Processing Industry (2013), Law on Chemical Management (2016), Law on Water and Water Resources (2017), and Mining Law (2017) have been enacted by the National Assembly in order to correspond those four types of water pollution.

Nonetheless, Laos has no specific law to prevent water pollution same as the Water Pollution Prevention Act as Japan. These six laws still maintain nature of general laws that could not control properly to diverse types of pollution. For instance, the Environmental Protection Law is a basic law similar as the Basic Act for Environmental Pollution Control as Japan. Therefore, the new six laws determine common general matters over diverse types such as industrialization, mining, agriculture, and urbanization as follows.

First, "industrialization" is corresponded by three main laws. (i) Law on the Processing Industry is the main law to prevent water pollution from industrial factories. Article 26 declares that waste, wastewater, and chemicals of all types from factories must be disposed and treated according to the method under regulations.[326] Article 52 prohibits releasing wastewater from any factory without treatment. (ii) The Environmental Protection Law in Article 24 formulates that companies must apply clean technology, clean manufacturing, less environmental impacts, and other standards imposed by the relevant organs. (iii) The Law on Chemicals Management generates from the companies or utilization must be treated or disposed of compliance with guidance manufacturers and appropriate technologies.[327] Article 23 provides that "waste chemical generated from the operation must be immediately conducted. In the case where waste chemical is not possible for immediate disposal, it can keep for no longer than 90 days from the date that the waste has generated."

[326] Law on the Processing Industry [ภ๊ดหมายอ่าด้อย อุดสาหะกำปุงแต่ง], arts. 26–27 (2013).
[327] Law on Chemicals Management [ภ๊ดหมายอ่าด้อย ภานคุ้มดองเคมิ], art. 23 (2016).

Second, "mineral exploration" is corresponded by three main laws. (i) The Mining Law is the main law to prevent water pollution caused by mineral activities. Article 8 describes that individuals, legal entities, and organs have obligation to protect minerals and mineral resources. Mining projects must be treated wastewater before releasing into rivers and other water sources to ensure the lives, health, and safety for people, animals, and the living environment.[328] The license of mineral prospecting may be relinquished when any mining project caused serious negative impacts to society and the environment.[329] (ii) The Environmental Protection Law in Article 35 prevents the mineral activities. A company must apply measures and methods concerning prevention of pollution, such as equipment installation, treatment sterilization, and appropriate technology as well as rehabilitating the environment caused by pollution of water resources. (iii) The Law on Water and Water Resources in Article 67 prohibits dumping or discharging any kind of wastes or chemicals into water resources to avoid polluted of water beyond the standards of wastewater discharge.[330] Discharging wastewater into water resources by individual, legal entity, or organ must be treated.[331]

Third, "agriculture activities" are corresponded by three main laws. (i) The Law on Chemical Management protects the lives and health of residents regarding the use of chemicals by chemical operations and individuals.[332] This law is the significant statute to prevent harm from using chemicals in rice fields, farms, and other food production facilities. This law prohibits the personal use of chemicals and operations for burning, bury, and discharge chemicals, or hazardous chemical waste.[333] A person who intends to produce or import pesticides for sale or personal use must be submitted an application to the Ministry of Agriculture and Forestry.[334] (ii) The Environmental Protection Law in Article 26 provides that the "persons, legal entities, or organs must take to prevent damage and possible accident on the nature, society, and the environment." (iii) The Law on Water

[328] Mining Law [ภົດໝາຍວ່າດ້ວຍ ແຮ່ທາດ], art. 96 (2017).
[329] Ibid. art. 64.
[330] Law on Water and Water Resources [ภົດໝາຍວ່າດ້ວຍ ນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ], art. 67 (2017).
[331] Ibid. art. 31.
[332] Law on Chemicals Management art. 1.
[333] Ibid. at arts. 53, 54 and 55.
[334] Prime Minister [ນາຍົກລັດຖະມົນຕີ], "Decree on Pesticide Management" [ດຳລັດ ຂອງນາຍົກວ່າດ້ວຍ ການຄຸ້ມຄອງຢາປາບສັດຕູພືດ], no. 258 (Prime Minister's Office, August 24, 2017), art. 15.

and Water Resources in Article 30 protects wastewater from mining activities that any activities must meet wastewater discharge standards based on physical, chemical, and biological characteristics of water.

Fourth, "urbanization" is corresponded by three main laws. (i) The Environmental Protection Law in Article 23 clearly provides that "household with operations, productions, and other activities that can possible impacted the environment, in particular, wastewater released, waste disposal, and chemicals may have plants to deal with the issues." (ii) The Law on Hygiene Prevention and Health Promotion prevents disease, promotes hygiene, and promotion of health to maintain good health, mental health to avoid sickness, liveliness, and longevity.[335] This law prevents hygiene from hospitals, industries, hotels, restaurants, and markets. Article 48 prohibits individuals and organizations from throwing any waste, animal corpses, rubbish, or chemical substance into water sources. This Article also prohibits the discharge of wastewater without meeting the standards of treatment processes.[336] (iii) The Law on Water and Water Resources in Article 32 declares urban planning. This Article formulates that "the system of the canal, drainage pipes, and wastewater treatment reservoirs shall be constructed to ensure human health and the quality of water in the lake, pond, and the living environment."

As mentioned above, four types of water pollution are considered to apply by six environmental laws to guarantee the lives and health of residents and environmental protection. Industrialization is caused by the activities of factories. However, the Law on the Processing Industry is weak due to it gives priority to the economic activity rather than environmental protection. Mineral exploration caused by mining projects, but the Mining Law is unclear to prevent water pollution. Agriculture activities caused by agriculture chemicals of the farmers, but the Law on Chemical Management does not clear to prevent such chemicals. Urban areas are caused by the activities of the community's use of water such as household or market. However, the Law on Water and Water Resources is the general law and it is failed to provide urban wastewater treatment.

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[335] Law on Hygiene, Disease Prevention and Health Promotion [ภิดฆายอ่าด้อย ภามอะนาไม, ภันพะยาด และ สิ่งเสิมสุขะพาบ], art. 1 (2011).
[336] Ibid. art. 48.

Formally, Laos has the environmental protection laws; however, they do little to protect the environment because of the abstractive nature of general laws.[337] According to the JICA, the legal framework in Laos creates at present, but implementation the laws are very weak.[338] The UN also reported that Laos is weak enforcement the laws.[339] The World Bank still concluded that administrative organs and their public servants do not strongly enforce the laws.[340] Weakness law implementation can bring serious impacts the water environment.[341]

However, the author has a different opinion on those policy's recommendations from the reports of other countries. Because of the current legal system in Laos for prevention of water pollution has problem of the kind of opportunism of administration rather than strength or weakness. This analysis will describe in Chapter IV that does not point out here.

Section 2: Administrative Organs and Their Relations

In the previous section, it analyzed the basic frameworks of six environmental laws that are applied to prevent water pollution. As already noted, six environmental laws provide missions and obligations of environmental organs to prevent water pollution. In this section, the implementation of the laws by the organs at both central and local levels will be explored. The relationship between both levels as the top-down system will also be discussed. Allocation of powers and administrative actions will further be described.

1. Administrative Organs for Water Pollution Prevention

Four main levels of environmental administration: central, provincial and capital, district, and village levels will be identified in this part. At the end of this part, it will show a structure of environmental organs in charge of water pollution prevention.

[337] Stuart-Fox, "Laos," 174.
[338] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," xxi.
[339] UN, "Country Analysis Report: Lao PDR-Analysis to Inform the Lao People's Democratic Republic-United Nations Partnership Framework (2017-2021)," 17.
[340] World Bank, "Lao PDR - Environment Monitor," 46.
[341] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," 3–1.

1.1 Central Level

The coordination and conflicts among the Prime Minister's Office, National Environment Committee, and ministerial levels will indicate in this part. Six ministries and three departments in a total of thirteen organs will also highlight in this part.

1.1.1 Prime Minister's Office Level

The Prime Minister's Office (*Samnukngarn Nayok Latthamonty* in Laotian) is the supreme of the state organ to perform as the role of secretariat to the government for facilitation the operation of the government, Prime Minister, and Deputy Prime Minister.[342] According to Article 11 of the 2016 Law on the Government, the Prime Minister's Office has the role to examine and summarize all affairs concerning the activities of the central and local levels. It further examines and analyzes the reports submitted by the central and local administrations concerning the preservation and protection of natural resources and then reports to the government, Prime Minister, and Deputy Prime Minister.[343] It is also coordinated and cooperated with ministries, equivalent-ministries, and other organs for environmental protection.[344]

In order to strengthen implementation of those six environmental laws, the present Prime Minister, Thongloun Sisoulith, issued the Decree on Establishment and Activities of the Prime Minister's Office, No. 93, March 3, 2017. According to Article 4 of the Decree, the Prime Minister's Office is coordinated with conflicts between ministries, equivalent-ministries, and local administrations for consideration and deal with problems in the state.[345] Prime Minister's Office is under the direct supervision of the Prime Minister, and it is the most significant power to supervise and inspect regarding water pollution. Article 12 (10) of the Law on the Government provides that Prime Minister's Office has to monitor, investigate, and supervise the implementation of resolutions, decrees, orders, and agreements of the government, Prime Minister, or Deputy Prime Minister.

[342] Law on the Government, art. 11 (2016).
[343] Ibid. arts. 12 (4-5).
[344] Ibid. art. 11.
[345] Prime Minister, "Decree on Establishment and Activities of the Prime Minister's Office" [ດຳລັດ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ເຄື່ອນໄຫວ ຂອງຫ້ອງວ່າການ ສຳນັກງານນາຍົກລັດຖະມົນຕີ], no. 93 (Prime Minister's Office, March 3, 2017), art. 4.

According to Article 2 of the Decree on Establishment and Activities of the Prime Minister's Office, it has the legal power to consider the opinions and reports presented by individuals, legal entities, and organs under its missions and then report to the government, Prime Minister, or Deputy Prime minister.[346] After such consideration, it may designate to issue an order a relevant organ for reconsideration or deal with such issue under the laws and legal regulations.[347] It is a type of petition system against a polluter reported by a resident to the Prime Minister's Office for dealing with a conflict of water pollution.

The Prime Minister's Office has to coordinate with the National Environmental Committee (*Khana Kummakan Singvaetlorm Haengsard* in Laotian) for ensuring the preservation and environmental protection. This establishment is based on the Decree on Establishment and Activities of National Environment Committee (hereinafter Decree), No. 09/PM, February 2, 2002. According to Article 2 of the Decree, the National Environmental Committee has to plan, administrate, and inspect the environmental protection in nationwide of its role as secretariat and advisor to the government. It is also as the coordinator for management, strategy, and inspection the environmental protection by coordinating with the Prime Minister's Office, ministries, and other organs at both central and local levels to ensure the environmental laws and national socio-economic development plans.[348] Article 10 (1) of the Decree declares that the Committee must administrate under the centralized or top-down system at the central, provincial and capital, district, and village levels.

The members of the National Environmental Committee are the Deputy Prime Minister, Minister of Natural Resources and Environment, Minister of Agriculture and Forestry, Minister of Industry and Commerce, Minister of Public Works and Transport, and Minister of Public Health.[349] The National Environmental Committee holds a national meeting twice a year to summarize the environmental protection and report to the Prime Minister's Office.[350] The Prime Minister's Office

[346] Ibid. at 2.
[347] Ibid. at 3.
[348] Prime Minister, "Decree on Establishment and Activities of National Environmental Committee" [ດຳລັດວ່າດ້ວຍ ການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ຄະນະກຳມະການສິ່ງແວດລ້ອມແຫ່ງຊາດ], no. 09 (Prime Minister's Office, February 2, 2002), art. 4.
[349] Ibid. at 3.
[350] Ibid. at 10.

and National Environmental Committee are as the roles of secretariats and consultations to the government.

As mentioned above, there is almost no special provision of water pollution prevention law regarding the organ at the Prime Minister level. However, the Prime Minister and its organs have authorities and play the significant roles for coordination to prevent water pollution in practice.

1.1.2 Ministerial Level

As mentioned above, the Prime Minister's Office and National Environmental Committee play as the central role by coordinating with all ministries in the state. The ministerial-levels may be coordinated with the Prime Minister's Office and held its missions under six environmental laws as already noted. The ministerial-level plays a core role to protect and conserve the environment. There are six ministries play as the secretarial headquarters and three main departments under ministerial level as follows.

First, the Ministry of Natural Resources and Environment is the key player as the secretarial headquarters for water pollution prevention as declared in Article 2 of the Prime Minister's Decree (hereinafter Decree), No.145 of 2017. This ministry has taken direct responsibility and a leading role with its organs to identify national policies, strategies, and measures regarding environmental protection.[351] Article 3 (3.11) of the Decree clearly defines that it has the right to control of water pollution, chemicals, and wastes.[352] It also works closely with other related organs to manage and control minerals, disasters, and other contaminations.[353] In addition, there are two departments created under this ministry. (1) There is the Water Resources Department established under the Minister's Agreement, No.3160 of August 1, 2017. This department has the legal power to consider the reports concerning water and water resource problems submitted by residents as well as

[351] Environmental Protection Law [ภิดพมายอ่าด้อย ภามปิภปักธัภสาสิ่งแอดล้อม], art. 78 (2012).
[352] Prime Minister, "Decree on Establishment and Activities of Ministry of the Natural Resources and Environment" [ดำลัด อ่าด้อยภามจัดตั้ง และ ภามเถื่อมไหวอยง ภะซวงซับพะยาภอมทำมะชาด และ สิ่งแอดล้อม], no. 145 (Prime Minister's Office, May 8, 2017), art. 3.
[353] Ibid. at 2.

coordination with relevant organs for dealing with the conflicts.[354] (2) The Pollution Control Department was established under the Minister's Agreement, No. 3163, August 1, 2017 (revised). This department is responsible for preventing and controlling pollution, chemicals, or other hazardous wastes.[355] The ministry also sets the quality for releasing wastewater and inspects the quality of water used by investment projects and other activities.[356]

Second, the Ministry of Industry and Commerce controls industrial activities such as wastewater, sewage, smell, and other pollution caused by factories.[357] This ministry was established by the Prime Minister's Decree, No. 230, July 24, 2017 (revised). It has the role to coordinate the promotion of economic activities and protection of environment with related central and local levels to modify strategies, policies, methods, and measures.[358] The ministry also has the right to issue licenses, suspensions, and withdraws the companies.[359] One main department under the ministry is the Department of Industry and Handicrafts was established by the Minister's Agreement (hereinafter Agreement), No. 1551, August 31, 2016. According to Article 2 of this Agreement, this department has the role of secretariat to the Minister of Industry and Commerce concerning management and inspection of industries and handicrafts in a nationwide. It sets up manufacturing standards for efficient and grown-up management and monitor systems in operation plants.[360]

Third, the Ministry of Energy and Mines was established by the Prime Minister's Decree, No. 296/PM, September 4, 2017 (revised). It deals with issues concerning hydroelectric power,

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[354] Minister of Natural Resources and Environment, "Agreement on Establishment and Activities of Water Resources Department" [ຂໍ້ຕົກລົງວ່າດ້ວຍ ການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ກົມຊັບພະຍາກອນນ້ຳ], no. 3160 (Ministry of Natural Resources and Environment, August 1, 2017), art. 4 (3).
[355] Minister of Natural Resources and Environment, "Agreement on Establishment and Activities of Pollution Control Department" [ຂໍ້ຕົກລົງວ່າດ້ວຍ ການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ກົມຄວບຄຸມມົນລະຜິດ], no. 3163 (Ministry of Natural Resources and Environment, August 1, 2017), art. 1.
[356] Ibid. at 9.
[357] Prime Minister, "Decree on Establishment and Activities of Ministry of Industry and Commerce" [ດຳລັດ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ກະຊວງອຸດສາຫະກຳ ແລະ ການຄ້າ], no. 230 (Prime Minister's Office, July 24, 2017), art. 3.
[358] Ibid. at 7.
[359] Ibid. at 4.
[360] Minister of Industry and Commerce [ກະຊວງອຸດສາຫະກຳ ແລະ ການຄ້າ], "Agreement on Establishment and Activities of Industry and Handicraft Department" [ຂໍ້ຕົກລົງວ່າດ້ວຍ ການຈັດຕັ້ງ ແລະ ເຄື່ອນໄຫວຂອງກົມອຸດສາຫະກຳ ແລະ ຫັດຖະກຳ], no. 1551 (Ministry of Industry and Commerce, August 31, 2016), art. 3.

mineral prospecting, and exploration activities.[361] Part XIII (Arts. 117-118) of the 2017 Mining Law states that the missions of the ministry are to supervise and control mineral activities for environmental protection and the prevention of water pollution. The present Prime Minister, Thongloun Sisoulith, also issued the Prime Minister's Decree, No. 296, September 4, 2017 for active implementation of the ministry. According to Article 4 (6) of the Decree, the ministry has the legal power to suspend and cancel the companies and projects concerning investments on energies and minerals under the laws. It further develops the strategy plans, policies, laws, and regulations with prospection, exploration, and pre-feasibility.[362]

Fourth, the Ministry of Agriculture and Forest has the primary responsibility for cultivation, irrigation, livestock, fisheries, water land, and forestry.[363] The Prime Minister's Decree, No. 99, March 9, 2017 (revised) give the legal authority as the implementation of the national policies, strategies, and programs by coordination with various local organs.[364] It also deals with watershed management, test, and analysis of water quality. It further has the legal power to issue its regulation for production, environmental protection, and agricultural activities development.[365] The ministry also controls the import, quality, and use of agriculture chemicals such as pesticides, fertilizers, and herbicides that impact the ecosystem.[366]

Fifth, the Ministry of Public Health is responsible for safe drinking water, rural water supply, sanitation, and environmental health issues.[367] This ministry was established by the Prime Minister's Decree (hereinafter Decree), No. 96, March 9, 2017. According to Article 3 (5) of the Decree, it has to promote the good health of the residents. It has the authority to issue regulations for

[361] Mining Law, art. 118 (2017).
[362] Prime Minister, "Decree on Establishment and Activities of Ministry of Energy and Mines" [ດຳລັດ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ເຄື່ອນໄຫວຂອງ ກະຊວງພະລັງງານ ແລະ ບໍ່ແຮ່], no. 296 (Prime Minister's Office, September 4, 2017), art. 3 (2).
[363] UN, *UN-Water International Conference-Water in the Green Economy in Practice-Towards Rio+20-Water Planning in Lao PDR*, Zaragaza (Zaragaza: UN, October 3–5, 2011), 7.
[364] Law on Agriculture [ກົດໝາຍວ່າດ້ວຍ ກະສິກຳ], art. 70 (1998).
[365] Ibid.
[366] Prime Minister, "Decree on Establishment and Activities of Ministry of Agriculture and Forestry" [ດຳລັດ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ກະຊວງກະສິກຳ ແລະ ປ່າໄມ້], no. 99 (Prime Minister's Office, March 9, 2017), art. 3.
[367] World Bank, "Lao PDR - Environment Monitor," 42.

safe disposal methods of solid waste, wastewater to ensure the water supply and sanitation. It also develops policies, strategic plans, laws, and legal regulations for management and inspection. It further sets the standard techniques for maintenance, construction expenses concerning treating wastewater and seeks to limit the danger of waste from hospitals, clinics, and other activities.[368]

Sixth, the Ministry of Public Works and Transport was established by the Prime Minister's Decree, No. 295, September 4, 2017. This ministry has a role as a secretariat to the government for water supplies, urban, and inland waterways.[369] According to Article 3 (6) of this Decree, this ministry has to inspect the activities of construction concerning railway and mineral exploration with coordination to line sectors such as the Ministry of Energy and Mines. Collection of data concerning water quality sampling at hydrological stations is also the responsibility of this ministry. It further has legal authority to enact regulations, develop policies, plans for urban water supply, solid waste, and sewage that are in line with urban development. It is still prevented the storm water drainage in urban areas, including roadside drains leading ultimately into the rivers.

In conclusion of the central level part, the Prime Minister's Office, National Environmental Committee, and six ministries play as the central level. The most powerful legal authority is the Prime Minister's Office, while the ministerial-level plays as the national policies to contribute the sustainable economic development and ensure the lives, health, and safety for residents. The ministries establish the organs at the provincial and capital level to implement the national policies at the local levels. Formally, ministerial-level issues national policies, strategies, and environmental standards, while provincial and capital level play the leading roles to get involved that respect the framework of national policies. Both central and local levels are interaction as the centralized system in the consistent manner with the principle of democratic centralism.

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[368] Prime Minister, "Decree on Establishment and Activities of Ministry of Public Health" [ດຳລັດ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ກະຊວງສາທາລະນະສຸກ], no. 96 (Prime Minister's Office, March 9, 2017), art. 3.

[369] Prime Minister, "Decree on Establishment and Activities of Ministry of Public Work and Transport" [ດຳລັດ ວ່າດ້ວຍການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ກະຊວງໂຍທາທິການ ແລະ ຂົນສົ່ງ], no. 295 (Prime Minister's Office, September 4, 2017), arts. 2-3.

As above noted, it was found that the provisions of the special water pollution law have never been even for the ministerial level. The ministries have been established by the Prime Minister's Decrees in order to prevent water pollution, but they are not special laws. The ministers do not have any legal power under those laws. Therefore, the ministerial level does not prevent water pollution well.

1.2 Provincial and Capital Level

The ministries have established the provincial and capital levels as the local levels. Currently, there are 17 provinces and one capital city.[370] In one province, there is one Provincial Governor's Office. According to Article 86 of the Constitution, a province administrates by a governor, while capital is a mayor. A governor is appointed and removed by the Prime Minister.[371] The provincial and capital levels have authority to implement the framework of national policies as follows.

First, the Provincial and Capital Divisions of Natural Resources and Environment were established by the Ministry of Natural Resources and Environment. This organ is responsible for management and control of water and air at the provincial and capital levels.[372] Article 3 (5) of the Agreement on Establishment and Activities of this division, No. 3171, August 1, 2017 gives legal power to this division for the reconciliation of disputes regarding the environment at provincial, capital, and district levels. This organ also has authority to inspect wastewater and set the quality standards of released wastewater. Indeed, it has authority to issue certification of Initial Environmental Examination in order to analysis and examine to anticipate possible small environmental impacts from investment projects as well as proposing to suspend its certificate when any legal violation is found at provincial and capital, district and village levels.[373]

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[370] Lao Statistics Bureau, *Statistical Yearbook 2017*, 11.
[371] Law on Local Administration [ภึดฒายอ่าด้อย ภาบปิภาถอๆท้อๆถิ่บ], art. 16 (2015).
[372] Minister of Natural Resources and Environment, "Agreement on Establishment and Activities of Natural Resources and Environment of Province and Capital City Division" [ข้ึ้ตึภลึๆอ่าด้อย ภาบจัดตั้ๆ และ ภาบเถื่อบไหวอฃอๆ พะแบภชับพะยาภอบทำมะชาด และ สิ่ๆแวดล้อม แฃวๆ บะถอบหลวๆ], no. 3171 (Ministry of Natural Resources and Environment, August 1, 2017), art. 2.
[373] Environmental Protection Law arts. 80 (6-8) and 21 (2012).

Second, the Provincial and Capital Divisions of Industry and Commerce were established by the Minister's Agreement of Industry and Commerce, No. 0035, January 6, 2012. This organ implements the national policies, agreements, orders, and regulations of the ministries and government under its missions.[374] Article 63 of the Law on the Processing Industry provides the duty and obligation of the organ. It is responsible for inspection of the activities of industries and handicrafts at provincial, capital, and district levels.[375] The organ is one of the administrative organs at the local levels to deal and solve with water pollution problems in local issues. It also has the legal power to grant, suspend, and cancel the licenses of the middle and small sizes in provincial, capital, and district levels.[376] Based on the Article 63 (7) of this law, this organ may propose an improvement, suspend, or cancel the permission of large size industrial factories when any violation of law is found.

Third, the Provincial and Capital Divisions of Energy and Mines were established to control the activities of mining. According to Article 119 of the Mining Law, this organ is responsible for management and controls the activities of mineral exploration at provincial and capital, district, and village levels based on the law. The organ also has the legal power to report for suspension and cancel of mining projects and licenses with mineral explorations and mining projects when its activities affect the environment based on Mining Law.[377]

Fourth, the Provincial and Capital Divisions of Agriculture and Forestry were established by the Ministry of Agriculture and Forestry. Each province has this division and it has legal power for activities of agriculture, in particular, the rice fields, tapioca productions, and other productions based on the Law on Chemical Management. The organ is also significant to prevent water pollution regarding control of agriculture chemicals such as insecticides, fungicides, and herbicides. Farmers

[374] Minister of Industry and Commerce, "Agreement on Establishment and Activities of Provincial and Capital of Industry and Commerce" [ຂໍ້ຕົກລົງວ່າດ້ວຍ ການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງພະແນກອຸດສາຫະກຳ ແລະ ການຄ້າແຂວງ ແລະ ນະຄອນຫລວງ], no. 0035 (Ministry of Industry and Commerce, January 6, 2012), art. 4.
[375] Minister of Industry and Commerce, "Agreement on Establishment and Activities of Industry and Commerce of Province and Capital City Division" [ຂໍ້ຕົກລົງວ່າດ້ວຍ ການຈັດຕັ້ງ ແລະ ການເຄື່ອນໄຫວຂອງ ພະແນກອຸດສາຫະກຳ ແລະ ການຄ້າ ແຂວງ ນະຄອນຫລວງ], no. 0035 (Ministry of Industry and Commerce, January 6, 2012), art. 4.
[376] Law on the Processing Industry, art. 63 (6) (2013).
[377] Mining Law, art. 119 (2017).

always use agriculture chemicals for production of food and protection of plants from damage caused by weeds, insect pests, and disease. Therefore, this organ is essential to ban some imports chemicals in order to ensure the chemicals do not contain in water resources based on the law.

Fifth, the Provincial and Capital Divisions of Public Health were established by the Ministry of Public Health to promote the good health of residents. According to Article 51 (1) of the Law on Hygiene, Disease Prevention, and Health Promotion, this organ has authority to advertise, disseminate, and give to educate the laws and regulations for prevention disease, hygiene, and health promotion in its level. It is one of the administrative organs to prevent water pollution in local areas about disease and hygiene caused by pharmacies, clinics, and hospitals. The organ may report the results of implementation the activities of hygiene, disease prevention, and health promotion to the Ministry of Public Health.[378]

Sixth, the Provincial and Capital Divisions of Public Works and Transport were established by the Ministry of Public Work and Transport. Article 78 the Law on Urban Plans gives power to this organ to inspect the activities of constructions near rivers or streams in order to ensure damage to the rivers. It might propose for consideration of suspension or cancellation the company at its level to the Minister of Public Work and Transport.[379]

As mentioned above, there are six environmental organs at the local or sub-national level. Each provincial and capital level organ has established by ministerial level. The coming down to this level, some provisions of the special environmental laws codify the missions such as investigation. This level has coordinated with the district level in order to ensure the implementation of national laws and policies.

1.3 District Level

The district levels are one key role in ensuring proper law implementation and enforcement. In one district, it has the district office, and it administrates by a chief of district.[380] The chief of

[378] Law on Hygiene, Disease Prevention and Health Promotion, art. 51 (8) (2011).
[379] Law on Urban Plans [ກົດໝາຍວ່າດ້ວຍ ຜັງເມືອງ], art. 79 (2017).
[380] Constitution of the Lao People's Democratic Republic, art. 86 (2015).

district is appointed and removed by a governor.[381] There were 148 districts in the whole country in 2016, according to the Lao Statistics Bureau.[382] This level is under the supervision of the provincial and capital levels. There are six main organs at this level as follows.

First, the District Offices of Natural Resources and Environment have the duty to implement environmental plans, orders, agreements, and instructions of the Provincial and Capital Divisions of Natural Resources and Environment.[383] This organ was established by the Minister's Agreement on Establishment and Activities of this organ, No. 3172, August 1, 2017. According to Article 2 of this Decree, this organ is under supervision of the District Office and Provincial and Capital of Natural Resources and Environment for management and inspection of the environment, including water pollution prevention at the district level. It is guided, monitored, and proposed to improve any activities within the district as the result of adverse impacts to the lives and health of residents.[384] The organ may allocate and resettle villagers impacted by projects of investments within the scope of its responsibilities as well as proposing to suspend the Initial Environmental Examination and the licenses of the projects when it is found a legal violation.

Second, the District Offices of Industry and Commerce are under the supervision of the Provincial and Capital Divisions of Industry and Commerce. This organ is responsible for inspection of chemicals and wastes used by industrial factories as provided in Article 64 of the Law on the Processing Industry. The organ controls and inspects the activities of industrial processing at district levels.[385] Chemical inspection and hazardous waste in the processing of industries controlled by this organ at district and village levels.[386] It further has the power to issue, suspend, withdraw, and cancel the licenses of industrial operations, as well as dealing with conflicts between local residents and violators at district and village levels based on the same law.[387]

[381] Ibid. art. 87.
[382] Lao Statistics Bureau, *Statistical Yearbook 2017*, 11.
[383] Environmental Protection Law arts. 80-81 (2012).
[384] Ibid. arts. 81 (3 and 10).
[385] Law on the Processing Industry, art. 64 (4) (2013).
[386] Ibid. art. 64 (3).
[387] Ibid. arts. 64 (4 and 8).

Third, the District Offices of Energy and Mines are responsible for management and control of mining projects at district level.[388] According to Article 120 (1) of the Mining Law, this organ has to implement the national plans, agreements, orders, and announcements under supervision by the Provincial and Capital Divisions of Energy and Mine. It must also be coordinated and inspected regarding mining operations in district and village levels.[389] It is also responsible for reporting the mineral explorations to the provincial level.[390]

Fourth, the District Offices of Agriculture and Forestry are responsible for management and control of agriculture in district and village levels as provided in Article 72 of the Law on Agriculture. Each district has this organ and it has controlled agriculture chemicals used by farmers and companies at the districts levels.[391] It is one of the organs to prevent water pollution and it is closest to residents for controlling and dealing with local issues.

Fifth, the District Offices of Public Health are managed and inspected the activities of hygiene and disease at district and village levels.[392] This organ is under the supervision of the Provincial and Capital Divisions of Public Health. Every district has this organ and it prevents water pollution at the local levels. For instance, Article 52 (4) of the Law on Hygiene, Disease, Prevention, and Health, the organ considers and handles the propositions by legal entities or organs concerning hygiene, disease prevention, and health promotion.

Sixth, the District Offices of Public Works and Transport implement the national plans, orders, and agreements from Provincial and Capital of Public Works and Transport.[393] Indeed, it has the authority to coordinate and inspect construction activities at the district levels to ensure they do not cause damage to water resources. As already mentioned above, there are six organs at the district level. Administrative organs at this level are delegated specific powers to implement the national plans and policies. This level also has the legal powers to supervise such as inspection of the activities at the district level. This characteristic considers as the same roles as the provincial level.

[388] Mining Law, art. 120 (2017).
[389] Ibid. art. 120 (3).
[390] Ibid. art. 120 (4).
[391] Law on Agriculture, art. 72 (1998).
[392] Law on Hygiene, Disease Prevention and Health Promotion, art. 52 (2011).
[393] Law on Urban Plans, art. 79 (2017).

1.4 Village Level

Village level is the lowest level of public administration in Laos.[394] A village has one village office. According to the Lao Statistics Bureau, there were 8,464 villages in 2016.[395] A village is administered by a chief of the village and is directly elected by villagers.[396] As already stated, the village level is under the supervision of the district level.[397] The chief of village is appointed and removed by a chief of the district.[398] Since the chief of village is elected by villagers, it can make contribution to local issues for prevention of water pollution better than district levels, but its difficulty under a centralism as already noted in Chapter I. Village level is significant to protect the lives and health of villagers and prevention of water pollution because it is closest to local areas.

Constitution Provision in Article 89 stipulates that village level has legal authority to protect natural resources and deal with the issues at the village, including conflict settlements.[399] Besides, Article 82 of the Law on Local Administration provides that village level has the authority to implement the environmental laws in order to preserve the good health of villagers. Village level is still responsible for restoration and protection of water resources under its missions.[400]

According to Article 82 of the 2012 Environmental Protection Law, the Village Units of Natural Resources and Environment has missions to prevent water pollution at the village level. In each village, it has one Village Unit of Natural Resources and Environment for implementation plans and regulations of water pollution prevention under the District Offices of Natural Resources and Environment. However, it is not only coordinated with this organ, but also coordination with five environmental District Offices: Industry and Commerce, Energy and Mines, Agriculture and Forestry, Public Health, and Public Works and Transport as already noted in the previous part. Article 82 (2) of the Environmental Protection Law also gives legal power to Village Units of Natural Resources and Environment for train, dissemination, build awareness, encouragement,

[394] Law on Local Administration, art. 81 (2015).
[395] Lao Statistics Bureau, *Statistical Yearbook 2017*, 11.
[396] Law on Local Administration art. 85.
[397] Ibid. art. 78.
[398] Ibid. art. 85.
[399] Constitution of the Lao People's Democratic Republic, art. 89 (2015).
[400] Law on Local Administration art. 82 (10).

guidance, and support to take leadership in order to manage, protect, solve with the problems, and rehabilitate the environmental and natural sources in the villages.

The Village Units of Natural Resources and Environment play the significant roles in many parts of water pollution prevention such as participation in village allocation and resettlement as the result of implementing from projects and natural impacts within the village territory.[401] It also participates for sharing ideas and consultation concerning the environmental protection and the activities of endorsement or the project of investments in the village level. This level is to suggest for improving, justify, terminate, and suspend the activities at the village, which bring adverse impacts on the lives and health of villagers. The Village Units of Natural Resources and Environment develop environmental and natural resources management rules in the village in order to keep cleanliness as well as develop the clean green, hopefully beautiful villages, protect streams, and water resources in the village.[402]

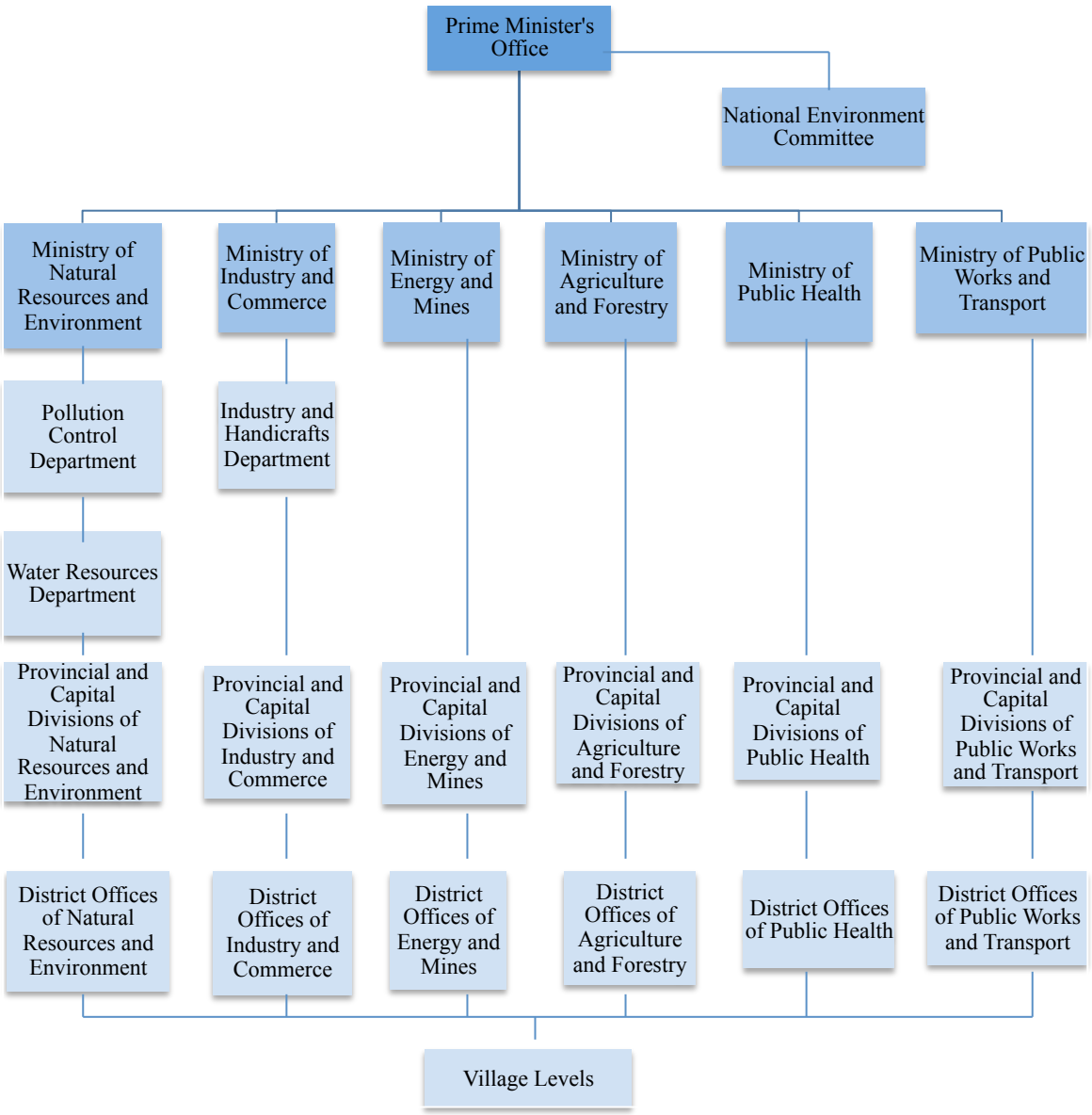
Village level also has the legal power to propose the District Offices of Natural Resources and Environment and other organs at the district level as mentioned above for suspensions or cancellations of certificates of the household environmental management plans.[403] Apart from this, Article 80 (2) of the 2017 Law on Water and Water Resources prescribes that this level leads villagers to protect and restore water and water resources. Encouragement and promotion the villagers to treat the household wastewater before discharging into the river to ensure the quality of water sources led by the village level.[404] Other authorities are to control chemicals used at the farms and rice fields by local farmers within the village level.

Constitution Provision (Art. 89) and the three main laws stated above give legal powers to village level for protection of water resources and the environment. However, those powers are weak and limited such as the encouragement roles to villagers for allowed getting involve the local issues. Therefore, village level could protect the lives and health of villagers, but its powers are strictly limited and weak. That is, the power of village level is weak due to the central level does not give

[401] Environmental Protection Law, art. 82 (4) (2012).
[402] Ibid. art. 82 (8-9).
[403] Ibid. art. 82 (5).
[404] Law on Water and Water Resources, art. 80 (4) (2017).

legal power to the village level. Central level is strictly controlled the village level. The Table 2 below shows the structure of all levels in charge of the prevention of water pollution.

Table 2: Structure of Administrative Organs for Water Pollution Prevention in Laos



Sources: Summarized by the author based on environmental laws,[405] JICA (2013),[406] and World Bank (2005)[407]

[405] The author bases on six environmental laws as mentioned in the previous parts: (1) Environmental Protection Law, (2) Law on Hygiene, Disease Prevention and Health Promotion, (3) Law on the Processing Industry, (4) Law on the Chemicals Management, (5) Law on Water and Water Resources, and (6) Mining Law.
[406] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," 1–22, 1–23 and 5–17.
[407] World Bank, "Lao PDR - Environment Monitor," 45.

To sum up, there are total of twenty-four organs at all levels for prevention of water pollution in Laos. These organs are the development of strategies, policies, and regulations to implement the laws. However, the structure of hierarch of laws is weak and responsibility of organs at the central level is unclear. On the contrary, there is no effective regulatory power such as licensing powers at the village level that most familiar to the residents. This is unique closely similar to China and Vietnam. Laos is also recognized as the centralized mechanism, and there are some local powers for the centralized missions.

2. Relationship Between the Administrative Organs

2.1 Relationship Between the Administrative Organs at the Central Level

A relation of administrative organs at the central level is one of the main significant for water pollution prevention. The relationship between administrative organs is different from country to country. Laos has carried out the socio-political as the one-party rule and principle of democratic centralism. Hence, the relationship between organs in Laos is differed from the "shared management doctrine" of Japan (*Buntan Kanri Gensoku* in Japanese).

As already noted, the Prime Minister's Office in Laos is the supreme power, and it is secretarial of the government. The Natural Environment Committee is also at the central level. The members of the National Environmental Committee are the Deputy Prime Minister and Ministers that advise to the government under its roles. Basically, the Prime Minister may consider and issue the decrees or orders by coordination with the Prime Minister's Office, National Environmental Committee, and ministries in charge. For instance, Prime Minister issued the Decree on Promulgation of the National Environmental Standards, No. 81/PM, February 21, 2017, and then the Prime Minister's Office may announce and inspect the implementation of this Decree.

Based on the Prime Minister's Decree as mentioned above, the Ministry of Natural Resources and Environment issued the Agreement on the National Environmental Standards, No. 0832, February 2, 2017. In order to ensure the coordination between the Prime Minister's Office,

ministries, and other organs, the present Prime Minister, Thongloun Sisoulith, issued the "Decree on Coordination Between the Ministries, Equivalent-Ministries, Provincial, and Capital with the Prime Minister's Office," No. 177, May 7, 2018 (hereinafter Decree). According to Article 1 of this Decree, it aims to boost teamwork and streamline operations between both levels for all state administrations, including management, preservation, and prevention of water resources nationwide. Article 5 of the Decree provides that the Prime Minister's Office, ministries, equivalent-ministries, and other organs must coordinate and perform among organs under the laws and legal regulations.

According to Article 15 of the Decree, the ministries and equivalent-ministries must be coordinated with the Prime Minister's Office regularly in order to report their performances to Prime Minister and the government. The Prime Minister's Office has the legal power to coordinate with ministries and equivalent-ministries in order to exchange information, plan, and inspection the implantation of the laws, decrees, orders, and other legal regulations based on the Decree.[408]

In general, the Prime Minister's Office has traditionally coordinated with ministerial levels. For example, when Prime Minister issues a decree, the Prime Minister's Office may announce and coordinate with ministerial level. For another example, when a person reports a complaint about water pollution to the government under the Law on the Handling of Petitions in Article 2 (1), the Prime Minster's Office may also coordinate with the ministerial level to deal with such issue. This practice is preserved even after six new laws enacted in 1990s.

The premise of coordination is the division of responsibility by each ministry. Coordination is necessary only because each ministry has different responsibilities. However, in practice, the Ministry of Natural Resources and Environment, Ministry of Agriculture and Forestry, and other ministries do not coordinate tasks across ministerial areas regarding water pollution prevention well. Because of specific provisions of laws for water pollution prevention are unclear to provide the

[408] Prime Minister, "Decree on Coordination Between the Ministries, Equivalent-Ministries, Provincial, and Capital with the Prime Minister's Office" [ດຳລັດ ວ່າດ້ວຍການປະສານງານລະຫວ່າງບັນດາກະຊວງ, ອົງການລັດທຽບເທົ່າກະຊວງ, ແຂວງ ແລະ ນະຄອນຫລວງ ກັບສຳນັກງານນາຍົກລັດຖະມົນຕີ], no. 177 (Prime Minister's Office, May 7, 2018), art. 15.

duties and obligations of the environmental organs on course of actions.[409] It is unclear that which organ is primarily responsible for water pollution prevention. The ministerial level sometimes overlaps their duties to issue administrative regulations. It sometimes overlaps and confuses among ministries.

For example, the Ministry of Agriculture and Forestry issued the Agreement on Pesticide Management (No. 0238, February 14, 2019), but the Ministry of Natural Resources and Environment gained to issue an agreement on the pesticide. It is unclear that which organ has the authority to issue the agreement on this issue. Besides, the coordination between the Prime Minister's Office and the ministerial level as the central level is weak. Some weak points are the connection with water pollution issues such as lack of information, plans, and policies.

As mentioned above, Laos has not adopted a legal system that gives each ministry the different responsibility and power. In fact, each ministry works at the first time when the Prime Minister exercises coordinative power. Besides, it is unclear which organ has responsibility and power within each ministry. In Chapter I, the author described the important concept of "administrative agency" as one of the conditions under which the concept of administrative responsibility in Japan is made a possibility. Compared with this, in Laos, it is unclear which organ or agency is ultimately responsible, and it is difficult to pursue administrative responsibility.

After Chapter III, the necessity of administrative case litigation system will be confirmed in Chapter IV. The legal construction of administrative case litigation system is necessary, but it is not sufficient for the establishment of administrative responsibility.

2.2 Relationship Between the Administrative Organs at the Central and Local Levels

A good performance of state administration is required to link the central and local levels. Without a clear distribution function of both levels, it is difficult to cope with local responsibility by the legal system. However, in fact, local levels have roles like mediation in order to settle conflicts.

[409] Robert B. Oberndorf, *Comparative Analysis of Policy and Legislation Related to Watershed Management in Cambodia, Lao PDR and Vietnam*, Phnom Penh (Phnom Penh: MRC-GTZ Cooperation Program, 2004), 5.

Central and local levels relation is an essential factor for decentralization. Relationship between both levels is significant to achieve the goals of the state. Linking between both levels depends on social political and economic developments.

With respect to water pollution prevention, the relationship between two levels in Laos is under the centralized or top-down system. There is no autonomy of local organs in Laos as in Japan. According to Article 18 of the Constitution, the state implements "the principle of combining centralized management through the consensus of central authorities with the delegation of responsibilities to local authorities under the laws and regulations." In this regard, it is the top-down system for water pollution prevention. It is in the form of a bureaucratic system. In general, it shares between the central and local levels. The central organs are normally responsible for the formulation and plan of the environmental policies in order to contribute the sustainable economic developments for ensuring lives and health of residents.[410] At the same time, local levels carry out the policies, functions, and duties in respect to the framework of central level. For instance, local levels play the leading roles to get involve of operations, water treatment facilities, and management of water areas in local levels regarding the framework of national policies.[411]

When water pollution occurs, a village level may report to the District Office of Natural Resources and Environment, and then the district level reports to the Provincial Division of Natural Resources and Environment. After that, the provincial level may report to the Ministry of Natural Resources and Environment. Finally, the ministry level may forward to the Prime Minister's Office and the government. Due to take long time, it is difficult to take prompt actions to water pollution.

In practice, the central level has been planned to delegate powers to the sectorial sectors and then it delegates to the provincial level, which in turn delegates power to the district level and finally to the village levels in many fields.[412] From the outside, it has been pointed out that relation between

[410] Decree on the Establishment and Activities of the Ministry of Industry and Commerce, art. 3 (LA Prime Minister's Office 2006).
[411] Law on the Processing Industry arts. 63–64.
[412] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," 3–3.

the central and local levels is poorly coordinated in Laos.[413] The unclear relation of expenditure assignments on joining responsibility is pointed out as one important factor blocking a smooth performance of administrative corresponding responsibility.[414] Local levels are the keys role in ensuring proper law implementation and enforcement for the central level.

With respect to local levels for water pollution prevention, the 2015 Law on Local Administration enacted aiming to make local levels is stronger to deal with the local issues.[415] At the same time, the responsible system of the local levels to central is a strictly control by the central level, including water pollution prevention.[416] Indeed, the central level influences with local levels through the range of involvements. Local levels are strictly controlled by central level in term of water pollution prevention. Therefore, legal responsibility of higher organs must be pursued in Laos. However, as a premise discusses this matter, it is necessary to sort out which actions of organs significantly in order to prevent water pollution. The next part will concentrate on the allocation of powers and actions of the administration.

Section 3: Allocation of Powers and Administrative Actions

This section will make clear the characteristic of the allocation of powers to which administrative organs have and its actions. The different tiers of central and local allocations of powers will be addressed. There are many kinds of administrative actions, but plans, standards, licenses, and administrative sanctions will be explored as the important actions in this section.

1. Administrative Plans and Standards for Water Pollution Prevention

The Ministry of Natural Resources and Environment has the legal power to set the plans and standards under the Environmental Protection Law, Decree on Environmental Impact Assessment, and Agreement on National Environmental Standards. Before the establishment of any factory or

[413] IMF, "2017 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Lao People's Democratic Republic," 12.
[414] Jorge Martinez-Vazquez and Andrey Timofeev, *Reining in Provincial Fiscal Owners: Decentralization in Laos* (Edward Elagr Publishing, 2011), 196.
[415] Law on Local Administration of the Lao People's Democratic Republic, art. 1 (LA 2003).
[416] SIDA, "Governance and Participation in Laos," 8–9.

investment project, it is generally required to follow the plans and standards provided by the law and administrative regulations as mentioned above. Without quality of the standards, an administrative organ may not grant a business license or permit an activity.

This part aims to attempt for two main points: environmental impact assessment and water quality standards. Case studies concerning impact assessment and water quality standards will also be discussed in this part.

1.1 Environmental Impact Assessment

Environmental impact assessment (hereinafter EIA) is a process to survey, analysis data, and anticipate both positive and negative impacts that may affect social and natural environment caused by various projects in short term or long term.[417] A result of an EIA is one reason that an environmental organ and its line organs approve or reject a project.[418]

In Laos, there is no specific law like the Environmental Impact Assessment Act (Act No. 81, June 13, 1997) as in Japan. Therefore, Laos refers to Article 22 of the Environmental Protection Law as the primary law to consider EIA. According to this Article, a new company or project expects to develop plans for monitoring of the environmental social management. EIA aims to prevent lives and health of residents as well as prevention of water pollution. To implement this Article, the present Prime Minister issued the "Decree on Environmental Impact Assessment," No. 21/PM, January 31, 2019 (hereinafter Decree). This Decree ensures the public and private investments projects create adverse environmental and social impacts in order to prevent harmfully.[419] Article 3 (1) of the Decree provides a project developer must first obtain an environmental compliance certificate before starting any construction work. The project developer must also survey both potentially positive and negative impacts on the environment and society by coordinating with all of the local administrations.[420]

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[417] Environmental Protection Law, art. 4 (6) (2012).
[418] Prime Minister, "Decree on Environmental Impact Assessment" [ດຳລັດຂອງນາຍົກ ວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມ], no. 21 (Prime Minister's Office, January 31, 2019), art. 2.
[419] Ibid. at 4.
[420] Ibid. at 3 (1).

In order to ensure proper EIA, the Minister of Natural Resources and Environment issued the Advice on Process of Impact Assessment for Social and Environmental from Investment Project and Operation (hereinafter Advice) to prevent negative impacts from investment projects throughout the state.[421] Under this Advice, the environmental organs concerned may examine the impact assessment of the developers before making any decision for allowing them to start operations in order to prevent harmful and pollution from business operations.[422]

The Ministry of Natural Resources and Environment has jurisdiction of EIA as the central level.[423] The organs at this ministry issue an environmental compliance certificates for projects that have completed EIA coordinate and process with line organs to carry out monitor and evaluation based on Environmental Protection Law. Moreover, the developers are further required to submit the reports of monitoring to this ministry based on the Environmental Management and Monitoring Plans.[424] Based on Part I (1.2) of the Decree on Environmental Impact Assessment that the new investment projects or companies must submit EIA to this ministry before starting the projects.

In local levels, Part XI (Arts. 74-79) of this Decree gives legal power to the Provincial and Capital Divisions of Natural Resources and Environment and District Office of Natural Resources and Environment for inspection of EIA at the local levels.[425] For such consideration, the developers are needed to analysis negative impacts that may affect the social and environment.[426] The assessment must correct with the laws and regulations as mentioned above. The operations are

[421] Minister of Natural Resources and Environment, "Advice of the Minister of Natural Resources and Environment on Process of Impact Assessment for Social and Environment from Investment Projects and Other Operations" [ຄຳແນະນຳ ຂະບວນການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມສັງຄົມ ແລະ ທຳມະຊາດ ຈາກໂຄງການລົງທຶນ ແລະ ກິດຈະການຕ່າງໆ], no. 8030 (Ministry of Natural Resources and Environment, December 17, 2013), Part I (1.1).
[422] Environmental Protection Law art. 19.
[423] Ibid. art. 22.
[424] Mekong Legal Network, *Environmental Impact Assessment in the Mekong Region: Commentary and Materials* (EarthRights International, October 2016), 58. For more EIA research works, see, Sengdeuane Wayakone and Inoue Makoto, *Evaluation of the Environmental Impacts Assessment (EIA) System in Lao PDR*, Journal of Environmental Protection vo. 3 (2012), 1658.
[425] Article 76 of the Prime Minister's Decree on Environmental Impact Assessment," (No. 21/GO, January 31, 2019) refers to Natural Resources and Environment of Province and Capital Divisions. Article 77 prescribes Natural Resources and Environment of District Offices.
[426] Minister of Natural Resources and Environment, "Advice of the Minister of Natural Resources and Environment on Process of Impact Assessment for Social and Environment from Investment Projects and Other Operations," Part I (1.2).

expected to provide the participation of local residents in order to prevent harm. EIA is one way to prevent negative impacts on the lives and health of residents in which may occur from development projects.

However, administrative processes for EIA are not clear and many developers find them complicated. There is lack of information available for the residents on administrative processes such as approve, suspension, delay, or reject of EIA. Lack of information causes uncontrollable in decision-making processes of EIA. For instance, some companies tended to operate their activities without EIA. On this point, an illustrative example case is the Industrial Rubber Plantation of Viet-Lao Rubber Company in Bachiang District of Champasak province.[427] This company entered into Authorization and License Agreement on January 18, 2005 based on Environmental Protection Law. The company prepared to make an EIA, but it was not competed. However, in September 2006, the operation of rubber plantation started by the company without EIA.[428] In October of the same year, the agriculture chemicals, namely pesticides, herbicides, and fertilizers were used by the company and the used of chemicals impacted to the residents' lives and health at thirty-three villages with a total population of 12,644 people.[429] Without EIA and established baseline, the company caused many problems such as stream, destruction of aquatic habitats, and fish.[430]

1.2 Water Quality Standards

Water quality standards indicate for quality determination on chemicals substance contaminated in surface water and groundwater.[431] Surface water is one of the most water resources for an urban water supply because most towns in Laos situate alongside rivers.[432] Groundwater is the main water resource for rural people.[433] Water quality standards are to set the quality of water for

[427] Francois Obein, *Industrial Rubber Plantation of the Viet-Lao Rubber Company, Bachiang District, Champasack Province-Assessment of the Environmental and Social Impacts Created by the VLRC Industrial Rubber Plantation and Proposed Environmental and Social Plans*, (May 6, 2007), 6.
[428] Ibid. at 18.
[429] Ibid. at 6.
[430] Ibid. at 19.
[431] Law on Water and Water Resources, art. 30 (2017).
[432] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," 3–1.
[433] World Bank, "Lao PDR - Environment Monitor," viii.

consumption and ensure is not negative impacts the lives and health of residents.[434] Article 27 of the Environmental Protection Law stipulates the basic environmental quality standards of water. Article 32 also prescribes the national pollution control standards to determine pollutant concentrations emitted by individuals, legal entities, and organs with permissions.

The Ministry of Natural Resources and Environment has the legal power to set the national environmental quality standards of water by upon coordinating with line sectors (central, provincial and capital, district, and village levels) to identify standards.[435] To implement Article 27 of the Environmental Protection Law, the Minister of Natural Resources and Environment issued the "Agreement on National Environmental Standards," No. 0832, February 7, 2017 for quality standards of water. Part 4 (Arts. 9-14) mainly sets water quality standards. Articles 10-12 determine the quality standards of surface water, groundwater, and drinking water. Article 14 (1-7) provides the quality standards of wastewater effluent from industrial factories, hospitals, hotels, markets, households, and other activities. For instance, this Article sets the standard of wastewater release from industrial factories of fat, oil, and grease that discharge must not be over 15.0 mg/L per day.

Formally, the legal mechanism for the environmental protection in Laos provides water quality standards. Nonetheless, some surface water and groundwater in Laos still lacks quality standards. Some drinking water supply contains chemicals. It is further reported that water quality in the rivers and marshes became worse because the inflow of wastewater from urban areas as the consequence of population increased to improve the living standards, new urban developments, the rapid growth of economy, and increased infrastructure.[436] It is also known that high incidence of diarrhea and dysentery caused by the absence of wastewater treatment facilities.[437] The UN reported

[434] Minister of Natural Resources and Environment, "Agreement on the National Environmental Standards" [ຂໍ້ຕົກລົງວ່າດ້ວຍ ມາດຕະຖານສິ່ງແວດລ້ອມແຫ່ງຊາດ], no. 0832 (Ministry of Natural Resources and Environment, February 7, 2017), art. 9.
[435] This Article (art. 27) prescribes "the National Environmental Quality Standards are identification of contaminant concentrations in the air, soil and water as parameters of environmental quality."
[436] JICA, *JICA Laos 2012-2013*, Vientiane (Vientiane: JICA, 2013), 14.
[437] World Bank, "Lao PDR - Environment Monitor," 32.

that water quality in Laos is needed to attention due to the urbanization and runoffs from industries, mineral exploitations, and agriculture activities.[438]

As mentioned above, the Ministry of Natural Resources and Environment has its water quality standards that not based on the laws and restricted substance tends to be narrow such as oil. The responsibility of setting on the proper water quality standards is the legal issue. Another problem is the insufficiency of monitor on quality of surface water and groundwater.[439] This is serious problem as indicated by reporting, but it is not the issue of legal system on water quality standards itself.

Another problem of water quality standards is low standards in the areas of agricultural and industrial chemicals being contained in some rivers, lakes, and streams. In the Drinking Water Contamination Case, local residents of six villages at Beng District of Oudomxay Province got sick due to drinking water contaminated by weed-killers in 2014. This case found that local farmers had used weed-killer chemicals and then they contained in a stream.[440] As a result, many people in these villages got sick from consuming water from the stream. In general, the District Office of Agriculture and Forestry at Ben district under the Ministry of Agriculture and Forestry has the legal powers to set the quality standards for this issue, but the organ did not exercise their powers.

The similar case is the Sino-Agripotash Co., Ltd of Potassium Salt Project in Takek District of Khammouan province. This potash mining company started operations at the end of 2011. Shortly after, villagers reported the environmental problems to the District Office of Natural Resources and Environment and the Ministry of Natural Resources and Environment. The salty acid of the potash seriously contained in local rivers and the quality of water resources in this area very low. As a result, it killed fish, impacted aquatic creatures, and health of residents across the mine sites.[441] Therefore, the Ministry of Natural Resources and Environment and its local organs took problems to

[438] UN, "SDG 6: Clean Water and Sanitation," *UN*, accessed June 22, 2019 http://www.la.one.un.-org/sdgs/sdg-6-water-and-sanitation.
[439] JICA, "Profile on Environmental and Social Considerations in Lao P.D.R.," 3–11.
[440] Rachel Vandenbrink, "Lao Villagers Complain Drinking Water Contaminated by Pesticides," accessed June 22, 2019 https://www.rfa.org/english/news/laos/water-05072014185021.html.
[441] Thipthida Sisoulath, *Study on Cumulative Impact Assessment for Mining Development Project in Laos: A Case Study on Water Quality Impact Assessment for Potassium Salt Project in Takek District, Khammouan Province* 1 (2013).

deal by mediating with the mining project and local victims.[442] Afterward, the mining project may have the case of taking admitted to take responsibility for the full amount of losses and damages, but responsibility of setting the proper quality standards becomes the legal issue from the viewpoint of the author.

2. Administrative Actions for Operation Permission

As already mentioned in the previous part, when a company or investment project meets the plan of EIA and quality standards required by the environmental laws and administrative regulations, an environmental organ may grant an environmental certification or wastewater effluent license. Considering of conformity with EIA and water quality standards, the organ might grant or not grant the license. The environmental certification, the permission of pollution emission, and wastewater effluent licenses will be explored in this part.

2.1 Environmental Certification

Environmental certification is an "endorsement of an initial examination report of the environment and social impact assessment of investment projects and activities, including the management of environment and monitoring plans."[443] Environmental certification provides in Section 4 of the Environmental Protection Law. According to this Section in Article 41, "the natural resources and environmental sectors may provide environmental certifications as their scope of powers by referring to effects from construction projects and the activities via sector-wide collaboration." The Ministry of Natural Resources and Environment with line organs have the powers to issue environmental certification.

The Ministry of Natural Resources and Environment and its organs may examine the initial environmental examination reports, impact of the social, and the environmental assessment of projects, including the management of the environment and monitoring plans.[444] Environmental

[442] Ibid. at 2.
[443] *Environmental Protection Law, art. 41 (2012).*
[444] Environmental Protection Law art. 41.

certification is valid through the project lifespan, except if the certificate recipient is not implemented their activity within two years from the date of obtaining permission.[445] In general, the Ministry of Natural Resources and Environment may certificate for two to five years based on the type of projects.[446]

However, even a company receives an environmental certificate and legally permission to operate the activities, the company sometimes pollutes a river and environmental impact when an environmental organ does not perform its mission to regularly inspect the activities of the company. In many cases, the legal nature of certification is not so clear, even if the company pollutes the river if the environmental organ does not exercise its power such as revocation of certification of the project. On this point, an illustrative example case is the agriculture practice caused a river. The Ministry of Industry and Commerce granted an environmental and license certification to Chinese-owned Yongzhen Import-Export Production Promotion Company on October 14, 2014 for planting bananas. According to the newspaper Vientiane Times, the toxic chemicals from the plantation killed 300 kilograms of fish and some other shrimp and snails after chemical residue leaked into the Ton River at Kua village in the Sangthong District of Vientiane Capital in November 2018. Therefore, a meeting held by the Deputy Head of the District Office of Agriculture, Somdeth Bouphakham with the coordinator of the company, Norsaeng Nouanpheng. As a result, it agreed to release 100,000 fish in the river for three of successive years to make up the loss of aquatic.[447] In this way, the settlement was done without considering the extinction of the legal effect of certification.

This case shows the problem that the legal nature of certifications is not clear and the environmental organ does not exercise the power such as revocation of certification. If the concept of administrative action or administrative disposition as described in Chapter I, the certification may be considered as a kind of administrative action or administrative disposition, and the revocation by the environmental organ having the power of certification may be considered.

[445] Ibid. art. 43.
[446] Ibid.
[447] Xayxana Leukai, "Poisoned Fish Worries Village as Sangthong District Promotes Good Agricultural Practices," Vientiane, *Vientiane Times*, February 12, 2019.

2.2 Wastewater Effluent License

Wastewater effluent system has purpose to prevent water pollution from industrial factories. A factory intends to establish any operation, it must be installed the wastewater treatment system.[448] According to Article 31 of the 2017 Law on Water and Water Resources, "discharging wastewater into water resources by individuals, legal entities or organs must be treated and comply with wastewater discharge standards." Article 14 of the Agreement on the National Environmental Standards, No. 81, February 21, 2017 provide wastewater discharge from the paper mill, pulp production, sugar cane, textile, garment, slaughtering, and other factories into the river, lake, stream, and pond. There are three sizes of wastewater discharged: "small, medium, and large sizes based on the volume of wastewaters and concentration of the chemical substances contaminated in wastewater."[449] The volume of wastewater's fee for wastewater effluent license started from m3 to m1000 per day within the amount of 50,000 to 10,000,000 LAK (approximately 649-130,000 JPY).[450]

With respect to industrial activities, the Department of Industry and Commerce (under Ministry of Industry and Commerce) considers that the factory must be met the standards before getting the licenses. For instance, the standards for a sugar mill factory must not be exceeded 60mg/1 components of BODs and 100mg/1 of TSS.[451] Another example of wastewater standards of the textile factory that it must not be exceeded 1mg/1 components of phenols and 40mg/1 of BODs.[452] This licensing power is based in Article 3 (7) of the Agreement on Establishment and Activities of Department of Industry and Commerce, No. 1551, August 31, 2016. At provincial and

[448] Minister of Industry and Commerce, "Agreement on Establishment of Factories" [ຂໍ້ຕົກລົງ ວ່າດ້ວຍການຄຸ້ມຄອງໂຮງງານ], no. 0264 (Ministry of Industry and Commerce, March 15, 2019), art. 29.
[449] Law on Water and Water Resources, art. 31 (2017).
[450] Minister of Industry and Commerce, "Agreement on Wastewater Discharging from Industrial Factories" [ຂໍ້ກຳນົດ ກ່ຽວກັບການປ່ອຍນ້ຳເປື້ອນ ແລະ ນ້ຳເສຍຄຸນອອກຈາກໂຮງງານອຸດສາຫະກຳປຸງແຕ່ງ], no. 326 (Ministry of Industry and Commerce, October 6, 2005), art. 22.
[451] Ibid. at 6 (1). "BODs refers to Biochemical Oxygen Demand that measurement of bio-substances quality under the required formed of oxygen for oxidation substance in water by bacteria within 5 days in 20ºC temperature. TSS means Initials of Total in solids that are solid non-oxydable substances suspended in water," as provided in Article 2 of the Agreement on Wastewater Discharging from Industrial Factories, No. 326, October 6, 2005.
[452] Ibid. at 6 (2).

capital level, the Provincial and Capital Divisions of Industry and Commerce have legal power to grant the licenses of medium and small sizes.[453]

Before installation of the wastewater treatment system, the factories are required to submit the documents within waste management, plan of treatment during installation, and other requirements to the Head of Department or Head of Provincial Division of Industry and Commerce.[454] When the factory has finished installation of the wastewater treatment system and has met the standards, the factory must be reported to the Head of Department or Head of Provincial Division of Industry and Commerce in order to inspect, collect samples, and analyze such issue.[455] The factory inspectors in the Department or Provincial and Capital Division of Industry and Commerce may conduct inspection such as wastewater discharge testing.[456]

The Head of Department or Head of Provincial Division of Industry and Commerce might not be granted the licenses, unless they find the applicants (factories) conform to water quality standards and meet other requirements specified by the laws and Agreement on Wastewater Discharge from Industrial Factories.[457] When the factory complies with the laws and legal rules mentioned above, the Head of Department or Head of Provincial Division of Industry and Commerce might grant the wastewater effluent license to release wastewater for two years. The factory can renew the license based on conditions and standards of wastewater discharge.[458]

As mentioned above, this system is a kind of licensing system and it is the most important legal system for preventing water pollution. If the purpose of water pollution prevention law is not ex-post supervision, but prevention of water pollution, the licensing system should be strengthened along with the water quality standards. However, as described in Chapter I, the discussion of administrative actions such as theory of administrative action or administrative disposition has not

[453] Minister of Industry and Commerce, "Advice on Granted Business Operation Concerning Industry and Commerce" [ຄຳແນະນຳ ກ່ຽວກັບການອອກອະນຸຍາດດຳເນີນທຸລະກິດ ໃນກິດຈະການອຸດສາຫະກຳ ແລະ ການຄ້າ], no. 0045 (Ministry of Industry and Commerce, January 18, 2019), arts. 3 (1-2).
[454] Minister of Industry and Commerce, "Agreement on Establishment of Factories," art. 29.
[455] Minister of Industry and Commerce, "Agreement on Wastewater Discharging from Industrial Factories," art. 16.
[456] Ibid. at 24.
[457] Ibid. at 7 (3).
[458] Law on Water and Water Resources, art. 31 (2017).

been known in Laos. It will still take long time to recognize the importance of licensing system for preventing of water pollution.

3. Administrative Sanctions

As already noted, an environmental organ may grant wastewater effluent license or environmental certification when a company meets the quality standards under the legal rules. However, the company breaches a law or legal regulation, administrative actions for the ex-post supervision may be conducted.

3.1 Administrative Fines

When a company obtains permission legally, but then violates the permission requirements from the environmental law, a sanction may be taken by the Ministry of Natural Resource and Environment.[459] The fine here is an action taken by an environmental organ against a violator to force it to behave in a particular way such as relief of rice filed or fish farm.[460] The Deputy Director of Chemical Control Department, Sengkeo Tasaketh, says that this type of fine is on someone who breaches an environmental law or legal regulation on permission requirement.[461]

Many environmental laws in Laos determine administrative fines. For instance, Article 98 of the Law on Water and Water Resources declares that individuals, legal entities, or organs infringing the law in which is minor impact must be fined. Part VI (Arts. 32-33) of the Agreement on Wastewater Discharging from Industrial Factories determines sanction measures against polluters. Article 32 of this Agreement imposes a factory breaches this Agreement for first time and

[459] Inthavy Akkharath, Director General Water Resources Department, Ministry of Natural Resources and Environment [ຫົວໜ້າ ກົມຊັບພະຍາກອນນ້ຳ, ກະຊວງ ຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ], interview by the author in Vientiane (February 18, 2018).

[460] Rotchana Phouangmanivong, Chief of Environmental Unit, Natural Resources and Environment Department, Ministry of Natural Resources and Environment [ຫົວໜ້າ ຂະແໜງສິ່ງແວດລ້ອມ, ກົມຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ, ກະຊວງ ຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ], interview by the author in Vientiane (February 16, 2018).

[461] Sengkeo Tasaketh, Deputy Director of Chemical Control Department, Ministry of Natural Resources, and Environment [ຮອງຫົວໜ້າ ກົມຄວບຄຸມມົນລະຜິດ, ກະຊວງ ຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ], interview by the author in Vientiane (February 12, 2018).

low impact, the Ministry of Industry and Commerce and its local organ in charge may fine based on wastewater effluent license from five to ten times. Second time of violation may increase the amount of fine by ten to fifteen times within responsible for such damage.[462] Besides, Article 55 (11) of the Agreement on Industrial Factories Management (No. 0264, March 15, 2019) also imposes that an industrial factory discharges wastewater or throws any hazardous waste into the rivers, streams, and other water resources without a standard treatment must be monetary fine from 10,000,000 to 20,000,000 LAK (approximately 130,000 to 260,000 JPY).

On this point, an illustrative example is the Lao Kaiyuan Mining Co., Ltd. Case. In this case, the factory discharged wastewater into a stream at Namkieng and Ilay villages. As a result, it impacted rice fields and killed fish in the stream.[463] The activities of this company violated Article 40 of the Mining Law (Law No. 04-97/NA, April 12, 1997, before the latest amendment on November 3, 2017). The company also breached Part 2 (Arts. 22-23) of the Environmental Protection Law (Law No. 02-99/NA, April 3, 1999, before being amended on December 18, 2012). For this reason, the Ministry of Industry and Commerce determined the amount of 60,000,000 LAK (approximately 800,000 JPY) per hectare. The factory further admitted paying for losing opportunities to supply fish at both villages based on legal basis, but in fact is mediation system.[464]

Another case is the Potassium Salt Operation. For this case, in 2008, the factory at Dongtai and a few villages in Takek and Nongbok districts of Khammouan province operated its activities without an "environmental and social impact assessment" as required by Article 8 (presently Art. 22) of the Environmental Law (Law No. 02-99/NA of 1999, before amendment 2012).[465] Afterward, it killed fish and affected the rice fields of local residents. Therefore, the organs of the Ministry of

[462] Minister of Industry and Commerce, "Agreement on Wastewater Discharging from Industrial Factories," art. 32.
[463] Sypha Chanthavong et al., "Legal Measures for Solving the Impacts of Wastewater from Industrial Factories-Case Studies: Potane Salt Factory in Takek and Nongbok Districts in Khammouan Province" [ມາດຕະການທາງກົດໝາຍ ເພື່ອແກ້ໄຂຜົນກະທົບຈາກນ້ຳເປື້ອນຂອງໂຮງງານອຸດສາຫະກຳ ສຶກສາກໍລະນີ ໂຮງງານເກືອໂປຕັດ ຢູ່ ເມືອງ ທ່າແຂກ ແລະ ໜອງບົກ ແຂວງ ຄຳມ່ວນ], *Scientific Journal of National University of Laos* 7 (December 2013): 205.
[464] Ibid. at 207.
[465] Ibid. at 206.

Industry and Commerce determined the amount of 12,000,000 LAK (approximately 162,200 JPY) per hectare of rice farm.[466]

3.2 Suspension of Business Operations

One term suspension of business operation is defined by the Deputy Director General of the Industry and Handicrafts Department, Somphong Soulivanh, that is a system to suspend an import or export taken by the Ministry of Industry and Commerce or another organ when a company violates a law or regulation.[467] The Director General Water Resources Department, Inthavy Akkharath, says suspension here could be a measure to withdraw or permanently cancel a business license regulated powers by the Ministry of Natural Resources and Environment for someone who breaches a law.[468]

Basically, many people consider the purpose of suspension of license as exclusively an ex-post sanction. It is not distinguished from the preventing the spread of the environmental damages or negative influences to the public interest. That is, suspension aims to hold a violator responsible for its ex-post activity.[469] Typical example is that when a factory releases wastewater into a river beyond the quality standards, the environmental organ may suspend a wastewater discharge license.[470]

On this point, an illustrative example case is "Nongchanh Dyeing Factory." In this case, the factory polluted water in the area of Vernthad in Vernkham district of Viengchanh province in 2016.[471] Therefore, Villager Khamla Sayyavong (representative of villagers) "applied" (petition system) to the Chief of Vernthad Village based on the 2014 Law on the Handling of Petitions in Article 2 (1) (before amendment by Law No. 05, November 9, 2016). Then, the chief of the village

[466] Ibid.
[467] Somphong Soulivanh, Deputy Director General of the Industry and Handicrafts Department, Ministry of Industry and Commerce [ຮອງຫົວໜ້າກົມອຸດສາຫະກຳ ແລະ ຫັດຖະກຳ, ກະຊວງຊັບພະຍາກອນທຳມະຊາດ ແລະ ສິ່ງແວດລ້ອມ], interview by the author in Vientiane (February 14, 2018).
[468] Akkharath, Director General Water Resources Department, Ministry of Natural Resources and Environment.
[469] Tasaketh, Deputy Director of Chemical Control Department, Ministry of Natural Resources, and Environment.
[470] Soulivanh, Deputy Director General of the Industry and Handicrafts Department, Ministry of Industry and Commerce.
[471] Vernkham District [ເມືອງເວີນຄຳ], "Notation on Investigation of Environmental Impact" [ບົດບັນທຶກ ການຕິດຕາມກວດກາຜົນກະທົບທາງສິ່ງແວດລ້ອມ], no. 055 (Vernkham District's Office, October 8, 2016).

issued the Report, No. 810, September 8, 2016 to the District Office of Industry and Commerce.[472] Next, this organ and the District Office of Natural Resources and Environment found the factory had no wastewater treatment facility and violations under Article 38 of the 2012 Environmental Protection Law, Part 6 (Arts. 26-27) of the 2013 Law on the Processing Industry, and Part 2 (Arts. 3-6) of the Agreement on Wastewater Discharging from Industrial Factories. After that, the Head of District Office of Industry and Commerce issued the Report No. 055, October 8, 2016 to the Chief of District in Viengchanh province to issue an order to suspension it based on the law and Agreement as mentioned above. Finally, the Chief of District was suspended this factory on November 29, 2016.

Another case is the Paper Mill owned by China's Sun Paper Group. This factory polluted Houaykalong stream (a branch of Sebangfai River) in Sepon district of Savannakhet province in June 2018. Wastewater from the plant caused fish and killed cows more than 30 because they drunk water contamination in the stream. In addition, the smell of polluted water was spread to two main villages: Vongvilay and Keang Houapa. For these reasons, the Governor of Sepon district, Vongxay Sayachack, designated to suspend the operation of the factory within 15 days. This suspension had purpose of sanction for the ex-post violations of laws. Due to when the factory could not be eliminated and solved the problems, the Governor planned to conduct suspension the operation permanently.[473]

On the other hand, violators who use chemicals that pollute the rivers are also sanctioned by the Ministry of Agriculture and Forestry at the central level. At the local levels, the Provincial and Capital Divisions of Agriculture and Forestry also have the legal power to suspend the operations.[474]

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[472] Chief of Vernthad Village, "Report of Chief of Vernthad Village" [ໜັງສືສະເໜີຂອງນາຍບ້ານ ບ້ານເວີນທາດ], no. 810 (Vernthad Village, September 8, 2016).

[473] Ounkeo Souksavanh, "Paper Mill Asks For Time to Deal With Pollution in Laos' Savannakhet Province," accessed May 16, 2019 https://www.rfa.org/english/news/laos/paper-mill-asks-for-more-time-to-deal-with-pollution-07102018095716.html.

[474] Minister of Agriculture and Forestry [ກະຊວງກະສິກຳ ແລະ ປ່າໄມ້], "Agreement on Pesticide Management" [ຂໍ້ຕົກລົງ ວ່າດ້ວຍການຄຸ້ມຄອງການດຳເນີນທຸລະກິດຢາປາບສັດຕູພືດ], no. 0238 (Ministry of Agriculture and Forestry, February 14, 2019), art. 34.

However, the District Offices of Agriculture and Forestry have no legal powers to suspend the operations, but they can only be reported the provincial and capital levels for consideration.[475]

Furthermore, the Decree on Pesticide Management (No. 258/PM, August 24, 2017) in Section 10 (Arts. 66-71) determines measures against violators.[476] Article 71 of this Decree prescribes that "any violation may be suspended" of pesticide business operation licenses and company registration certificates. Section 8 of the Agreement on Pesticide Management (No. 0688, July 2018) in Article 33 also imposes administrative measures against violators.[477]

In the Banana Plantations in Luang Namtha province, the plantations used fertilizer chemicals impacting local streams and agriculture productions. Many activities of plantations affected health problems of local residents and low quality of water resources. These activities are illegal for using the agriculture chemicals as prohibited in Part V (Arts. 53-55) of the Law on Chemicals Management and Section 6 (Arts. 48-50) of the Decree on Pesticide Management as mentioned above. Hence, the Governor of Luang Namtha province, Phimmasone Lueangkhamma, issued the Order, No. 04, July 10, 2014 to suspend banana plantations in the rice fields.[478] However, the problems destroyed local livelihoods, impacted streams, and health problems of villagers. Finally, the new Governor of Luang Namtha province, Phetthavone Philavanh, issued the order, No. 09, November 4, 2015 to permanently suspend the plantations and not issue the new licenses for banana plantations in the province.[479]

In sum up of this section, it analyzes the allocation of powers and administrative actions. The Ministry of Natural Resources and Environment and another organ set the water quality

[475] Ibid. at 35.
[476] This Decree issued on August 24, 2017 to ensure the quality, efficiency and safe for humans and environment with the aim of allowing the agriculture and forest products to be carried out in line with clean, green and sustainable agriculture, capable to ensure regional and international integration and contribute to the national socio-economic development.
[477] This Agreement issued by the Mayor of Vientiane Capital Sinelavong Koungphaitoun on July 13, 2018 to ensure for humans and the environment.
[478] Governor of Luang Namtha Province, "Governor's Order on Prohibition of Banana Plantations in Rice Fields" [ຄຳສັ່ງ ຂອງເຈົ້າແຂວງ ວ່າດ້ວຍການຫ້າມປູກກ້ວຍໃສ່ດິນນາ], no. 04 (Luang Namtha Provincial Governor's Office, July 10, 2014).
[479] Governor of Luang Namtha Province, "Governor's Order on Prohibition of Banana Plantations in Luang Namtha Province" [ຄຳສັ່ງ ຂອງເຈົ້າແຂວງ ວ່າດ້ວຍການຫ້າມປູກກ້ວຍຢູ່ແຂວງຫຼວງນ້ຳທາ], no. 09 (Luang Namtha Provincial Governor's Office, November 4, 2015).

standards. When the factory conducted the EIA and it meets the standards, the environmental organs may grant the wastewater effluent licenses. The standards setting and licensing are important of administrative actions because the standards are also requirement for licensing. However, at the present, regulated substances are limited and standards are generally loose because the legal framework is not codified in the laws, but it is delegated in the decrees or agreements of environmental organs at the central level.

Therefore, administrative actions used in water pollution filed are mainly ex-post sanctions such as monetary fine since the licensing system does not work well. When the factory operated illegal discharge wastewater, the environmental organs might have broad freedom to choose the monetary fine or the suspension of business operations that depends on the minor or serious case. In the case, permanent suspension of business operation was considered that is the same effect of the cancellation of wastewater effluent license.

In this way, ex-post and sanction-centered administrative actions were found in Chapter. It is necessary for this study to make clear the legal issue with attention to the current situation of water pollution prevention in Laos.

Conclusion

This chapter briefly contributed to examine the legal mechanism and administrative organs, as well as identified the current administrative actions regarding water pollution prevention in Laos. Based on examination, the research's findings are follows.

The first thing is that six laws have been enacted one after another since 1990, but the inter-organizational assignment and the allocation of powers are unclear. It makes unclear which organs are primarily responsible for what kind of administrative actions.

Second, the problem is what are the causes of the unclear responsibility. It is a significant problem. This cause calls for in one word the centralized legal system. Since the Prime Minister has durable coordination power, each ministry or department's responsibilities are vague. In other

words, each ministry relies on the Prime Minister's coordination when problems arise and have not able to fulfill their own responsibilities.

Third, in the second problem as mentioned above creates the same problem in administrative actions. Formally, this study has tried to classification among planning, standards, licenses, and sanctions after licensing. However, the interrelationship of these administrative actions is also unclear. For example, even when water pollution is caused by very low quality standards, the responsibility of the administrative organs having the standards setting powers cannot be pursued. Even in the case, a complaint may be filed with an unrelated organ having de facto authority, and sometimes the standards may be changed as the Prime Minister exercises coordination power as noted above.

It is also understood that even when the case of permission was illegality rendered, sanction such as imposing monetary fine is required by residents. In other words, there is no distinction between cases in which the license itself was illegal and cases in which the license was lawful, but the person who received the lawful license engaged in illegal activities. It makes difficult to pursue responsibility for administrative actions. When it is not clear which organ should exercise which power, the concept of responsibility cannot be born in reality.

As there is no "administrative agency" concept in an administrative organ, there is no "administrative action" concept in administrative actions, so it is not clear which organ is ultimately responsible for which action. For this reason, the requirements for administrative actions, even in license have remained unclear. Therefore, it is more important than anything to clearly define administrative responsibility in both levels of organs and their actions.

However, sanctions against persons are illegally polluting water exist in reality, even if they are opportunistic nature. First of all, a potential of clarifying administrative responsibility will discover from overcoming the opportunism in this sanction function. Keeping this in mind, in the next chapter, it will trace the history of water pollution prevention law system in Japan and analyze what kind of legal system created the concept of administrative responsibility and whether this has pursued.

Chapter III: Japanese Experiences for Water Pollution Prevention

Introduction

In the previous chapter of this study, it specifically considered to the legal system, organs, and administrative actions for the prevention of water pollution in Laos. The current state of the legal system is not prevention, but the sanction to the harmful actions of water pollution. The research's findings found that the present water pollution crises in Laos have similarities to Japan. Therefore, the present chapter aims to reconsider the legal system for the protection of the water environment in Japan and tries to learn the possible lessons from Japan.

This chapter is divided into three sections. Section one will review the history of the legal system for water pollution prevention. Section two will concentrate on administrative agencies and their relations. Section three will identify the case study of state redress of inaction, administrative case litigation of mandamus action, and the role of municipal level of public entity.

Section 1: Historical Developments and Legal System for Water Pollution Prevention

This section is to attempt two main issues: historical analyses and legal system for water pollution. Part one will analyze the history of the legal system for water pollution prevention in prewar and postwar eras with economic transitions. The failures of legal responsibility of administration will discuss. Some other problems of pollution crises and the case studies will also describe. Part two will explore the current Japanese legal mechanism for water pollution prevention.

1. Historical Developments and Water Pollution Problems in Prewar and Postwar Periods

This part reviews the historical perspective of Japan concerning water pollution with economic developments. The main object of this part is to survey two main periods: prewar (1868-1944) and postwar (1945-present) eras.[480]

[480] For more environmental issues in Japan, see former Environment Agency (presently the Ministry of the Environment), *Quality of the Environment in Japan*, (Tokyo: Environment Agency, 1992, 1993, 1995,

After 1945 period, it can distinguish before and after National Diet session called "pollution session" (*Kogai Kokkai* in Japanese) in 1970 as well as after administrative reform era in the 1990s. Because of legal responsibility of administration did not be pursued well, even constitutional principles changed after the Second World War. Of course, it was radically changed in the theory of protection of people's rights, but it was a different matter to realize constitutional principle in practice, even constitutional changed. The situation has been a little changed after the 1990s. Administrative reform and administrative case litigation reform have changed legal systems and case practices. For instance, since the amendment of Administrative Case Litigation Act (ACLA) in 2004, the legal responsibility of administration has been changed to work well than before.

1.1 History of Economic Developments and Water Pollution Problems in Prewar Period

Japan forced to pressure internal and external circumstances in the Meiji Restoration (1868-1912). [481] Meiji government lunched to move on modernization called "civilization and enlightenment."[482] To achieve this, Japan built modern mines and industrial factories such as silk reeling, steel, chemicals, and other goods essential.[483]

Japan started to achieve its goal in 1868.[484] With this transition, the "Industrial Revolution" introduced into Japan in 1880[485] and then the state established heavy industries that served the economy of the nation to capitalism.[486] Japan became one of the world's largest experts of silver and gold in the middle age and modern times Japan.[487] Some of the mines were Sado gold mine, Iwami,

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and 2000). Ministry of the Environment [環境省], *Quality of the Environment in Japan*, (Tokyo: Ministry of the Environment, 2001).

[481] Jun Ui, "Overview," in *Industrial Pollution in Japan*, ed. Jun Ui (Tokyo: United Nations University Press, 1992), 1.

[482] Kazuo Usui, *Marketing and Consumption in Modern Japan* (New York: Routledge, 2014), 13.

[483] Richard J. Smethurst, "The Diffusion of Western Economics in Japan," in *The Diffusion of Western Economic Ideas in East Asia*, ed. Malcolm Warner (New York: Routledge, 2017), 269.

[484] Usui, *Marketing and Consumption in Modern Japan*, 1.

[485] Ken'ichi Miyamoto et al., "Japan," in *The State of the Environment in Asia: 1999/2000*, ed. Japan Environmental Council, The State of Environment in Asia (Tokyo: Springer, 2000), 40.

[486] Usui, *Marketing and Consumption in Modern Japan*, 14.

[487] Haruo Tonegawa and Akio Hata, "Essay 1: Asian Mining Pollution and the Japanese Experience," in *The State of the Environment in Asia 2002/2003*, ed. Japan Environmental Council (Tokyo: Springer, 2003), 42.

Ikuno, Ashio Copper Mine (hereinafter "Ashio"), and Besshi.[488] As the results, the country was rapid economic growth; however, the structure of economic became with environmental destruction.[489]

According to the Japan Environmental Council (ed.), the historical finding in relation to "pollution and environmental problems in Japan can be found as far back as the 1600s."[490] Ministry of the Environment reports that the "mineral pollution case of Ashio knew as the first pollution case occurring in Japan."[491] Some other instances of pollution represented by sulfurous acid gas from copper smelt of Besshi, Hitachi, and Kosaka as well as the problem of air and water pollution in Osaka, Amagasaki, and Kawasaki.[492] However, Japan lacked the concept of pertaining for dignity, worth of individual, and limited for the protection of basic human rights in this period.[493] The 1889 Constitution of the Empire of Japan (*Dai Nippon Teikoku Kenpo* in Japanese, hereinafter "Meiji Constitution") had a limited list of the rights and duties of subjects" (person).[494] The rights and freedoms of people guaranteed only within the framework of statutory laws.[495]

In the Ashio Case, Tochigi prefecture representative, Tanaka Shozo (a member of the Lower House), called the national government to revoke the license of Furukawa (Ashio) and protected the residents' constitutional rights from infringement of their properties under Article 27 of the Meiji Constitution.[496] Nonetheless, the Meiji government failed to address to villagers and Tanaka adequately.[497] The Meiji government pointed out that it had no duty to impose remedial request measures in the prefectures.[498]

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[488] For further research work of Ashio case, see Kichiro Shoji and Masuro Sugai, "The Ashio Copper Mine Pollution Case: The Originals of Environmental Destruction," in *Industrial Pollution in Japan*, ed. Jun Ui (Tokyo: United Nations University, 1992), 18-62.
[489] Jun Ui, *Industrial Pollution in Japan* (Tokyo: United Nations University Press, 1992), 1.
[490] Miyamoto et al., "Japan," 40.
[491] Ministry of the Environment, "Japanese Environmental Pollution Experience," Ministry of the Environment, accessed January 29, 2019 https://www.env.go.jp/en/coop/experience.html.
[492] Miyamoto et al., "Japan," 40.
[493] Ui, *Industrial Pollution in Japan*, 4.
[494] Hiroshi Oda, *Japanese Law*, 3rd ed. (New York: Oxford University Press, 2009), 16.
[495] Ibid.
[496] Constitution of the Empire of Japan [大日本帝国憲法], 1889, art. 27 [Japan]. There are two main issues in this article: (1) "the right of property of every Japanese subject shall remain inviolate" and (2) "measures necessary to be taken for the public benefit shall be any provided for by law."
[497] Shiro Kawashima, "A Survey of Environmental Law and Policy in Japan," *North Carolina Journal of International Law and Commercial Regulation* 20, no. 2 (1995): 234.
[498] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 5.

Many diseases originally represented by the Meiji government and it caused the lives and health of local residents, but the government did not more attention for appropriate actions to control pollution. In this period, there was no pollution act (law) and no effective ways to deal with pollution.[499] On the other hand, some instance of local ordinances (*Furei* in Japanese) was found as the Manufactories Control Regulation of the Osaka Prefecture in 1896.[500] In fact, so-called "police administration" played the minimum roles to protect the freedoms of residents not rights of lives and health.[501] According to the "Service Regulations and Rules for the Metropolitan Police Office" (*Keishicho Shokusei Shotei Narabi Ni Shokisoku*, enacted on February 7, 1874), the purpose of the police was to prevent the residents from suffering injury of freedom, property, and secured the public peace in general.[502]

Basically, the police administration tried to help the conflicting parties by conciliation, mediation, and arbitration and then offered the polluters to agree the compensation for damages. For example of Suzuki Case, the Suzuki Company (hereinafter Suzuki) built a plant in Zushi of Kanagawa prefecture for production of *Ajinomoto* (monosodium glutamate). After establishment, the plant released dextrin wastes into a stream causing fish and agriculture crops. Hence, Kanagawa prefectural governor mediated the conflicting parties, and then Suzuki agreed to compensate the farmers for crops damaged. One again in 1928, the flood dispersed the waste at the plant and after that caused farmland. As a consequence, the "local police chief" and farmers improvement union negotiated with Suzuki for the new compensation. Such conflicts continued sporadically until 1935.[503]

[499] Miyamoto et al., "Japan," 42–43.
[500] Shigeto Tsuru, *The Political Economy of the Environment: The Case of Japan*, 1st ed. (London and New York: Bloomsbury Publishing, 2012), 29.
[501] Service Regulations and Rules for the Metropolitan Police Office classified four main topics: (1) "the police protects the rights of the people and safeguard their property. (2) The police take measures to safeguard the health of the people and protect their lives. (3) The police suppress immoral conduct and purify popular habits. (4) The police secretly hunt down and take preventive action against political offenses."
[502] Wilhelm Röhl, "Chapter Two: Public Law," in *History of Law In Japan Since 1868*, ed. Wilhelm Röhl (Leiden and Boston: BRILL, 2005), 141.
[503] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 12.

The police administration and local levels played its roles to protect the freedoms and properties of local residents. However, the powers of local levels were limited and the Ministry of the Interior (also known as the Ministry of Home Affairs) "controlled the prefectures by appointed the governors" and turned in to control the municipalities as a form of the administrative hierarchy.[504] The national and local levels worked together as a centralized system.[505] The policy goal was the economic development in Meiji era. Therefore, pollution crises more increased so that it was difficult for local entities to handle with a lot of complains by residents about pollution. Nonetheless, the basic policy toward economic developments was not changed and many companies continued to be dependent on the national supports.

Japan used administrative control through advices or orders to implement its official policies in the frameworks of administrative system.[506] Many cases indicated that wrongful actions and non-use regulatory power to control pollution could not be disputed through the lawsuit. In Japan, it was not enough system of administrative case litigation in the prewar period. For instance of Arata River Pollution Case, the fishermen and farmers lived along downstream banks of the Arata River in 1920 found the dead fish in the river. This suffering impacted crops and fish caused by releasing textile factories operating in Gifu city.[507] Polluted water covered farmlands, affected crops, and ruined irrigation works. As the residents' direct movements of Taisho Democracy, the fishermen and farmers formed the Arata River Irrigation Association against the prefecture. There was no administrative case litigation system that could solve this kind of dispute by the residents.

Meiji government lacked the administrative responsibility regarding prevented water pollution. On the contrary, even the state redress system for past damages not the prevention that had no constitutional legitimacy. Indeed, the claims to the compensation for past damages were not accepted by the Administrative Court in Article 16 of the Act on Administrative Litigation.

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[504] Michio Muramatsu and Farrukh Iqbal, "Understanding Japanese Intergovernmental Relations: Perspectives, Models, and Salient Characteristics," in *Local Government Development in Post-War Japan*, ed. Michio Muramatsu, Farrukh Iqbal, and Ikuo Kume (Oxford and New York: Oxford University Press, 2001), 4.
[505] Ibid.
[506] Ibid. at 15.
[507] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 13.

This part indicates the history of water pollution crises in prewar Japan. The problems of water pollution had already occurred and demanded by residents were active, but the legal system was inadequate. The legal structure was changed in postwar era. Therefore, the next part will be attempted to discuss the change of water pollution act in postwar era.

1.2 Rapid Economic Growth and Serious Water Pollution Problems in Postwar Period

After the end of World War II in 1945, Japan aimed to rebuild the country. With this transition, the national government heavily supported industrialization. During 1950 to 1970, the country determined pursuit the industrial growth.[508] By 1950, Japan started to achieve its aim. Significantly, in 1956, the government stated the "Economic White Paper" that the state was "no longer in postwar period" (*Mohaya Sengo Dewa Nai* in Japanese).[509] As this fiscal point of view, the expansion of rapid industrial started to lead the economic boom in 1960.[510] According to the Ministry of Internal Affairs and Communications, the state was the growth rate of national per capita income exceeded 10 percent in 1960.[511] The World Bank reported that GDP of Japan was 12 percent in 1961.[512] In 1962 and 1971, Japan became the world's third largest gross national product after the U.S. and former USSR.[513] However, the achievement of Japan came with huge costs to residents and environmental serious disruptions in the modern era.

The economic development represented by the national government led many pollution occurrences again in postwar era. Some of the first instances represented by Minamata disease at Minamata Bay of Kumamoto prefecture in 1956. Another case of Dokai Bay discovered in 1960. Niigata Minamata was regained in Niigata prefecture north of Tokyo in 1965. In 1968, another case

[508] Midori Kagawa-Fox, *The Ethics of Japan's Global Environmental Policy: The Conflict Between Principles and Practice* (New York: Routledge, 2012), 3.
[509] Ibid.
[510] Brendan F.D. Barrett and Riki Therivel, *Environmental Policy and Impact Assessment in Japan* (London and New York: Routledge, 1991), 33.
[511] Ministry of Internal Affairs and Communications [総務省], *Statistical Handbook of Japan*, 23.
[512] World Bank, "GDP Growth | Data," accessed June 21, 2019 https://data.worldbank.org/indicator-/NY.GDP.MKTP.KD.ZG?end=2017&locations=JP&name_desc=true&start=1961.
[513] Ardath W. Burks, *Japan: A Postindustrial Power*, 3rd ed. (Boulder, San Francisco, and Oxford: Westview Press, 1991), 130.

called Itai-Itai (It hurts-it hurts in English) disease still reported.[514] In most cases industry was to blame for pollution, but in a large urban center in Tokyo also polluted rivers like cases of Kanda River in 1970 and Sumida River in 1971. Many people died, thousands of people left with lifelong disabilities, and in some cases of disease passed on to subsequent generations.[515]

During the early postwar, the directions of administrative organizations were begun to separate. On the one hand, the national government remained economic revitalization and less interested for protection of the environment.[516] On the other hand, local entities could not ignore serious water pollution and requests from victims. Unlike the prewar ear, the guarantee of local autonomy in the postwar Constitution created the different legal phenomenon from the prewar stage. In 1947, the Local Autonomy Act was enacted to promote the principle of local autonomy, but in the early postwar, Japan mixed the model of prewar integrationist with the model of American separationist.[517]

Under the principle of local self-government, local entities enacted many ordinances and regulations to protect the lives and health of local residents. One ordinance was the Tokyo Factory Pollution Prevention Ordinance of the Tokyo Metropolitan government in 1949.[518] Other ordinances were the Osaka prefecture in 1950 and Kanagawa prefecture in 1951.[519] However, many ordinances were vague, unclear, and no penalty for violations. In 1958, water pollution incident represented by Tokyo Paper Mill killed massive numbers of fish at Urayasu on the lower reached of the Edo River running between Tokyo and Chiba prefectures.[520]

Therefore, the residents expressed to complaints and dissatisfaction over national organizations because of their inaction to prevent pollution.[521] So extreme crises provoked local

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[514] For further consideration concerning Itai-Itai disease, see Environment Agency, *Quality of the Environment in Japan* (Tokyo: Environment Agency, 1995), 697-698.
[515] Kagawa-Fox, *The Ethics of Japan's Global Environmental Policy: The Conflict Between Principles and Practice*, 3.
[516] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 16.
[517] Muramatsu and Iqbal, "Understanding Japanese Intergovernmental Relations: Perspectives, Models, and Salient Characteristics," 5.
[518] Food and Agriculture Organization of the United Nations, *Legal Systems for Environmental Protection: Japan, Sweden and United States* (Room: United Nations, 1972), 16.
[519] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 16.
[520] Miyamoto et al., "Japan," 43.
[521] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 17.

communities and victims express their anger in civic protest, media, and courts (called residents' movement).[522] When the Tokyo Paper Mill Company failed to respond to pollution control, several hundred fishermen forced their plants' restoration. The protest started to begin and then sixty-four local people injured, while policemen over one hundred summoned to suppress the riot. Thousands of fishermen wanted the National Diet to enact an act (law) concerning water pollution prevention.[523]

In response to such criticisms, the National Diet enacted two Acts: Act Relating Conservation of Water Quality and Act on Factory Effluent Control in December 1958.[524] Without debate, these Acts failed to cover all pollutants systematically and density limitations to control pollution such as suspended solids, not the volume of effluent, and not impose the penalty.[525] For those reasons, the National Diet interpolated the Cabinet to draft a pollution act. However, the political conflicts about the act. In 1965, the Socialist and Democratic Socialist parties submitted the different versions. The Socialist party stressed the "responsibility of industrial for pollution damage and advocated of creation of an administrative commission to consolidate all aspects of pollution control."[526] While "the Democratic Socialist party's bill underlined the need to "harmonize" industrial development and pollution control."[527] In 1966, the Socialist and Democratic Socialist parties regained submission the bills at the 51th Session of the National Diet. On October 11, 1966, the Minister of Health and Welfare, Zenko Suzuki, reported to the Cabinet's meeting and cooperated with other ministries for promulgation the draft "Basic Act for Environmental Pollution Control." Suzuki supported by Prime Minister, Eisaku Sato, and other Ministers.[528]

Therefore, the government submitted the draft Act to the House of Representatives. After that, the Socialist, Democratic Socialist, and Komeito (Clean Government Party) parties submitted their own versions. While three political parties oppositions, pollution crises still increased. The

[522] Simon Avenell, *Transnational Japan in the Global Environmental Movement* (Honolulu: University of Hawai'i Press, 2017), 24.
[523] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 17.
[524] Miyamoto et al., "Japan," 43.
[525] Toru Hayashi, "Water Pollution Control in Japan," *Water Environment Federation* 52, no. 5 (1980): 850.
[526] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 19–20.
[527] Ibid. at 20.
[528] Ibid. at 21.

Liberal Democratic Party (LDP) negotiated with three parties to agree on the draft Act. So, on July 17, 1967, the House of Representatives' Special Standing Committee for Industrial Pollution Control passed it with supplementary resolution supported by all four political parties.[529] In the end, legislative reform started when the National Diet officially enacted the Basic Act for Environmental Pollution Control on August 3, 1967 (amended in 1970).[530]

In early 1970, a turning point for pollution reached when the serious of busy Tokyo traffic intersections poisoned.[531] Moreover, in April 1970, the photochemical smog in Tokyo's central Suginami Ward suffocated around forty school children.[532] For the past reasons for serious pollution crises combined with these problems, Japan reformed both National Diet and Cabinet. The special standing committees' members of both House of Representatives and House of Councilors questioned on the Cabinet. Both Houses proclaimed need more aggressive government actions.[533] To respond to the National Diet, in July 1970, the Prime Minister, Sato, ordered the environmental pollution unit to unify the ministries' approaches for pollution control and strengthen environmental legislation.[534] In December 1970, the extraordinary 64th of the National Diet session called "pollution session" (*Kogai Kokkai*) enacted and amended thirteen environmental Acts.[535]

From 1970, the environmental legislation in Japan was stronger that ever; however, administrative case litigation system for remedy of victims was not enough. For example, Article 9 of ACLA stipulated that mainly those who have "legal interest for seeking the revocation of the original administrative disposition." Under this procedure, many environmental litigation cases challenged the governor prefectures to grant permission the reclamation for building the power plants and other potentially polluting facilities. Many cases sued by local residents those could not fish and other interests. However, the courts denied such standings of local residents.[536]

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[529] Ibid. at 23.
[530] Kawashima, "A Survey of Environmental Law and Policy in Japan," 242.
[531] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 25.
[532] Avenell, *Transnational Japan in the Global Environmental Movement*, 29.
[533] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 25.
[534] F.D. Barrett and Therivel, *Environmental Policy and Impact Assessment in Japan*, 39.
[535] Ibid.
[536] Setsuo Miyazawa, "Administrative Control of Japanese Judges," *Kobe University Law Review* 25 (1991): 53.

Apart from the problems that the general act of administrative case litigation system, the water pollution act amendment in the 1970s was braking legislation in the sense of paradigm change from economic priority to human rights protection. In 1971, the extraordinary 65th of the National Diet session, the 66th in 1972, and the 67th in 1973 sessions of the National Diet completed the present of the environmental protection legislation.[537] Certainly, in the sense of the Supreme Court ruling had to be waited until state redress of inaction has worked after the Supreme Court decision of Minamata disease on October 15, 2004. The significance of these court cases and theories will be discussed in Section 3 of this Chapter and before that the features of the current prevention of water pollution law will be stated. This issue will explain in the following part.

2. Present Legal System for Water Pollution Prevention

The current legal system in Japan clearly indicates of purpose to guarantee human lives and health. The present Constitution of 1946 guarantees human rights in Chapter III (Arts. 10-40). Articles 13 and 25 invoke as the constitutional basis to claim for the right to the decent and healthy environment.[538] Especially, Article 25 formulates that all people may have the right to maintain the minimum standards of "wholesome and cultured living" and the state must use its endeavors of the promotion and extension of "social welfare and security, and public health."

In order to realize the Constitution clause, the two main Acts are enacted in the filed of water pollution prevention: the Basic Act for Environmental Pollution Control and Water Pollution Prevention Act. The Basic Act for Environmental Pollution Control (Act No. 132 of 1967, amended by Act No. 132 of 1970 and Act No. 88 of 1971) is the basic principle to comprehensively and systematically of promotion policies of the environmental conservation in order to ensure healthy and the living environment.[539] This Act is essentially a charter to control water pollution and other

[537] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 27.
[538] Kawashima, "A Survey of Environmental Law and Policy in Japan," 237.
[539] Basic Act for Environmental Pollution Control [公害対策基本法], 1967, art. 1 [Japan].

pollution.[540] It is also called to create the pollution monitoring, surveillance system, development of technology, and science for controlling of pollution.[541]

The Act clarifies the responsibilities of the state (Art. 6), local levels (Art. 7), corporations (Art. 8), and citizens (Art. 9) to prevent and preserve the environment. Article 6 and 7 provide the state's responsibilities and local entities. The state must be responsible for formulating and implementing fundamental and comprehensive policies under the environmental conservation and under the basic principle of environmental conservation.[542] Local entities must also be responsible to formulate and implement the policies under the conservation of the environment on correspondence to the national policies and other policies based on natural and social conditions of the local levels' jurisdiction and pursuant to the primary principle.[543]

The Basic Act for Environmental Pollution Control is the primary and general Act. Therefore, it is required the National Diet to enact the Water Pollution Prevention Act (Act No. 138 of 1970, amended by Act No. 83 of 1971 and Act No. 84 of 1972). This Act purposes of preventing water pollution in the areas of public waters, groundwater, protects the people's health, and preserves the living environment.[544] Article 1 of the Act applies to control effluents discharged by the factories and workplaces into public water areas and protects the injured parties by deciding the liability of the proprietor of the factories and establishment to compensate for the damaged in cases where human health is negatively affected by polluted water or wastewater discharged. Chapter II (Arts. 3 to 14-4) provides the regulations on discharging effluents. Article 4 declares that the Ministry of the Environment provides the necessarily for prevention of water pollution in the areas of public works as well as recommendation the prefectures to establish their effluent standards following the national act.

Chapter III (Arts. 15 to 18) provides the monitoring of the statutes of water pollution. The prefectural governors as provided by Order of the Ministry of the Environment may monitor water

[540] Ibid. art. 2 (3).
[541] Miranda A. Schreurs, *Environmental Politics in Japan, Germany, and the United States* (Cambridge: Cambridge University Press, 2002), 43.
[542] Basic Act for Environmental Pollution Control, art. 6.
[543] Ibid. art. 7.
[544] Water Pollution Prevention Act [水質汚濁防止法], 1970, art. 1 [Japan].

pollution in surface and groundwater.[545] The prefectural governors may consult with the national's head regional administrative agencies every year in order to prepare plans for measurement of water quality in public water areas.[546]

According to the former Environment Agency (replaced by the Ministry of the Environment in 2000), the number of prosecution for environmental offenses by Acts (Water Pollution Prevention Act, Waste Disposal and Public Cleaning Act, and others) and regulations was 2,018 in 1999.[547] In 2000, 3,393 violators reported and handled for violations of pollution-related acts and regulations, while 2,177 of them prosecutions.[548] These statistics show that the legal system in Japan strictly implements by prosecuting the polluters.

The mentioned above is only an overview of the legal system in Japan, so as a main subject of this study is the characteristics of administrative agencies such as the Ministry of the Environment and local entities. This issue will be provided in the next part.

Section 2: Administrative Roles at the National and Local Levels and Their Relations

The purpose of this section is to indicate the roles and duties of national and local levels for preventing water pollution. There are basically two levels of government in Japan: national and prefectural levels. All levels of administration are significant to prevent and deal with pollution, but mainly regulatory powers delegate to the agencies of prefectural governors. At the national government, there are ministries, but one ministry has responsible for pollution control. The Ministry of the Environment has significance because it is the head of the ministry and it "may take charge of and manage" the relevant matters of water pollution prevention (so-called shared management doctrine, *Buntan Kanri Gensoku* in Japanese, see Article 5 (1) of the National Government Organization Act).

[545] Ibid. art. 15 (1).
[546] Ibid. art. 16 (1).
[547] Environment Agency, *Quality of the Environment in Japan 2000* (Tokyo: Environmental Agency, 2000), 299.
[548] Ministry of the Environment, *Quality of the Environment in Japan 2001* (Tokyo: Ministry of the Environment, 2001), 349.

There are three parts provided in this section. Part one will consider the role of national government. Part two will survey the role of local levels. The final part will end with the confrontations between the national and local levels.

1. Administrative Roles of Ministries

There are four main ministries responsible for water pollution prevention in Japan. First, the Ministry of the Environment is the Cabinet-level responsible for national environmental conservation, control over pollution, and nature conservation. This ministry has the Central for Environment and several other communities as its advisory bodies.[549] For instance, Chapter II in Article 4-2 (1) of the Water Pollution Prevention Act formulates that the Minister of the Environment is to prevent water pollution on designate the particular area of waters following Cabinet Order for chemical oxygen demand and other particulars. Article 4-2 (5) of this Act declares that the Minister of the Environment must establish or change basic policy for total emission reduction and notify the prefectural governors.

The most important role of the Minister of the Environment is to issue the effluent standards regarding the extent of pollution effluent by Order of the Ministry of the Environment (Article. 3 (1)). If it finds particularly necessary for the prevention of water pollution, the Minister of the Environment may recommend prefectures to establish their own effluent standards following the provisions of paragraph (3) of the Article, or revise the effluent standards already established under the same paragraph (Art. 4).

The Ministry of the Environment comprises five main agencies. (1) The Minister's Secretariat is responsible for coordination with ministry affairs concerning personnel, acts, and budgets. This agency also plans, drafts, and promotes the basic policies regarding environmental conservation as well as leading efforts for drafting environmental measures, making policy

[549] Hidefumi Imura, "Japan's Environmental Policy: Institutions and the Interplay of Actors," in *Environmental Policy in Japan*, ed. Hidefumi Imura and Miranda A. Schreurs (Cheltenham and Northampton: World Bank and Edward Elgar Publishing, 2005), 57.

evaluations, and coordination on the affairs with government bodies.[550] (2) The Environmental Health Department is to take comprehensive measures in order to prevent pollution caused by chemicals from threatening human and the environment. (3) The Global Environment Bureau takes global environmental conservation and promotes the environmental policies of the entire government.[551] (4) The Environmental Management Bureau develops general measures to prevent water pollution and conserve underground water resources. (5) The Nature Conservation Bureau is to preserve and restore ecosystems in order to ensure people's health.[552]

Second, other ministries are also indirectly involved for water pollution prevention. The Ministry of Health, Labor, and Welfare has roles in preventing occupational diseases and promoting healthy working environments. The Minister's Secretariat takes comprehensive coordination, including the draft of policies, acts, and ordinances.[553] It also has other bureaus, departments, and the Central Labor Relations Commission. The Ministry of Health, Labor, and Welfare is one ministry that plays the significant roles to get involved in water pollution problems. On this point, an illustrative instance is the Itai-Itai disease. This disease first reported in an academic conference in October 1955. With this case, the Ministry of Health, Labor, and Welfare was essential to examine the patients, inspect, and analyze the disease. After examination in May 1968, this ministry addressed an opinion that cadmium caused the poisoning of chronic found in wastewater of Kamioka Mine operated by Smelting Co., Ltd and Mitsui Mining.[554] Another ministry is the Ministry of Agriculture, Forest, and Fisheries. This ministry is responsible for oversight of agriculture, forestry, and fishing industries. The ministry is to play the roles of cleaning water and air, conserving land, and fostering water resources.[555] The Minister's Secretariat plans the basis of policies, projects, and duties concerning acts, the National Diet, resources, and policies regarding

[550] Cabinet Secretariat [内閣官房], "Organization of the Government 2017," accessed June 22, 2019 http://www.cas.-go.jp/jp/gaiyou/jimu/jinjikyoku/satei_01_01.html.
[551] Ibid. at 101.
[552] Ibid. at 102.
[553] Ibid. at 70.
[554] Environment Agency, *Quality of the Environment in Japan* (Tokyo: Environmental Agency, 1995), 697.
[555] Ministry of Agriculture, Forestry, and Fisheries [農林水産省], "Mission : MAFF," accessed February 20, 2019 http://www.maff.go.jp/e/about/mission/.

agriculture, forestry, and fisheries.[556] Lastly, the Ministry of Land, Infrastructure, Transport, and Tourism is to manage water resources, sewage, and wastewater management.

As described above, the Ministry of the Environment, which in one of the province that makes up the Cabinet assigns the responsibility for preventing water pollution. In particular, the Minister of the Environment has the power to issue "effluent standards" as the form of ministerial order, and its role is essential. The legal system of the shared management doctrine (*Buntan Kanri Gensoku*) has significance in order to clarify the responsibility of the ministry comparing with the current situation in Laos as described in Chapter II.

2. Administrative Roles of Local Entities

In general, local autonomy system in Japan is based on the principle of comprehensive authorization rather than the restrictive principle of enumeration concerning the power of local levels.[557] They are strongly characterized as the governing entities based on the local community under their jurisdictions.[558]

In the field of water pollution prevention too, local entities have been guaranteed under the principle of local autonomy. Local entities are established assemblies as deliberative under the Acts in order to make the decision-making according to the characteristics of each region. Local entities played the important roles to deal with pollution problems, even in prewar era as already noted above.[559] On this point, an illustrative historical example that many cities such as Kawasaki, Kitakyushu, Osaka, and Yokohama discovered pollution problems, and then they influenced the industrial areas in their areas and created industrial sites along the coastlines in order to prevent pollution.[560] These cities took their actions because the national government took the small of actions

[556] Cabinet Secretariat, "Organization of the Government 2017," 77.
[557] Council of Local Authorities for International Relations, *2016 Local Government in Japan*, 2.
[558] Council of Local Authorities for International Relations, *Local Government in Japan*, 5.
[559] Environment Agency, *Quality of the Environment in Japan*, 287.
[560] Imura, "Japan's Environmental Policy: Institutions and the Interplay of Actors," 62.

and spent a long time to wait for actions of the national government, so the cities as the local entities left them to take actions.[561]

Apart from this point, moving from a little long background explanation to the main issue of this study. Article 3 (3) codifies that "the prefecture" might establish more "stringent standards" for the maximum permissible levels stipulated in the effluent standards by enacting Prefectural Ordinances "under the criteria stipulated by the Cabinet Orders." When the effluent standards are recognized as being insufficient to protect public health or preserve the living conditions, the prefectures have the regulatory power to enact the more stringent local ordinances. Although there is restriction that is must obey the Cabinet Orders, the national statutes themselves recognize the significance of the roles of prefectures.

Moreover, the prefectural governors may "order" the persons who discharge the effluent to "improve" the construction of faculties, usages, or means of treatment of polluted water within the certain time limit or suspend the use of the facilities or discharging of effluent (Art. 13 (1)). According to Article 30, any person in violation of orders pursuant to the provisions of Article 13 (1) is subjected to imprison and require for labor of less than a year or fine no more than 1,000,000 JPY.

Aside from the complex problem of effluent standards as noted above, in many cases, the effluent standards are set by the Minister of the Environment and the governors are authorized to issue improvement orders to the persons who are not comply with these standards.

Besides, the local self-laws that do not relate to the delegation by the national statutes are also permitted. Local levels have the rights to formulate and implement the policies regarding the environmental conservation corresponding to the central policies under the natural and conditions of local levels' jurisdiction.[562] In this regard, when the national environmental act does not establish, local levels may institute their own environmental ordinances and regulatory systems.[563] For example, the Miyagi prefecture issued its Basic Ordinance on the Environment on March 17, 1995,

[561] Ibid.
[562] Basic Act for Environmental Pollution Control, 1967, art. 7 [Japan].
[563] Imura, "Japan's Environmental Policy: Institutions and the Interplay of Actors," 65.

and Gifu prefecture issued its Basic Ordinance on the Environment on March 23, 1995.[564] In 1969, the government of Tokyo Metropolitan led by the Mayor, Ryokichi Minobe, issued the Tokyo Metropolitan Environmental Pollution Control Ordinance that set emission standards of pollution, and it provided the great impetus for local legislation.[565] According to the former Environment Agency, the municipalities enacted the comprehensive environmental ordinances of 340, pollution control ordinances of 635, and nature conservation ordinances of 294 in 1999.[566] The Ministry of the Environment reported that there were 53 prefectures and "ordinances-designated cities had enacted pollution control ordinances, and 50 of them enacted the nature conservation ordinances on March 31, 2000."[567]

The prefectures and large cities such as the Osaka city have their own monitoring network systems and environmental research institutions.[568] The monitor of water quality and conduct the inspections of factories and plants also responsibility by local entities.[569] In addition, local entities improve the systems of environmental monitors, draft local action plans for reducing emissions, and other activities.[570] Since local leaders have democratically elected, they have influenced by public opinions and played more attention to protect the environment.[571] Indeed, local entities are closely contacted with the environmental problems and directly received the complaints from local residents.[572] Therefore, local entities play the significant roles in society and improve the quality of people's daily lives.[573]

[564] Environment Agency, *Quality of the Environment in Japan*, 835.
[565] A. Schreurs, *Environmental Politics in Japan, Germany, and the United States*, 41. This issue also considers by Akio Morishima, Koichiro Fujikura, and Julian Gresser, *Environmental Law in Japan* (Massachusetts and London: Massachusetts Institute of Technology Press, 1981), 246.
[566] Environment Agency, *Quality of the Environment in Japan 2000*, 234.
[567] Ministry of the Environment, *Quality of the Environment in Japan 2001*, 284.
[568] Imura, "Japan's Environmental Policy: Institutions and the Interplay of Actors," 62.
[569] Ibid.
[570] Ibid.
[571] Yong Ren, "Japan's Environmental Management Experiences: Strategic Implications for Asia's Developing Countries," in *Environmental Policy in Japan*, ed. Hidefumi Imura and Miranda A. Schreurs (Cheltenham and Northampton: World Bank and Edward Elgar Publishing, 2005), 294.
[572] F.D. Barrett and Therivel, *Environmental Policy and Impact Assessment in Japan*, 15.
[573] Council of Local Authorities for International Relations, *Local Government in Japan*, 9.

3. Confrontations Between the National and Local Levels

As the author pointed out above, the Water Pollution Prevention Act in Japan delegates the effluent standards power to the Ministerial Orders, but in the serious cases, the more stringent standards power is vested to the Prefecture Ordinances (Art. 3 (1)). The national statute itself gives strong power not to the municipalities, but prefectures for the wide area works of water pollution prevention. In this case, since the national statute allows contradiction between the state and prefecture, the provisions of adjustment are provided in the Act. According to Article 3 (5), when the prefectures establish the effluent standards under the provisions of paragraph (3), "prefectural governors" must in advance to notify the "Minister of the Environment" and the relevant prefectural governors.

Indeed, the Japanese legal system vests the administrative responsibility to the Ministry of the Environment as the national government and prefectures in the local levels for water pollution prevention, and it is also assumed that adjustment to perform between the two levels. However, the real problems are a little more complicated because the Constitution guarantees local autonomy to the local entities, efforts of local entities are not only based on the national statutes, but also based on the local ordinances.

As noted above, the "prefectures" may set more stringent effluent standards in the form of prefectural ordinances than the Ministry Order. This power is delegated by the special act of the Water Pollution Prevention Act in Article 3 (3) and the power is limited in serious cases considered as "insufficient for protecting public health or for preserving the living conditions." Other cases are that the "municipalities" not the prefectures may enact ordinal legislation in the form of municipal ordinances. The power is delegated by the general acts of the Constitution in Article 94 and Article 14 of the Local Autonomy Act. For example of the latter cases, there are the municipal ordinances for protection of water sources. These cases will be discussed in a next section.

In any case, in order to prevent water pollution, the national acts, prefectural ordinances, and municipal ordinances have the roles in each geographic condition. When it uses the word of "administrative responsibility," the regulatory powers of setting effluent standards are allocated to

the ministers and prefectures. Apart from the allocation of regulatory powers by the Water Pollution Prevention Act in Article 3, the municipalities may enact their own municipal ordinances on the Constitution and the Local Autonomy Act.

Comparing with the Laotian legal system as already noted in Chapter II, the concept of "administrative responsibility" for prevention of water pollution is found in multiple dimensions or multiple layers. The significant difference is that the confrontations between the state and local entities are allowed in Japanese legal system. Through the allowance of the confrontations, the purpose of prevention of water pollution has been considered to realize.

Section 3: Administrative Responsibility for Water Pollution Prevention and Its Problems

As mentioned in the previous parts, many acts enacted in 1970s. However, the agency such as the prefectural governors "may" exercise regulatory powers. The Water Pollution Prevention Act in Article 13 (1) codifies as prefectural governors "may" order to improve means of treatment of polluted water when the governors suspect the persons who discharge the effluents which have the level of pollution that do not conform to the effluent standards. In this way, administrative agencies such as the prefectural governors have "discretion" to decide whether discharging effluents meet the effluent standards and decide whether to render the orders for improvement.

When administrative agencies do not actively exercise their legal authorities due to the economic developments are priority, it is the important legal issues for this study to make clear of the legal system to pursue the administrative responsibility. This is the main issue of this study. This section aims to deal with both legal and non-legal of responsibilities as the system of administrative responsibility in Japan. Legal responsibility of administration (state redress of inaction and administrative case litigation of mandamus action) will be identified in this section.

Another context of administrative responsibility should be noted. The municipalities have tried to protect water pollution by their own efforts. Those actions do not have legal basis such as the Water Pollution Prevention Act. As noted in the previous section, those actions should be discussed.

1. Legal Responsibility of Administration

In general, judicial controls administrative actions of inaction (inaction also known as non-use of regulatory power or omission) to ensure sustainable development.[574] Any non-use of regulatory power or inaction made by competent administrative authority sometimes led to serious health damage and polluted the environment.[575] In the modern society as Japan, a person who has caused as a consequence of action or inaction by the governmental administrators has the right to sue a public entity or the state responsible for such damage.[576] State redress of inaction is the typical measure to challenge of non-exercise of regulatory power. Mandamus lawsuit is a measure to push the administration to exercise its legal authority.[577] Therefore, this part will analyze what kind of legal problems have arisen in the case of water pollution prevention.

1.1 State Redress of Inaction

In present, an administrative action has nature of "administrative disposition" such as improvement order is easy to be disputed by plaintiffs. Court rules recognize state redress of inaction to enforce legal regulations.[578] The exercise of the public authority as codified in Article 1 of the State Redress Act (*Kokka Baisho Ho*) includes inaction or non-exercise regulatory power. This fact has significance in the environmental protection law filed. In fact, the actions that seek liability of inaction or non-use of regulatory power increase in the environmental protection law filed.[579]

With respect to water pollution, the Minister of the Environment and prefectural governors as the central and local levels have regulatory powers as issue the effluent standards. When those administrative agencies ignore their missions or non-exercise regulatory powers to prevent harm, it

[574] Noriko Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," in *Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issues*, ed. Volker Mauerhofer (Cham, Heidelberg, New York, Dordrecht, and London: Springer, 2016), 189.
[575] Ibid. at 190.
[576] Constitution of Japan [日本国憲法] of 1946 in Article 19 stipulates that "freedom of though and conscience shall not be violated" [思想及び良心の自由は、これを侵してはならない].
[577] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 189.
[578] Ibid. at 191.
[579] Ibid. at 193.

sometimes led to damage health or pollution of the environment.[580] Because as noted in Chapter I, the concept of "exercises the public authority" as codified in Article 1 of the State Redress Act is understood as broader one. It is not only "administrative disposition," but also standards setting action such as effluent standards are included in "exercises the public authority."

However, the Water Pollution Prevention Act codifies the responsibility of the prefectural governors as the main one. For instance, according to the Water Pollution Prevention Act in Article 5 (1), a person who discharges water from factory must submit a report or notification to prefectural governor. Article 8 (1) prescribes that when it finds the level of pollution of effluent does not conform to effluent standards, the prefectural governor may order to change plans for construction, usages or treatment of polluted water. Besides, the power of orders for improvement is vested to prefectural governors (Art. 13 (1)) as noted above. These "orders" are the disadvantageous disposition, which is the kind of administrative disposition. When water pollution occurs because the governor fails to exercise the powers of administrative disposition, so will the prefectural administration be held responsible to the victims?

This issue comes to focus by theories since many lower court decisions appeared after the late 1960s. And as one theory, Naohiko Harada described this as a "new phenomenon" and understood that "reinforcement of administrative responsibility" was being asked at that time.[581] This "newness" is broadly speaking, firstly the change in the subject and content of the right from freedom of business to protect the lives and health of residents. Second, the overcome of a kind of opportunism in the sense of discretion whether the administrative agency uses or not its regulatory powers.[582]

After more than 30 years of history, in general, state redress of inaction in Japan proves that the current stage of judicial controls to the inaction regulatory power by administrative agency. Because of such kind of administrative lawsuits is direct measure for compensation of damage to

[580] Ibid. at 190.
[581] Naohiko Harada [原田尚彦], *Administrative Responsibility and Rights of the People* [行政責任と国民の権利] (Tokyo: Koubundo, 1979), 1.
[582] Ibid. at 48.

victims.[583] In general, the framework of the case law of Japan has been formed after the Supreme Court decision in 1989: the failure of public officers enforcing regulations could be unlawful when it deems to unreasonable in three main factors. First, the purport and purpose of law and ordinance are the basis of authority. Second, the nature of authority and finally is the specific circumstance of the case.[584]

That framework is a little strict condition for the remedy of people who are damaged their lives and health. Therefore, it had no court decision by the Supreme Court that ruled on state redress for a long time.[585] However, this is the general situation, so analysis must be conducted in line with water pollution prevention in this study. Then, the next following part will be discussed the case study of Minamata disease in order to analyze the arrival point of the court decision.

1.1.1 State Redress of Inaction: Minamata Disease Case

Minamata case[586] is one of the most serious water pollution crises during a high growth in Japan after the World War II period.[587] According to the former Environment Agency, Minamata disease firstly discovered in May 1956 around Minamata Bay in the Yatsushiro Seas of Kumamoto prefecture in May 1956 (known as the first Minamata).[588] This problem is the toxic nervous disease caused by the consumption of seafood contaminated with methyl mercury compounds released by the Minamata plant of Shin-Nippon Chisso Hiryo K.K. (renamed "Chisso Corporation," hereinafter "Chisso").[589]

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[583] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 189.
[584] Ibid. at 193.
[585] Ibid.
[586] There are many research on Minamata disease, see Masazumi Harada, *Minamata Disease* (Tokyo: Iwanami Shoten, 1972). Timothy S. George, *Minamata: Pollution and the Struggle for Democracy in Postwar Japan* (Cambridge: Harvard University Press, 2001). Yoichi Tani, "Another Look at Minamata Disease and Methyl Mercury Pollution," in *The State of the Environment in Asia 2005/2006*, ed. Japan Environmental Council (Tokyo: Springer, 2005), 178-180.
[587] Jun Ui, "Minamata Disease," in *Industrial Pollution in Japan*, ed. Jun Ui (Tokyo: United Nations University Press, 1992), 103.
[588] Environment Agency, *Quality of the Environment in Japan*, 692.
[589] Ministry of the Environment, *Lessons from Minamata Disease and Mercury Management in Japan*, Japan, September 2013, 2.

In October 1959, Chisso was fully aware that disease concerned the effluent discharge from the unit of acetaldehyde production, but it continued to pollute water.[590] In May 1965, it further discovered in the basin of the Agano River, Niigata city, Niigata prefecture that it was far away from Minamata (known as the second Minamata).[591] The second disease was a similar situation as with the first Minamata disease.[592] Nevertheless, there were no acts for regulating the activity of industries and no precedents upon that victims could be based on its case.[593] Even ordinance enacted in 1958 concerning industrial effluents were not inapplicable due to the effluents from acetaldehyde compound and the facility of chemical production exempted.[594]

The resident voluntary general group called the People's Congress for the Minamata Disease and the Association of Kumamoto City to Indict the Minamata Disease forced with the Minamata Disease Research Group to support the court struggle, but the legal procedures were very slow and extremely difficult for the victims to win the cases.[595] In 1968, the national government officially recognized the Minamata disease and announced its opinions.[596] In 1970, the negotiation team appointed by the Ministry of Public Welfare that held Chisso to pay small compensation to some victims without holding responsible for the damages.[597] Before 1970, the national and local levels were not exercised the regulatory to prevent and control the activities of Chisso well. One possible reason was that the goal of national government was the priority of economic developments. Also, the Chisso was one of the most important companies to support the government. From December 1970, the extraordinary 64th of the National Diet session passed and amended many acts such the Water Pollution Prevention Act (Act No. 138) and Act Concerning Conservation of Water Quality in Public Waters (1958, amended by Act No. 108 of 1970) as already

[590] Ui, "Minamata Disease," 113.
[591] National Institute for Minamata Disease [国立水俣病総合研究センター] (under the Ministry of the Environment), "Outline of Minamata Disease," accessed June 18, 2019 http://nimd.env.go.jp/archives-/english/tenji/a_corner/a01.ht-ml.
[592] Ui, "Minamata Disease," 115.
[593] Ibid. at 118.
[594] Ibid.
[595] Ibid. at 118–19.
[596] Ministry of the Environment, "Minamata Disease: The History and Measures," accessed June 18, 2019 http://www.env.go.jp/en/chemi/hs/minamata2002/summary.html.
[597] Ui, "Minamata Disease," 119.

noted. However, even these laws promulgated, but some environmental agencies at both levels were still inaction to exercise their authorities to get involved under their missions.

Since the environmental legislation reform in 1970, many victims made lawsuits against the polluter (Chisso), prefectural governments, and national government for non-exercise authorities to prevent pollution. In Kansai Minamata Case, some victims who lived in the Kansai area sued against the Kumamoto prefectural government and national government for non-use of their authority powers against Chisso.[598] After that, the Kumamoto prefecture and national government (hereinafter "appellants") appealed to the Supreme Court. At that time, it is needed to keep in mind that state redress of inaction in the Supreme Court did not work well.

On the liability of national government, the Supreme Court pointed out that it failed to exercise the legal authorities. First, the Supreme Court generally referred to the judgment in 1989. When the failure of national officials of public bodies exercises, the authority enforced regulations deeming to beyond the allowable limits and extremely unreasonable in light of the purport and purpose of the Acts such failure in illegal. Second, the Supreme Court found that at least around three years passed when the official discovered Minamata disease on May 1, 1956 and the period "there continued possibility of serious and grave damages may cause to the lives and health of residents" that ate fish and shellfish caught in Minamata Bay and its surrounding sea areas. The national government was "able to recognize with high probability" that causative substance of Minamata disease was the kind of organic mercury compound released from the acetaldehyde facility of manufacturing of the Chisso. Finally, the national government was "capable of quantitatively analyzing" the small amount of mercury contained in effluent discharged from the Chisso.[599]

Therefore, the Supreme Court concluded that the national government "could have and should have immediately to take the measures that required to exercise its regulatory authorities" vested by the Water Quality Acts, by designating Minamata Bay and its surrounding sea areas as the

[598] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 194.
[599] Supreme Court Second Petty Bench [最高裁判所第二小法廷], Judgment [判決], October 15, 2004, 58 Minshu [民集] (7) 1802 (access: http://www.courts.go.jp/app/hanrei_jp/detail2?id=52320) [Japan].

designated water areas that established water quality standards so as to prevent plant effluent discharged to the designated water areas from containing the detectable amount of mercury or its compounds and designating the acetaldehyde facility of manufacturing as the specified facility.

In addition, the Supreme Court examined the liability of the prefecture that the governor of Kumamoto prefecture "recognized or could have recognized the circumstance" regarding Minamata disease as the national government recognized or could have recognized. The Supreme Court concluded that "although the direct purpose of the Prefectural Regulation on Fishery Coordination is to ensure protection for the reproduction of aquatic animals and plants," these regulations also "ultimate aim" to protect the health of people who eat animals and caused by the plants.

In conclusion, the national government (appellant one) failed to exercise regulatory authorities under Article 5 of the Act Concerning Conservation of Water Quality in Public Waters[600] and Article 7 and 12 of the Factory Effluent Control Act (1958) to protect the lives and health of residents who live in the areas that suffer water quality deterioration to designate water area that caused the disease was unlawful of inaction. For the Kumamoto prefectural government (appellant two), it failed to exercise its regulatory authorities under Article 32 of the Prefectural Regulations on Fishery Coordination. Therefore, the Supreme Court ordered each of the appellants (Kumamoto prefectural government and national government) liable for compensation of damage to the appellees (victims of Minamata disease) up to 2,500,000 JPY.[601]

It is important for this study that three factors were pointed out in 2004 decision of the Supreme Court. First, it is the existence of harm as the word of "there was the continued possibility

[600] Act Concerning Conservation of Water Quality in Public Waters in Article 5: (1) "the Director-General of the Economic Planning Agency shall designate a public water area in which water pollution has caused or would cause considerable damage to relevant industries or has had or would have a significant impact on public health, as a designated water area. (2) When designating designated water, the Director-General of the Economic Planning Agency shall establish water quality standards for the designated water area. (3) The water quality standards shall not go beyond the necessary level for eliminating or preventing causes required for the designation under Paragraph 1. (4) When designating designated water and establishing water quality standards, the Director-General of the Economic Planning Agency shall consult with the Water Quality Council. The same shall apply when changing the designation or standards." Cited by the Supreme Court Second Petty Bench [最高裁判所第二小法廷], Judgment [判決], October 15, 2004, 58 Minshu [民集] (7) 1802 (access: http://www.courts.go.jp/app-/hanrei_jp/detail2?id=52320) [Japan]

[601] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 194.

that serious and grave damage might cause to the lives and health of residents." Second, it is predictability of result by the administrative agency as "able to recognize with high probability." Third, it is an avoid ability of result as "capable of quantitatively analyzing" the small amount of mercury contained in effluent discharged from the Chisso.

On the other hand, when it comes to the liability of prefectures, it seems that the purpose of the legal system is not reality emphasized. The Supreme Court itself mentioned this a little using the word "ultimate aim." In fact, the court decision's framework as mentioned earlier does not appear suddenly, but it has the history that continuous with the development of judicial precedents in lower courts and theories since late of the 1960s. Then, history is analyzed next.

1.1.2 Legal Problem of State Redress of Inaction

One of the main problems of state redress of inaction is related to the discretion of administrative agency whether to exercise regulatory power.[602] For instance, Harada pointed out the kind of opportunism as noted above. In fact, the Water Pollution Prevention Act in Article 13 (1) codifies that prefectural governors "may" order the persons to improve as noted above. This word recognizes some discretional power to the governors. To implement the Act, the agencies always consider discretion on how and when they may exercise their legal authorities. Of course, it does not mean the discretionary powers by agencies are absolutely lawful.[603] In this regard, an abuse of its discretion will be a legal issue.

In this case, how much that a court recognize of discretion power when determines the agency abuses its discretion to fail for issuing an administrative disposition.[604] The plaintiff needs to prove that the agency abuses its discretion.[605] Since the abuse of discretion may the legal issue that is difficult for plaintiff to prove in general.[606] Indeed, the abuse of discretion's scope has been

[602] Kamino, "Governmental Compensations in Japan," 111.
[603] Ibid.
[604] Goodman, *Justice and Civil Procedure in Japan*, 465.
[605] Ibid. at 466.
[606] Ibid. at 467.

considered as broad one in the absence of positive administrative action case.[607] It is almost the same as in specific circumstances of lives and health are injured when the government is inaction to exercise regulatory power.[608]

In other words, the problem is what elements that limit administrative discretionary judgment and that convert from the discretion to the duty for exercising regulatory powers.[609] Otherwise, inaction of regulatory powers even in water pollution cases with serious harms to lives and health of residents cannot be recognized as an illegality. This is called the traditional thinking of "administrative opportunism." This is derived its root from German law "*Opportunität Prinzip*."[610]

However, as Harano pointed out that discretion of administrative inaction was in particular controversial concerning cases of injury arising from food or medicine of the late 1960s to 1970s, as the new tendency has appeared in lower court decisions. The opportunism or administrative discretion has been transformed into administrative responsibility. In the case of state redress, the court's decisions framework on the illegality of inaction of regulatory powers are generally three or four requirements: the seriousness of the damages, predictability of the result, possibility of avoiding the result, and expectation for administration. If these requirements are satisfied, the administrative discretion shrinks or converts from discretion to zero or legal duty. Such thinking is generally called discretionary shrinking (contraction) theory. Harada discussed this theoretical thinking about such issues in the book, namely "Administrative Responsibility and Rights of the People" (*Gyousei Sekinin To Kokumin No Kenri* in Japanese).[611]

However, compared to the value of which the freedom of the factory owner who carries out economic activities, the rights of lives and health of residents are thought as the fundamental legal

[607] Joel Rheuben, "Government Liability for Regulatory Failure in the Fukushima Disaster: An Australian Comparison," in *Asia-Pacific Disaster Management: Comparative and Socio-Legal Perspective*, ed. Nasu Hitoshi, Luke Nottage, and Simon Butt (Heidelberg, New York, Dordrecht, and London: Springer, 2014), 109.
[608] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 193.
[609] Kamino, "Governmental Compensations in Japan," 111.
[610] For further research works of the discretion and German law *Opportunität Prinzip*, see Kenji Kamino, "Governmental Compensations in Japan," in *Comparative Studies on Governmental Liability in East and Southeast Asia*, ed. Yong Zhang (The Hague, London and Boston: Kluwer Law International, 1999), 112.
[611] Harada, *Administrative Responsibility and Rights of the People*, 73.

issue. Since it becomes apparent that the administration should positively exercise regulatory powers in order to protect the environment after the extraordinary 64th of the National Diet called "pollution session." This change of basic value is thought as the significant factor that requires the courts to new decisions. It can evaluate that the theory of Eiji Shimoyama firmly pointed out this paradigm change at that time.[612]

Since then, the legal system in Japan in water pollution has been changed gradually in general. Many lawsuits have filed into the courts. During this time, both theory and court cases are accumulated, even the Supreme Court case rules over Minamata disease on October 15, 2004, stating the non-exercise of regulatory powers as illegality. Thus, it is worth noting that Japan over the past 30 years after the pollution parliament "pollution session" in 1970, the broad discretion of non-exercise of regulatory power change to the legal responsibility to exercise regulatory powers.

In this way, the experiences of the Japanese administrative law that the value conversion creates the legal phenomenon of the conversion from discretion to duty become clear. However, this logic should not be limited only in the matter of state redress cases. In other words, state redress only compensates for past damages with money, and it is not the sufficient remedial measures. State redress is the problem, whether it is fair to inflict the past damages on the plaintiffs or defendants that damages have occurred. On the other hand, mandamus action is a system to require the administration to exercise regulatory powers at the present time or in the future so that damages will not occur in the future. This is the meaningful remedy for preventing water pollution. The next part will attempt mandamus litigation.

1.2 Administrative Case Litigation of Mandamus Action

Administrative case litigation of mandamus action (*Gimuzuke Sosho* in Japanese) is a primary type of the environmental administrative case litigation.[613] As already in the 1970s, Harada mentioned in the work of "Administrative Responsibility and Rights of the People" that the rights of

[612] Eiji Shimoyama [下山瑛二], *The Basics of Modern Administrative Law* [現代行政法学の基礎] (Tokyo: Nihon Hyoronsha, 1983), 15-18.
[613] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 192.

residents have been significant in the present situation in Japan.[614] This litigation is to ensure sustainable development and pushes the agencies exercising their missions because inaction to prevent water pollution by the environmental agencies sometimes violate human rights such as health damage or lose life.

As already noted, mandamus action has been introduced since the amendment of ACLA in 2004 in order to hold administration exercise its missions.[615] ACLA introduces some new types of mandamus litigation and remedies.[616] With water pollution prevention case, the amendment of ACLA increases the possibilities for persons to obtain temporary relief by including the mandate, injunction, and the requirement for suspension of plans, orders, or business licenses.[617] A relief must be granted when the courts find that inaction of agencies is unlawful or abuse of discretion.[618] The aims for introducing mandamus action are to push the administration to exercise its abilities.[619] The courts have recognized state redress of inaction to enforce regulations to the violators,[620] as the next step, the potential of this litigation is discussed in water pollution prevention cases.

There is the same problem as mandatory litigation as state redress for illegal of non-exercise regulatory powers. That is the shift from the police administration that admits broad administrative discretion to the affirmation of administrative legal responsibility that makes illegal for inaction of regulatory powers. However, there is the difference between state redress and administrative lawsuits. The legal system of state redress is monetary compensation for past inaction. It is not the system that the courts can order the administration to start exercising the regulatory power at the present moment. In this regard, it can be said that the courts are in the stronger position in the case of mandamus litigation system.

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[614] For further consideration, see Naohiko Harada [原田尚彦], *Administrative Responsibility and Citizen's Rights* [行政責任と国民の権利] (Tokyo: Koubundo, 1979).
[615] Kadomatsu, "Judicial Governance Through Resolution of Legal Disputes? A Japanese Perspective," 141.
[616] Ibid. at 156.
[617] Ibid.
[618] Goodman, *Justice and Civil Procedure in Japan*, 465.
[619] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 190–91.
[620] Ibid. at 191.

Nonetheless, about 15 years after the amendment of ACLA, especially in environmental disputes, the judgment of the lower courts are found that the courts ordered administrative agencies to exercise the administrative disposition power to the industrial waste disposal companies. Because these cases have proved that the prevention of the environment is possible by utilization of mandamus litigation system.

Before considering the case in the following part, there are matters need to be noted. Mandamus litigation in the environmental field, it acts of judicial review of "administrative disposition."[621] The resident filed for complaint against a public work of an agency that is not applicable with the "administrative disposition," this case is dismissed. A resident can sue the administration when it fails to exercise the authority such as administrative disposition to order a factory for improvement the treatment facility. The resident has no right to require the agency to control measure against illegal polluters without identifying administrative disposition such as improvement orders. This type of rigor is different from Laos in the sense.

Mandamus litigation is the action to seek the order the effect that administrative agency can make the original administrative disposition.[622] The hurdle is high since the courts make illegal decision before administrative disposition take place. Such local resident who live near factory can be caused adverse effect for rehire lives and health to seek court remedy. Nonetheless, if the hurdle is too high, it means that only the state redress is the court remedy for past damages. The paying as the noted above, the next following part will be indicated case studies of administrative case litigation of mandamus action and its problems.

1.2.1 Administrative Case Litigation of Mandamus Action: Fukuoka Permission Case

Article 37-2 (1) of ACLA declares that mandamus action may be filed only when any "serious damage" is likely to be caused if a certain original administrative disposition is not made and there are no other appropriate means to avoid the damage. Article 37-2 (2) of ACLA also formulates that when judging whether or not any "serious damage" can be caused as prescribed in

[621] Ibid. at 192.
[622] Administrative Case Litigation Act, 1962, art. 3 (6) [Japan].

the preceding paragraph, the court may consider the degree of difficulty in recovering from the damage and may take into consideration the nature and extent of the damage as well as the content and nature of the original administrative disposition.

On this point, an illustrative example case is the Fukuoka prefectural governor granted permission to a company for establishing an industrial waste treatment facility that could pollute underground water (water pollution) lives and health of local residents. The residents who lived near area of the disposal site sought revocation of a license granted to the company due to it could be suffered their lives and health, the living environment, and groundwater contamination. For industrial waste disposal site, local residents claimed that the underground water contaminated with lead is disposed of by the disposal of industrial waste that does not meet the standards.

On February 7, 2011, the Fukuoka High Court (2122, Hanrei Jiho, 45) ordered that "serious damage" may occur due to the failure of Fukuoka prefecture to take necessary measures against the company such as removal or elimination of the above obstacles. Because of it can be possible to risk of causing damage to lives and health of residents who lived around the disposal site as well as pollution of groundwater.[623] It was recognized that the damage caused to lives and health were extremely difficulty to recover by its nature and it should be "serious damage."[624]

As mentioned above, this action satisfied with the requirements, the main point of the case was the scope of the discretionary power or its abuse under Article 37-2 (5) of ACLA.[625] The Waste Management and Public Cleaning Act of 1970 (revised by Act No. 34 of 2010) aims to promote the preservation of the living environment and improvement of public health by treating the appropriate

[623] Fukuoka High Court [福岡高等裁判所], Judgment [判決], February 7, 2011, 2122 Hanrei Jiho [判例時報] 45 [Japan]. This part is a tentative translation from Japanese to English.

[624] Article 4 (4) of the Waste Management and Public Cleaning Act [廃棄物の処理及び清掃に関する法律] of 1970 stipulates the responsibilities of the central and local governments: "to suppress discharge of waste and ensure their proper management, the central government, Prefectural governments, and municipalities shall all endeavor to enlighten both the general public and businesses on the importance of appropriate solid waste management."

[625] Article 37-2 (5) of ACLA prescribes that when a mandamus action satisfies the requirements prescribed in paragraph (1) and paragraph (3), if it is found that the provisions of the laws and regulations which give a basic for an original administrative disposition pertaining to a mandamus action clearly show that the administrative agency should make the original administrative disposition, or it is found that the administrative agency's inaction to make the original administrative disposition goes beyond the bounds of the agency's discretionary power or constitutes an abuse of such power, the court shall make a judgment to order that the administrative agency should make the original administrative disposition.

disposal of waste and cleaning the living environment.[626] When it is recognized the disposal of the industrial waste is not complying with the industrial waste disposal standards, the governor "may" exercise regulatory authority such as ordering to take measures such as removal of obstacles to disposers of maintain. It should be exercised in the timely and appropriate manner with protection as one of its purposes.

In essence, as pointed out above, the Fukuoka High Court ordered the governor of Fukuoka prefecture to take necessary measures for removal of obstacle on maintenance of living environment. The Court pointed out that the governor of Fukuoka prefecture could set the time limit for the Fujihiro Sangyo that has made the disposal and could order to take measures such as removing the obstacles under Article 19-5 of the Waste Management and Public Cleaning Act. The Court recognized that there was the kind of damage to the lives and health of the residents in the area and Fujihiro Sangyo has suspended the operation of the disposal site after receiving the temporary disposition decision on September 30, 2004. Such groundwater contamination is presumed to have been in progress for at least six years at the latest. Looking at this matter, the possibility of spilling out of the disposal site was considered as high. It was said that the water supply system is not deployed at the place of residences and the well water is used as drinking water and domestic water.

Taking the above into consideration, lead-contaminated groundwater caused damage to the lives and health of residents around the disposal site due to the disposal of industrial waste that did not meet the industrial waste disposal standards at the disposal site. The Court decided that the governor should take the order for this measure to be granted, but it is recognized that the governor did not order this measure over the scope of the discretionary power or its abuse. Summarizing these circumstances of the purpose of the Act and the nature of the regulatory powers in light of, it was

[626] Waste Management and Public Cleaning Act aims to promote the preservation of the living environment and the improvement of public health by treating the appropriate disposal of waste and cleaning the living environment. Under this Act, when it is recognized the disposal of the industrial waste is not complying with the industrial waste disposal standards, the governor may exercise regulatory authority such as ordering to take measures such as removal of obstacles to disposers to maintain. It should be exercised in a timely and appropriate manner, with protection as one of its primary purposes.

considered to be extremely lacking in rationality and beyond the scope of its discretion or to be its abuse.[627]

1.2.2 Legal Problem of Administrative Case Litigation of Mandamus Action

Mandamus litigation as a general act applicable for prevention of water pollution can be characterized as a trial phase in some senses. As stated in the previous part, Article 37-2 (1-2) of ACLA requires mandamus litigation may be filed only when any "serious damage" and "no other appropriate means" to avoid such damage. Therefore, it is necessary to prove that the administrative disposition likely to seriously cause damage. If a person cannot prove that the serious damage is likely to occur, the person cannot use mandamus action in order to prevent water pollution.

By the way of illustration of the case of Fukuoka High Court, this case is considered as the standard one. It was relatively easy for the Fukuoka High Court to recognize of "serious damage" in this case because the defendants received the civil temporary decision to stop operation on September 30, 2004. It can be possible to risk of causing damage to lives and health of residents who lived around the disposal site. The fact that the water supply system was not deployed at the place of residences and the well water was used as drinking water also proved the serious nature of the risk in this case. Therefore, in cases where it is difficult to prove the serious damage to lives and health of residents, the court's decision may be different. In general, the characteristic of the legal system in Japan is found in the clear distinction between the relief of a person's rights and the promotion of public interest, as already noted in Chapter I (subject litigation and object litigation) as the same characteristics appear in the Fukuoka High Court decision too. That is the clear distinction of the protection of lives and health of plaintiffs and the interest of residents' participation for prevention of water pollution.

Another legal issue is that the concept of illegality of inaction of administrative agency is considered as basically the same concept between the state redress case and the case of mandamus action. As discussed above, it was the serious damage of lives and health of residents that made the

[627] Fukuoka High Court [福岡高等裁判所], Judgment [判決], February 7, 2011, 2122 Hanrei Jiho [判例時報] 45 [Japan].

Fukuoka High Court decision. This was found in the Supreme Court decision of Minamata disease in 2004. The court's decision framework for abuse of discretion of inaction appears to be shared regardless of the difference between the two systems.

However, it is difficult to relief of lives and health of residents who have used water contamination lead that exceeds the standards by compensation for the past damage. It cannot be said that the Fukuoka High Court decision should not adopt the different approach such as the Precautionary Principle. At vary least, the monetary after serious damage has occurred should be decided by the courts more widely. On the other side, it will be the future problem in Japan that mandamus action codified in ACLA as the general act and it should be properly interpreted according to the characteristics of the Water Pollution Prevention Act. Unlike the state redress cases have been many and the number of cases are small. In this sense, the court practice of mandamus action in water pollution filed is still the trial phase.

2. Administrative Responsibility in Municipalities

As mentioned in the previous section, the Water Pollution Prevention Act mainly delegates the prefectural governors to render administrative disposition such as improvement orders. Certainly in some cases such as the Supreme Court decision of Minamata disease, the national government may be held liable for compensation of inaction. However, mandamus action is limited to the administrative disposition only and this action is still the trial phase at the present. Apart from the state redress of inaction on regulatory powers, it cannot be said that the legal responsibility for prevention of water pollution is well established.

However, administrative responsibility is not limited in the one that is delegated the regulatory powers by the Water Pollution Prevention Act, but municipalities are not delegated the regulatory powers by the special national statute also fulfilled their own responsibilities as stated in the previous section. For instance, administrative agencies have sought certain of specified persons

as administrative guidance (*Gyosei Shido*) in municipalities in cases of water pollution.[628] Administrative guidance is an action taken by an administrative agency without a legal binding force that intends to influence another party in order to achieve an administrative goal.[629] The effect as factual and not legal due to it does not create a legal enforces right since it is voluntary.[630]

Administrative guidance is used in many fields of Japanese administration.[631] It is involved in water pollution prevention. The purpose of administrative guidance has three as regulatory, promotional, and conciliatory,[632] but those purposes are clearly related in water pollution cases. Administrative guidance is also rendered in different name as a request (*Yobo*), warning (*Keikoku*), suggestion (*Kankoku*), or encouragement (*Kansho*), but the differences are not so meaningful.[633] Generally, it is a form to ask for a specific action or inaction concerning cases of prompt action is required by the residents. For instance, the heavily industrialized areas, administrative agencies in municipalities have tried to negotiate with factories for water pollution prevention.

Of course, the "form" of municipal efforts for water pollution prevention is not limited to administrative guidance form. According to the Ministry of Health, Labor, and Welfare, the number of local by laws concerning the preservation of water source (*Suidou Suigen Hogo Zyourei*) in Japan

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[628] For Introductory literature on "administrative guidance," see Shuichi Sugai [須貝脩一] and Itsuo Sonobe [園部逸夫], *Administrative Law in Japan* [日本の行政法] (Gyosei, 1999), 117-18. Hiroshi Shiono, "Administrative Guidance," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: University of Tokyo Press, 1984), 203-215. Hitoshi Ushijima, "Administrative Law and Judicialized Governance in Japan," in *Administrative Law and Governance in Asia: Comparative Perspectives*, ed. Tom Ginsburg and Albert H.Y. Chen (London and New York: Routledge, 2008), 84. Carl F. Goodman, *The Rule of Law in Japan: A Comparative Analysis*, 4th ed. (Alphen aan den Rijn: Wolters Kluwer, 2017), 428-439. Joseph W.S. Davis, *Dispute Resolution in Japan* (Massachusetts and Den Haag: Kluwer Law International, 1996), 55. J. Mark Ramseyer and Minoru Nakazato, *Japanese Law: An Economic Approach* (Chicago: University of Chicago Press, 1999), 205. Michael K. Young, "Judicial Review of Administrative Guidance: Governmentally Encouraged Consensual Dispute Resolution in Japan," Columbia Law Review, vol. 84, no 4 (1984), 926.

[629] Hiroshi Shiono, "Administrative Guidance," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Tokyo: University of Tokyo Press, 1984), 204.

[630] Meryll Dean, *Japanese Legal System*, 2nd ed. (London: Cavendish Publishing, 2002), 140.

[631] Yong Zhang, "Judicial Review of Administrative Actions in China and Japan," in *Comparative Studies on the Judicial Review System in East and Southeast Asia*, vol. 1 (The Hague, London and Boston: Kluwer Law International, 1997), 92.

[632] Dean, *Japanese Legal System*, 140.

[633] Ibid. at 138-40.

is 160 municipalities (6 prefectures, 106 cities, 44 towns, 3 villages, and 1 organization) in 2019.[634] Municipalities try to encourage and promote the actions or inactions of the companies based on their own local ordinances. Even when the companies are legally granted the permissions of facilities by the prefectural governors, the municipalities may find some problems and keep efforts for protecting the health of local residents and the living environment.

2.1 Administrative Responsibility in Municipalities: *Suidou Suigen Hogo Zyourei* Case

The *Suidou Suigen Hogo Zyourei* concerns drinking water supply in general that one well-known case in Japan in the Kii-Nagashima town of Mie Prefecture.[635] This case is the first judicial decision over water source protection ordinance.[636]

The fact of this case was that a company planned to establish an industrial waste intermediate treatment facility and its construction site adjoined to Sando River that located in the upper reach of water intake facility for the Akabane Small-Sized Water Supply System.

On November 5, 1993, an operator submitted a plan to establish the facility in the Mie Prefecture. On November 9 at the same year, an investigation conducted and a meeting held with the government of Mie prefecture and town government.[637] Upon obtaining for the plan, the town government established and enacted the "Ordinance on Drinking Water Source Protection," No. 6, March 18, 1994 (forced March 25) under Article 2 (1) of the Water Works Act. This type of Ordinance has been enacted in many municipalities such as the Tsu city in Mie prefecture and Shiroishi city in Miyagi prefecture.[638] The town also followed other precedents in order to protect water sources.

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[634] Ministry of Health, Labor and Welfare [厚生労働省], "A Survey Concerning Preservation of Water Source" [水道水源の保全に関する取組み状況調査について], accessed June 21, 2019 https://ww-w.mhlw.go.jp/topics/bukyoku/kenkou/suido/jouhou-/suisitu/o6.html.
[635] Ichiro Tsuge [柘植一郎] and Mikihisa Arai [新井幹久], "Local Authority vs. Industrial Waste Facility: Dispute over Water Source" [自治体 vs 産廃施設＋水をめぐる攻防], *Hanrei Chiho Jichi* [判例地方自治] 212 (2001): 4.
[636] Ibid.
[637] Supreme Court Second Petty Bench [最高裁判所第二小法廷], Judgment [判決], December 24, 2004, 58 Minshū [民集] (9) 2536 (access: http://www.courts.go.jp/app/hanrei_jp/detail2?id=52304) [Japan].
[638] Tsuge and Arai, "Local Authority vs. Industrial Waste Facility: Dispute over Water Source," 4.

For this Ordinance, it provides in Article 11 (1) that "the town mayor may designate the water source protection area" for the purpose of conserving the water quality of the water source.[639] Article 12 prohibits any establishment and no any person establishes the place of business subject to regulation in the area "without consultation or designation" by the town mayor.[640] A person who intends for the operation of a business subject regulation in the water source protection area must be consulted with the town mayor in advance.[641] When the mayor receives an application for consultation, the mayor may firstly be considered that the facility causes or likely to cause the depletion of the water source.[642] After that, the mayor may consult with the Council to carefully consider, whether or not to make such recognition.[643] The Council may investigate and deliberate the matter in order to protect water sources for drinking water in the town.[644]

On December 22, 1994, the Operator submitted the application to consult the business subject to regulation. On January 4, 1995, the town government consulted with the Council under Article 13 (3) of the Ordinance. In the end, the town government made a decision that the facility caused or was likely to cause the depletion of the water source as provided in Article 2 (4-5) of the Ordinance.

The issue of the case and result of court decision should be omitted because they deviate slightly from the main subject of this study. The point for this study is that the national act gave the license power to the prefectural governor in formal; however, the town government also tried to protect the local residents and drinking water source. Certainly, the town government needed to

[639] Ordinance on Drinking Water Source Protection [水道水源保護条例], No. 6 of 1994 in Article 2 (2) provides that "water source protection area refers to a water source relating to the drinking water in the town and an upper reach thereof as designated by the town mayor."
[640] Ordinance on Drinking Water Source Protection in Article 2 (5) prescribes that a "place of business subject to regulation refers to a plant or other place of business to be operated for a business subject to regulation that causes or is likely to cause the deterioration of the water quality of the drinking water or the depletion of the water source, which is recognized as a place of business subject to regulation in accordance with Article 13 (3)" of this Ordinance. Indeed, "business subject to regulation refers to industrial waste treatment and other business that are likely to cause the deterioration of the water quality or the depletion of the water source" as provided in the Appendix of this Ordinance.
[641] Kii-Nagashima Town, "Ordinance on Drinking Water Source Protection" [水道水源保護条例], no. 6 (Kii-Nagashima Town, 1994), art. 13 (1).
[642] Ibid. at 13 (2).
[643] Ibid. at 13 (3).
[644] Ibid. at 5.

avoid so-called double regulation with the license and could not regulate powerfully. However, this case has shown that the town had no legal power, but it tried to protect local water source for the lives and health of local residents.

2.2 Legal Problem of Administrative Responsibility in Municipalities

As noted above, many national acts such as the Water Pollution Prevention Act and the Waste Disposal Act give legal power to the prefectural governors for implementation of the Acts in order to protect the lives and health of residents as well as prevention of water pollution and the living environment. For instance, Article 13 (3) of the Water Pollution Prevention Act formulates that "prefectural governors" "may" order the operator of the workplace in the designated area pertaining to the effluent to improve the means of treatment of polluted water.

However, in fact, municipal entities have responsibilities to prevent and deal with water pollution. Because of the national act formulates that the prefectural governors "may" order the operator of facilities, the prefectural governors have discretion to order or not. Of course, there have been judicial cases that have decided the illegality of inaction of prefectural governors such as the Fukuoka High Court Case. However, it is still uncertain on what conditions that the court decides inaction of exercising regulatory powers of administrative agencies as illegal. Although the prefectural governors are authorized by national statute, even if it cannot exercise enough, the residents have requested non-legal measures to municipalities.

At first, in the form of the *Yoko*, which documented administrative guidance, and then in the form of the local ordinance, which is the form of legislation that the action for protecting the water source comes to be carried out in many municipalities. The survey by the Ministry of Health, Labor, and Welfare lists the names of local entities and the dates of promulgation. According to this survey, it was started early from the 1970s.

Here, the significant legal issue in Japanese experiences for water pollution prevention becomes obvious from the fact noted above. That is the concept of administrative responsibility in Japan that is recognized in multiple layers both of legally delegated forms and non-legal efforts

simultaneously. Of course, the national acts and local ordinances relations have raised the major issue in the Local Autonomy Act. In judicial cases, many plaintiffs insisted that the national acts and local ordinances were dual regulation and illegal, the municipalities have implemented their own measures to respond to the needs of residents. The national acts and local ordinances relations are problems in the Local Autonomy Act in Japan. The municipal efforts should be recognized a fulfillment of administrative responsibility in Japan that aims for water pollution prevention existed in multiple dimensions or multiple layers. For such consideration, it may provide suggestions to analyze the present situation in Laos.

Conclusion

This chapter examined the possible lessons from Japan's experiences on administrative responsibility for water pollution. Based on examinations, the main research findings are follows.

First, the National Diet passed many acts, including the Water Pollution Prevention Act in December 1970 in order to give authorities to national, prefectural, and municipal levels for prevention of water pollution. When administrative agencies tended not exercise their regulatory powers, it sometimes polluted water and brought serious damages to lives and health of residents. In this sense, after legislative reform in 1970, the conflicts occurred and the lower courts decided illegality of inaction of regulatory powers. In 2004, state redress of inaction has started to work well since the Supreme Court decision of Minamata case recognized illegality of both national and prefectural inaction of regulatory powers.

While state redress only compensate for past damages with money and it is not the sufficient remedial measures. Therefore, administrative case litigation of mandamus action is recognized as the role of judicial protection of lives and health of residents. Mandamus action is the measure for inaction of regulatory authority to prevent water pollution. This litigation has introduced since the amendment of ACLA in 2004. The amendment of this Act is increased more possibilities for the person to obtain relief. In Japan, this relatively new legal system has the short history that will be noted whether or not mandamus action will be used by the court practices in case of inaction. In this

regard, newly enactment of this action is considered as a trial phase in the field of water pollution prevention act.

Second, the efforts for protection of water sources in municipalities are different from legal responsibility as mentioned above. It is the challenge of municipal entities to guide an individual or company when explicit the statutory power is not delegated. In this regard, when prefectural governors do not exercise their legal authorities enough, the local residents may request non-legal measures provided by municipalities because they are close with local residents.

In brief, state redress of inaction and administrative case litigation of mandamus action of inaction as the concept of legal responsibility of administration that protect the lives and health of residents in the court decisions form. At the same time, the certain effort as administrative guidance with the business operators in municipalities is also in the form of administrative responsibility. It could be said that the national act form of administrative responsibility aiming at water pollution prevention in relation to residents in Japan is one of the forms that the concept of administrative responsibility exists in multiple dimensions or multiple layers. The research's findings in this chapter will contribute to find the issues of the legal system in Laos for water pollution prevention by referring to the possible lessons from Japan. The next chapter will be the final part of this study.

Chapter IV: Problems of the Legal System for Water Pollution Prevention in Laos

Introduction

In Chapter II of this paper, it attempted the legal system, organs, and actions for water pollution prevention in Laos. In Chapter III, it referred to Japanese experiences as the comparative legal perspective study. In the present chapter, it describes some legal problems in Laos as presented in previous chapters.

This chapter mainly aims to find some conditions of administrative responsibility to supervision in Laos by referring to the possible lessons from Japan. The new core characteristics of legal responsibility of administration will be discussed in this chapter. Under the new system, the residents will receive compensation for any damages caused by the state. However, it is the fact that the Laotian government finds certain deficits of the legal system for water pollution management to be reformed in the globalized society. The lesson from Japanese historical developments of the same legal system will be possible lesson for Laos.

In order to find the possible lesson in the experiences of other countries, it is needed to make clear the difference, while to find some common features between the two countries described in Chapter II and III. This is the indispensable analysis in the final chapter for the research of water pollution prevention law in the future in Laos.

Section 1: Differences and Commons Between Japan and Laos

The objective of this section is to conduct the comparative study between Japan and Laos. In many sights, the two countries are very different contexts, but some values are commons. Some differences are the historical background of the legal mechanisms and concept of responsibility. On the contrary, the common values are water pollution crises and roles of regulatory by the administration. Learning and sharing similarities and common values are beneficial to reform the legal system in Laos.

1. Differences

1.1 Historical Developments of the Legal System

The historical developments of the legal system concerning water pollution prevention in Laos described in Chapter II of this paper. Chapter III presented the Japan's experiences that are the legal system of the foreign country in order to discover a current status (present stage) in Laos. As a result, the legal systems in the two countries are different and paths of its developments.

From the historical situation, the Japanese modern legal system was started in the era of the Meiji Constitution (promulgated on February 11, 1889, and came into effect on November 29, 1890) based on the Prusso-German model. Under the Meiji Restoration, the government aimed to move the country on modernization.[645] To achieve the goal, the Meiji government established massive industrial developments; however, it came with serious pollution problems. Many people died, lifelong disabilities, and some diseases passed to subsequent generations.[646] In prewar Japan, there was no pollution act (law), national regulation, and no effective ways to deal with pollution.[647]

After the Second World War, the model of Prussian adds the pattern of Anglo-American (as the occupation force). Japan reformed the local entities by introducing the American democratic elements.[648] Chapter VIII (Arts. 92-95) of the Constitution and Local Autonomy Act were enacted to promote autonomy. However, Japan mixed the model of prewar integrationist with the model of American separationist in early stages.[649] After 1970, the extraordinary 64th Session of the National Diet in December 1970 called "pollution session" (*Kogai Kokkai*) enacted and amended thirteen environmental acts such as the Water Pollution Prevention Act and other acts.[650] Indeed, the

[645] Usui, *Marketing and Consumption in Modern Japan*, 13.
[646] Kagawa-Fox, *The Ethics of Japan's Global Environmental Policy: The Conflict Between Principles and Practice*, 3.
[647] Miyamoto et al., "Japan," 42–43.
[648] Muramatsu and Iqbal, "Understanding Japanese Intergovernmental Relations: Perspectives, Models, and Salient Characteristics," 4.
[649] Ibid. at 5.
[650] F.D. Barrett and Therivel, *Environmental Policy and Impact Assessment in Japan*, 39.

extraordinary 65th Session of the National Diet in 1971, the 66th in 1972, and the 67th in 1973 sessions were strength the Japanese environmental legislation.[651]

By comparing with Japanese experiences, the Laotian legal system for water pollution prevention must be found out as the different one. The legal system in Laos, including the environmental protection started to change when the government transformed from centrally planned economy into open-market economy in 1986.[652] In 1990, Laos reformed the legal system in order to provide for open-market economy.[653] Therefore, the National Assembly promulgated the Law on Water and Water Resources on October 11, 1996 (amended in 2017).

The historical developments of the legal system in both countries are completely differences. Because of it may be the gradual developments in the Japanese water pollution act over a hundred year. Even after the Constitutional changed, it was needed around 25 years for the transformation of basic value judgment from the freedom of economic developments to protect lives and health of residents. In short, the legal system of water pollution prevention in Japan, as described in Chapter III has experienced gradualism or step-by-step approached to problems of water pollution.

On the other hand, the Laotian government has faced serious water pollution problems since the domestic markets partially opened in the 1980s. In the word of "water pollution," the rapid technology innovation has brought serious damages to the river waters as well as lives and health of residents in agricultural country. Therefore, the gradualism approaches in Japanese legal developments cannot adopt by the Laotian government. In fact, the six environmental laws, Prime Minister's Decrees, and Minister's Agreements have enacted in rapidly after 1996, but it is difficult for practice of administration to implement the new legal system properly because of the shortage of historical experiences. Instead, practice of the old type arbitration and socialist style of petitions have been continued, even after enactments the new legal system in 1996.

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[651] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 27.
[652] People's Supreme Court of Lao PDR et al., *Economic Dispute Resolution*, 3.
[653] ADB, "ADB Economics Working Paper Series - the Lao Economy: Capitalizing on Natural Resource Exports," 1.

If the Laotian government needs an effective legal system, it will be needed the responsive legal system to the unique characteristics of Laos's history in order to control the new legal system in the proper manner. As the challenge, this study focuses on the concept of responsibility as the following.

1.2 Concept of Responsibility as a Leading Thread

As the results of this study, the concept of responsibility in both countries is different meanings. This concept in Japan is considered as administrative responsibility. On the other hand, the concept of responsibility in Laos means violators responsible for the state.

The legal system and cases of state redress of inaction have introduced in order to protect the lives and health of residents. In addition, mandamus litigation has been recognized since the amendment of ACLA in 2004. This is considered to push administrative agencies to exercise their legal powers of rendering administrative disposition.[654] The residents use this litigation. The movement of residents in the late of 1960s has required not only the ministries and prefectures that have legal powers, but also municipalities that do not have legal powers to grapple with serious water problems such as the serious pollution of drinking water.

To compare with Japan, the concept of responsibility in Laos refers to violators or polluters responsible for the state: administrative sanctions, criminal punishment, and violator responsibility by dispute resolution in local levels. Criminal punishment is the sanction against an offender who causes the lives and health of residents.[655] Besides, violators' responsibility by dispute resolution in local levels is also counted as the violator responsibility for the state in Laos. This is the traditional legal system in Laos.

In short, the traditional custom of the village level arbitration and the punishment system by police departments and administrative organs as continuum exist in Laos, even after enactment the new six laws. The important legal issue here is to transform the police administration to the new

[654] Okubo, "Judicial Control Over Acts of Administrative Omission: Environmental Rule of Law and Recent Case Law in Japan," 190–91.
[655] Kiettisak, Former Deputy Minister of Justice.

environmental protection administration such as the Japanese experiences in the 1970s. In order to find some conditions is not only differences, but also commonalities should be discussed.

2. Commons

2.1 Water Pollution Problems

In Japan, pollution problems can be found as far back as the 1600s.[656] Pollution crises mainly linked to economic activities.[657] In half of the 1800s, pollution problems started to find more in particular in the 1880s when the country introduced the Industrial Revolution.[658] The Ministry of the Environment reported that the Ashio Copper Mine known as the first pollution case in Japan."[659] Other instances of pollution in Japan are in Osaka, Amagasaki, and Kawasaki.[660] In the Meiji regime, the state proposed to transform Japan into the modern and wealthy.[661] Hence, the Meiji government built modern mines and industrial factories.[662]

After the Second World War in 1945, Japan recovered the country and economic infrastructure. In 1956, the state stated the "Economic White Paper" that was "no longer in the postwar period."[663] Japan determined pursuit the industrial growth from 1950 to 1970 that led many majors of pollution occurrences more.[664] Pollution caused the living environment, human bodies, and human dignity.[665] In 1956, Minamata disease was discovered in Japan. Pollution caused the lives of many people, and some of them left with lifelong disabilities, and some diseases passed on to subsequent generations.[666]

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[656] Miyamoto et al., "Japan," 40.
[657] F.D. Barrett and Therivel, *Environmental Policy and Impact Assessment in Japan*, 27.
[658] Miyamoto et al., "Japan," 40.
[659] Ministry of the Environment, "Japanese Environmental Pollution Experience."
[660] Miyamoto et al., "Japan," 40.
[661] Usui, *Marketing and Consumption in Modern Japan*, 13.
[662] J. Smethurst, "The Diffusion of Western Economics in Japan," 269.
[663] Kagawa-Fox, *The Ethics of Japan's Global Environmental Policy: The Conflict Between Principles and Practice*, 3.
[664] Ibid.
[665] Avenell, *Transnational Japan in the Global Environmental Movement*, 24.
[666] Kagawa-Fox, *The Ethics of Japan's Global Environmental Policy: The Conflict Between Principles and Practice*, 3.

In comparatively study with Japan, Laos opened more opportunities for foreign investors across the world from Asia, the West, and other nations. As a result, this transition comes with water pollution and environmental impacts. The WHO reports that Laos is rapid economic growth, and it starts to impact the environment, pollution, and health of the people.[667] The WEPA also reports that factories, mines, agriculture, and urbanization mainly cause pollution in Laos.[668] The World Bank reports that only sixty-four percent of people have access to safe drinking water in Laos.[669] The UNDP further reports that pollution in Laos increases due to the activities of agriculture, industrial, mineral exploitation, and urbanization.[670]

Currently, the pollution problems in Laos closely similar to Japan discovered in prewar and early postwar Japan. Hence, water pollution crises in both societies are commons characteristics. Water pollution has the risk of violation the most significant fundamental rights of human lives and health. Therefore, beyond the differences in economical social developmental stages, this is relatively easy problem to discover common issues. In other words, it is environmental issues such as water pollution that have more strong nature of commonality to different societies than the unique historical nature that each society has experienced. The two countries have commonality regardless of whether they are socialist or capitalist in the sense that residents have expected the administrative regulatory role to the private violators.

2.2 Regulatory Roles of Administration

Water pollution prevention in Japan was challenged by national and local administrations that not court rules in the civil disputes. Both national government and local entities consider the task of securing the industry's compliance with pollution regulations to essentially share responsibility in Japan.[671] Some regulatory roles of Japanese administration for environmental field

[667] WHO, "Health and Environment."
[668] WEPA, "State of Water Environmental Issues: Laos."
[669] World Bank, "Lao PDR - Environment Monitor," viii.
[670] UNDP, "Clean Water and Sanitation," *UNDP*, accessed March 8, 2019 http://www.la.undp.org-/content/lao_pdr/en/home/sustainable-development-goals/goal-6-clean-water-and-sanitation.html.
[671] Morishima, Fujikura, and Gresser, *Environmental Law in Japan*, 279.

could be found in the crises of Minamata, Toyama, and other cases.[672] Local entities play the essential parts in regulatory efforts.[673] For examples of the 1970 cases for heavily industrialized areas, local entities started to deal with pollution problems and antipollution measures.[674] Even in Minamata case, the Kumamoto prefecture finally decided to prohibit fishing in the Bay.[675] On the other hand, the Ministry of International Trade and Industry (presently the Ministry of Economy, Trade, and Industry) gave guidance to Chisso to install a plant effluent treatment system on October 1959.[676]

In Laos, the regulatory role of administrative organs is greater than the court rules in civil disputes. This is similar to Japan when water pollution cases occur, administrative organs may exercise their legal authorities to the private companies, but the authorities of administrative organs are not exercise properly. It may be expected that it will be the legal issues of illegality of inaction of administrative organs in the future in Laos.

3. Legal Problems in Laos

The two legal issues in Laos discussion are finally apparent. First, the conceptual turns from the concept of violators responsible for the state to administrative supervisory responsibility to violators. Second, it is to clarify the issue in the transition period until the turn is realized. The reason is that the first issue is the medium and long-term issue, and it is expected that the long time is required for realization.

Of course, there is no law concerning state redress and administrative case litigation in Laos, as described in Chapter I. Currently, the legal system in Laos does not recognize the legal responsibility of administration. Judicial review of administrative action also does not introduce in Laos. For this reason, the persons cannot seek administrative disposition such as suspension order to protect their lives and health and the living environment. However, even the legal system in Laos

[672] Ibid. at 252.
[673] Ibid. at 267.
[674] Ibid.
[675] Ministry of the Environment, *Lessons from Minamata Disease and Mercury Management in Japan*, Tokyo (September 2013), 4.
[676] Ibid. at 5.

does not guarantee state redress and administrative case litigation, but the residents have filed certain complaints (petition system) for administrative organs to seek protection of their lives and health as already stated. For instance, when the Minister of Natural Resources and Environment tends to ignore its duty, the person can report to the Disciplinary Committee, Ministry of Home Affair, or Central Committee of the Party to issue the sanctions such as warn, re-education, reduction salary, or dismissal. In addition, the persons can also report to the Prime Minister's Office in order to impose to the Prime Minister for consideration of any inaction. The persons can further petition for justice to the National Assembly for dealing with any cases when administrative organs do not perform their legal authorities.

Unlike Japan, there is also the custom in Laos that the residents demand administration to exercise its regulatory authorities. In theory, this legal study will try to find some possible lessons from the Japanese legal system to prevent the legal problems in Laos in the future. For this purpose, the next section will try to clarify the legal issues in line with some cases in Laos.

Section 2: From Violators Responsibility to Administrative Responsibility

1. Case Studies

Three case studies will be pointed out in this section: Banana Plantation, Lao-Indochina Tapioca, and KPS Paper Mill.

1.1 Banana Plantations in Bokeo Province Case

The Laotian government has encouraged agriculture investments from abroad through contract farming and land concessions in the central, northern, and southern of Laos.[677] Banana plantations are one of the agriculture investments by abroad (mainly China) and domestic investors in many parts of the nation. In Bokeo province, bananas exported 56,900 tons with 32.5 million

[677] Satomi Higashi, *Impacts on Regional Land Use from Investment in Banana Contract Farming by Chinese Companies: Case Study in Oudomxay Province, Northern Laos*, Vientiane (Vientiane: Mekong Watch, June 2015), 2.

UDS incomes in 2014, and it was 65,700 tons with 43.5 million USD incomes in 2015.[678] However, the plantations used herbicides and pesticides that poisoned many land, local streams, ponds, and rivers.[679] Local water resources contain chemicals and environmental impacts. Indeed, a few workers have died, and some villagers have an illness as well as health problems.

In this case, the Bokeo Provincial Governor Office approved plantations of 2,382.7 hectares (13 abroad and 5 domestic companies). However, the Bokeo District Office of Planning and Investment reported to the Governor of Bokeo province of 8,977 hectares (6,595 hectares illegality). The plantations used pesticides, herbicides, and rodenticides. As a result, they killed fish in the streams and environmental impacts. According to a government official in Pha Oudom district, one worker in a banana plantation was more seriously ill and treated in a hospital. An owner of plantation paid the amount of 500,000 LAK (approximately 6,600 JPY) to suffer for treatment.[680] However, the victim died due to exposure by chemicals.

Therefore, the Governor of Bokeo Province, Khammun Sounvileuth, issued the Order, No. 697, June 26, 2014 to suspend for consideration and approved the new banana plantation projects.[681] During January to August in 2015, the Bokeo Provincial Office of Public Health reported that 29 workers at banana plantations treated at its public health. Two of them died due to the chemical used by plantations.[682] For this reason, the new Governor of Bokeo Province, Khamphanh Pheryyavong, issued the Order, No. 1238, July 16, 2015 to reconsider to deal with plantations in rice fields and

[678] Sypha Chanthavong et al., "Implementation of Legal Measures Toward the Violator of Land Lease-Concession Contracts and Impacts to Environment Case Study: Banana Farms in Bokeo Province" [ການນຳໃຊ້ມາດຕະການທາງກົດໝາຍຕໍ່ ຜູ້ລະເມີດສັນຍາເຊົ່າ-ສຳປະທານທີ່ດິນ ແລະ ສ້າງຄວາມເສຍຫາຍແກ່ສິ່ງແວດລ້ອມ ສຶກສາກໍລະນີ: ການປູກກ້ວຍ ທີ່ແຂວງບໍ່ແກ້ວ], *Faculty of Law and Political Science, National University of Laos*, 2017, 14.
[679] Tappe, "On the Right Track? The Lao People's Democratic Republic in 2017," 173–74.
[680] Ounkeo Souksavanh, "Chinese Banana Plantations Lose Their Appeal in Laos as Pollution Concerns Grow," accessed September 8, 2018 https://web.archive.org/web/20180103161447/http://www.rfa.org-/english/news/laos/chinese-banana-plantations-04142016151133.html.
[681] Governor of Bokeo Province, "Governor's Order of Bokeo Province on Suspension to Consider and Approve the New Projects of Banana Plantations in the Province" [ຄຳສັ່ງ ຂອງເຈົ້າແຂວງບໍ່ແກ້ວ ວ່າດ້ວຍການ ໂຈະການພິຈາລະນາ ແລະ ອະນຸຍາດໂຄງການລົງທຶນໃໝ່ ສຳລັບການປູກກ້ວຍຫອມໃນເຂດທົ່ວແຂວງ], no. 697 (Bokeo Provincial Governor's Office, June 26, 2014).
[682] Chanthavong et al., "Implementation of Legal Measures Toward the Violator of Land Lease-Concession Contracts and Impacts to Environment Case Study: Banana Farms in Bokeo Province," 23.

irrigation areas.[683] The Governor also issued the Order, No. 789, June 11, 2016 to prohibit of buying, sale, import, and use any herbicides and pesticides.

The activities of banana plantations violated Article 53 (3) of the Law on Chemicals Management: "prohibit of burn, bury, throw away and discharge chemicals or hazardous chemical waste into the environment and society in the way not consistent to techniques."[684] The plantations also violated in Part 6 (Arts. 48-50) of the Decree on Pesticide Management, No. 258, August 24, 2017.[685] Therefore, the Governor of Bokeo province permanently suspended the activities of 18 Chinese plantations in Tonpheung and Huayxai districts in 2017.

Of course, this problem is the problem of occupational health at work not the problem of water pollution. However, since this case is also the drainage case, so it is introduced here. What will happen if this case occurs in Japan? Of course, it depends on the detailed facts, but as the Minamata disease case that the Supreme Court decision in 2004 stated that there were mainly three illegal factors. In other words, whether the danger existed, did the administration foresee the outcome, and did it could avoid the outcome? For Laos, the existences of such consideration factors are fresh concept, but in this case, it may be argued what conclusions can be obtained if these considerations are applied.

1.2 Lao-Indochina Tapioca Case

The Lao-Indochina Tapioca Factory Co. Ltd established in July 2007 within granted investment permit registration of five million USD. This factory located at Natham village, Pakngum district, Vientiane Capital.[686] According to this factory, it firstly exported tapioca of 340 tons to two

[683] Governor of Bokeo Province, "Governor's Order on Problems of Banana Plantations in Rice Fields and Irrigation Areas in Bokeo Province" [ຄຳສັ່ງ ຂອງເຈົ້າແຂວງ ວ່າດ້ວຍການແກ້ໄຂບັນຫາການປູກກ້ວຍຫອມ ໃສ່ເນື້ອທີ່ນາ ແລະ ເຂດຊຸມລະປະທານ ຢູ່ແຂວງບໍ່ແກ້ວ], no. 1238 (Bokeo Provincial Governor's Office, July 16, 2015).
[684] Article 53 (5-8) prohibits to produce, import, possess, and uses hazardous chemical. "Store hazardous chemicals without authorization." Article 54 (2) prohibits any "operate the chemical business, which adversely affects the lives and health of residents beyond the prescribed standards."
[685] Minister of Agriculture and Forestry, Thongphet Vongmany, issued the Agreement on Pesticide Management, No. 0238, February 14, 2019 in order to prevent chemicals use by agriculture activities.
[686] Ounkeo Souksavanh, *Problems of Dead Fish at Nong Han Lake* [ບັນຫາປາຕາຍຢູ່ໜອງຫານ] 1 (National Land Management Authority, Swiss Agency for Development and Cooperation SDC, and Village Focus International 2009).

large companies in China: Eastern Trade Development in Guangxi and TaiTong Trading Co., Ltd in Shanghai on July 22, 2008.[687] Nonetheless, after operation for a year, it polluted Nong Han Lake.

According to Vientiane Times Correspondent, Phonsavanh Vongsay, the heavy rainfalls caused wastewater reservoir cum treatment plant overflow and then toxic water accidentally flowed into the lake on May 21, 2009.[688] As a result, pollution killed a large amount of fish and shellfish as well as destroyed the villager's livelihoods.[689] The lake had one of the essential food sources for more than a thousand villagers. Around seven percent of local villagers supplied fish from the lake to the markets. For the impact, many villagers lost of income roughly up to 100,000 LAK (approximately 1,400 JPY) per day since they could not supply fish to the markets. Therefore, administrative organs got involved as follows.

First, villagers reported to the Chief of Village, Phimmason Somsanouk, and then the Chief announced to the villagers for controlling their livestock due to water contamination in the lake that could be dangerous for both people and animals. Second, Somsanouk submitted a report to the Pakngum District Office. Third, this office forwarded the report to the Ministry of Natural Resources and Environment. According to the researcher, Ounkeo Souksavanh,[690] this ministry was inaction to exercise its regulatory power to supervise the factory under its missions as provided on the Prime Minister's Decree, No. 435/PM, November 28, 2011 (presently No. 145/PM, May 8, 2017).

As a result, villagers reported to the Prime Minister's Office under the petition system as provided in Article 41 of the 2003 Constitution (before amendment in 2015) and Article 2 (1) of the Law on the Handling of Petitions (Law No. 07/NA of 2005, before amendment 2014 and 2016). Therefore, the Government Secretariat Office (under the Prime Minister's Office) and the Ministry

[687] Lao-Indochina Tapioca Factory Co. Ltd, "Tapioca Factory – LIG," accessed June 23, 2019 http://www.laoindochina.com/en/tapioca-factory/.
[688] Phonsavanh Vongsay, "Cassava Processing Plant Cleans Up Its Act," Vientiane, *Vientiane Times*, May 25, 2009.
[689] Phonsavanh Vongsay, "Dead Fish Test Results to Be Made Known This Week," Vientiane, *Vientiane Times*, May 26, 2009.
[690] Ounkeo Souksavanh reported in his work namely *"Problems of Dead Fish at Nong Hane Lake"* [ບັນຫາປາຕາຍຢູ່ໜອງຫານ] in 2009. This project supported by the Swiss Agency for Development and Cooperation SDC and Village Focus International.

of Industry and Commerce exercised their regulatory powers on May 22, 2009.[691] After that, they organized a special investigative team for inspection and test of fish killed.[692] The final inspection found out that chemicals polluted in wastewater by the Lao-Indochina Tapioca Factory Co. Ltd.

On May 22, 2009, the Government Secretariat Office and Ministry of Industry and Commerce held a meeting for reconciliation between the victims and Director of the factory, Sengmaly Sengvatthana.[693] In the end, the factory admitted to take actions as follows. (1) Removal of dead fish floated on the lake and burned were the joint effort with the factory, villagers, and district, the Water Resources and Environmental Administration, and the Ministry of Industry and Commerce.[694] (2) The factory released 500,000 fish into the lake every year by 2009 to 2011 and organized the long-time activities to replace the environment.[695] (3) The factory compensated for fish killed by 10,000 LAK (approximately 152 JPY) per kilogram where collection amount total of 1,352 kilograms.[696] (4) The Deputy Government Secretariat Office under the Prime Minister's Office, Phouvong Vongkhamsao, ordered the factory pumping out wastewater from ponds near stream and clean within one week.[697] Vongkhamsao also advised to establish a team and cooperated with district authorities to inspect the area in order to make sure the lake clean.[698] (5) The factory needed to build eleven wastewater treatment reservoirs with quality standards.[699] The wastewater treatment reservoirs must be the width of 50 meters, length of 250 meters, depth of 8 meters, and land over 20 hectares.[700]

When referring to the Japanese legal system as discussed in Chapter III, it is understood that the damage of this case was the loss of fishery not lives and health of residents. For this reason, since it is not the case where the dead came out, it is the case of monetary compensation becomes the

[691] Vongsay, "Cassava Processing Plant Cleans Up Its Act," 1.
[692] Phonsavanh Vongsay, "Cassava Processing Plant Cleans Up Its Act," *Vientiane Times*, May 25, 2009,1.
[693] Vongsay, "Cassava Processing Plant Cleans Up Its Act."
[694] Ibid.
[695] Ibid.
[696] Vongsay, "Dead Fish Test Results to Be Made Known This Week," 2.
[697] Vongsay, "Cassava Processing Plant Cleans Up Its Act."
[698] Ibid.
[699] Souksavanh, at 5.
[700] Lao-Indochina Tapioca Factory Co. Ltd, "Company Profiles – LIG," accessed June 24, 2019 http://www.laoindochina.com/en/company-profiles/.

remedy for the damage in the past. If the readers recall the court case in Japan as discussed in Chapter III, the substance judgment of the necessity of relief was depending on whether the contents of the infringed interests are life or health. It should be recalled that the Supreme Court decision of Minamata disease was the case of serious physical and mental disability.

One possible conclusion would be that in this case, flexible loss compensation by the arbitration may be considered as well as the legally state redress system. It is because of flexible arbitration, including job mediation may be more suitable for compensation for the living of fishermen than monetary compensation for the past damages.

1.3 KPS Paper Mill Case

KPS Paper Mill is the paper-manufacturing factory located at Illai village, Nasaythong district, Vientiane Capital. Under its operations, the factory did not install a system of wastewater treatment, but it provided in the project of factory documents lodged with the Ministry of Natural Resources and Environment.

In June 2005, the factory discharged wastewater into the ponds and overflowed into the Houay Say Khao Stream without appropriation treatment for reducing of the chemical oxygen demands or biological oxygen. In addition, the wastewater basin broke and overflowed into near rice fields and fishponds of local villagers due to the massive storm.[701] The impacts also caused the "survival of aquatic animals (shrimp, fish, shellfish, and snails) and other lives forms depending on the ecosystem" of two villages: Ilay and Numkeng.[702] Moreover, it affected the daily activities of local people's livelihood such as fishing and vegetable productions. About 90 percent of villagers used water from the stream to grow rice, vegetable, cabbage, snake bean, pepper, lettuce, corn, and tomato plants.[703] According to a survey in 2009 conducted by Kaisorn Thanthathep, Phousavanh Douangphila, and Somphone Khamphanh, "Illai households loss (rice and fishery) whole villages

[701] Kaisorn Thanthathep, Phousavanh Douangphila, and Somphone Khamphanh, *An Assessment of Paper Mill Wastewater Impacts and Treatment Options in Vientiane Capital City, Lao PDR*, Vientiane (Vientiane: Economy and Environment Program for Southeast Asia, October 2009), 2.
[702] Ibid. at 15.
[703] Ibid. at 8.

were 190,905 USD per year or about 408 USD per household.[704] Furthermore, it blamed the skin irritations suffered to local villagers.[705] This issue affected the health of local villagers, where some of them got stomachaches, trachoma, and nausea.[706]

For such reasons, the conflict started between the villagers and factory. First, the villagers reported to the chief of village and then reported to the local authorities at the district office. However, the district office had no legal power to order or suspend the activity of the factory. Therefore, the district office reported to the Science Technology and Environment Agency (abolished, presently the Ministry of Natural Resources and Environment) under the Prime Minister's Office to exercise its legal authority and issued an order for appropriate action.[707] Nonetheless, this organ as a supervision level could not provide the needed advice and tended to ignore to exercise its regulatory authority to prevent and deal with the problem.

Therefore, local organs at the district office tried to mediate the conflicting parties. As a result, the factory admitted compensating for losing fish and rice fields under Article 46 (3-4) of the Environmental Protection Law (Law No. 02-99/NA of April 3, 1999, before amended in 2012). This Article provided that "a person or organ shall be fined if they cause the quality of water, soil, or air to deteriorate below the prescribed quality standards. The discharging excessive amounts of vibrations, noise, radiation, colors, odor, toxic chemicals or radioactive substances, thus violating established standards or other regulations and being hazardous to the health of people, animals, plants, and the environment."[708]

This case is the example of damage to the health of residents living near factory as well as damages to agriculture and fishery. After all, the loss was compensated rather it should be noted that residents reported to the Science Technology and Environment Agency to exercise its legal power. What will happen if this incident occurring in Japan? It depends on the facts that the existence of the

[704] Ibid. at 14.
[705] Wastewater from the factory is not only blamed for the skin irritation of the villagers, but also negative impacts the properties, livelihoods, and the living environment.
[706] Thanthathep, Douangphila, and Khamphanh, "An Assessment of Paper Mill Wastewater Impacts and Treatment Options in Vientiane Capital City, Lao PDR," 14.
[707] Ibid. at 2.
[708] Environmental Protection Law [ภิดฒายอ่าด้อย ภาบปิภปักธัภสาสิ่งแอดล้อม], arts. 46 (3-4) (1999).

danger and predictability by administration as well as the possibility of avoidance of results will be considered. If this case is recognized based on such the idea referring to case study in Japan, it may be argued in Laos what kind of conclusion.

2. Conditions of Administrative Responsibility in Laos

In the previous parts, it considered three cases of Banana Plantation, Lao-Indochina Tapioca, and KPS Paper Mill. By considering how these three cases can be considered if they are happened in Japan, this study tries to discover the issues for Laos.

The first issue is that the allocation of responsibility is vague in each case. For instance, in the first case of Banana Plantation, the Ministry of Agriculture and Forestry was reported to exercise its power to prevent the agriculture chemicals as provided in Article 70 of the Law on Agriculture. According to Article 52 of the Decree on Pesticide Management (No. 258/PM, August 24, 2017), the ministry has power to conduct monitoring, preventing, controlling, and supervising the provincial levels.

In the second case of Lao-Indochina Tapioca, the director of the factory, Sengmaly Sengvatthana, was liable for compensation of damages as the civil case.[709] However, according to Souksavanh Oukeo, the factory had not enough wastewater treatments, but an organ approved a license and allowed the factory to start operations.[710] In this regard, Article 53 of the Law on the Processing Industry prohibits any organs for approving any licenses without the standards of wastewater treatment. This Article further prohibits the failure to report any illegal industrial activities.[711] Therefore, the license had illegality and inaction of revocation of license in considered as the legal issue.[712]

In the third case of KPS Papers Mill, the Science Technology, and Environment Agency (abolished) had supervision power as provided in Part VII (Arts. 35-36) of the 1999 Environmental

[709] Vongsay, "Cassava Processing Plant Cleans Up Its Act."
[710] Ibid. art 1.
[711] Ibid. art. 53.
[712] Local level may allow a factory to operate without a license and does not report the fact of illegal operation to the central level. Article 53 Law on the Processing Industry attempts to stop this practice of local levels.

Protection Law (before amended in 2012). Article 36 (1-13) of this law formulated the duty of this organ that it must supervise, monitor, and inspection the activities of operations in general matters. There is a broad room for judgments, which activities must do if requirements meet and requirement are not written. In other words, one of the conditions for realizing the administrative responsibility is that each new law after 1996 should be reconsidered to make clear which organ owes the ultimate responsibility and what actions are necessary for more clear terms.

The second issue is necessary for administrative transformation from the police to original water pollution prevention. As mentioned in Chapter III, the illegality of administrative inaction has actually come to be disputed by the courts and the new theories were born in Japan because the basic value conversion was experienced. In this respect, this study has somewhat optimistic outlook that if the rapid technological innovations in Laos also reveal the harm to the lives of ordinary people, the legal developments for prevention of harm will be started in the shorter time than Japanese experiences. However, it is impossible for paradigm shift from violators' responsibility to administrative responsibility occur easily in a short time that takes a long time.

Section 3: A Role of Mediator at Village Level

As described in the previous section, this study is to elucidate the structure that legal liability of regulatory administration, but it also anticipates that it will take a long time to become reality. In the short term, the arbitration system traditionally in Laos should also be used. In the following, this study will show the conclusion by stating the benefits that the Laotian society is not well aware of it.

This part aims to learn possible lesson from Japanese administrative efforts in municipalities in order to find the legal issue for the construction of water pollution law in Laos. As mentioned in Chapter III, in Japan, prefectural governors as the administrative agencies are delegated to render administrative dispositions and have legal responsibility to prevent water pollution. At the same time, the municipalities have tried their own efforts such as protection water resources notwithstanding without of delegation of the national statutes. The author is not here to insist on the

importance of local autonomy. Instead, one of the multi-layered forms of the legal system in Japan is found here.

On the other hand, the current situation in Laos is shown in three cases in Section 2 of this Chapter. For example, in the second case of Lao-Indochina Tapioca, it doses not matter which organ is responsible under the six laws. Instead, under the initiative of the Deputy Government Secretary Office, the special investigation team was set it. The factory, victims, and the organs removed of dead fish with the joint efforts. Also, in the third case of KPS Paper Mill, regardless of legal liability, the violators made monetary compensation by the efforts of the village organs performing an arbitrative function.

This research emphasizes that there is the legal issues to clarify the legal responsibility of the regulatory administration in Laos. Emphasizing this; however, it is also the fact that the dispute resolution process in the current situation in Laos as mentioned in Section 2 of this Chapter has unique characteristics that the legal system in Japan does not have such issues. It is the arbitration efforts at the village levels under the higher-level supervision. Of course, in the case of serious health damages, the administration should be considered to have legal responsibility for prevention of damages. However, in the case of water pollution makes it difficult for fishermen to lives by the death of fish, even if monetary compensation is permitted because state redress of inaction of regulatory powers in the future, it does not provide an adequate guarantee of daily life. In this case, as a matter of course, state redress of inaction of regulatory powers in only compensation for past damages with money and it is not sufficient remedial measures. On the other hand, live support such as job mediation cannot be expected to state redress or administrative case litigation system.

One of the conclusions drawn from the above is the importance of the legal system as such state redress and administrative case litigation in Japan that the author has repeatedly insisted. However, the author concludes that it is necessary to affirm the multi-layered form of the legal system for water pollution law. It is while the national legislation should be defined to respond the administrative agencies and delegate significant regulatory powers to the agencies and the difficult roles of the legal system should be affirmed positively. For Laos, the existing arbitration system is

important in two ways. First, it is necessary at the present time until the legal system such as state redress system will be established in the future. Second, as mentioned above, the arbitration system should not disappear for flexible the living compensation or dairy life supports that it is insufficient for monetary compensation.

For instance, the five approaches or actions for past pollution of lake were taken in the Lao-Indochina Tapioca Case as described above. The suggestion from discussion of the Japanese legal system in Chapter III makes that it is possible to discover that there are multiple legal system with different dimensions. It can be said that (4) and (5) types of the activities correspond to administrative regulatory responsibility. The civil tort liability is (3). On the other hand, (1) and (2) is different to explain in the administrative regulatory responsibility. However, it cannot be said that the efforts of (1) and (2) are unnecessary. Apart from the legal administrative responsibility, this should be continued as the form of responsibility as the broad complaint processing system.

In any case, it is certain that there is the legal issue of discovering the different roles of legal system that exist in the confused manner in conflicts in Laos and discussing their proper division of roles. Here it was only discussed with the roles of arbitration at the village levels as one of them. With the combination of medium and long-term problems and short-term problems, it seems that further specific research from the perspective of this study is necessary in the future.

Conclusion

This chapter presents the problems of the legal system for water pollution prevention in Laos and it tries to learn the possible lessons to apply in Laos from the legal perspective of Japan. Under the examinations, the main research's findings in this chapter are followed.

First, many points are different between Japan and Laos, but some are commons. Two main different points in both countries are found in this chapter: historical developments of legal system and concept of responsibility. In Laos, the concept of responsibility means violators responsible for the state, but the concept of responsibility in Japan considers state redress and mandamus action. Apart from the different point of views, there are two main commons. Water pollution crises are

commons characteristics. The regulatory roles of administration to deal with water pollution by central and local levels in the two countries are commons.

Second, the location of responsibility is vague in Laos as described in three case studies as mentioned above. The environmental laws are too vague, and they are not clear, which organs are responsible for the public. In this regard, the condition to realize the administrative responsibility that the new environmental laws after 1996 should be made clear which organs are responsible for the public and what actions are needed in order to make clear its responsibilities. In Japan, illegality's inaction of administration has come to dispute by courts due to the fundamental values are experienced. The paradigm change in Laos from violators responsible for the state to administrative responsibility by referring to the possible lessons from Japan can be prevented the problems in the near future in Laos.

Third, the system of legal liability of regulatory administration in Laos will take a long time. In the short term, the traditional arbitration system in Laos is used to deal with the conflicts of water pollution. The arbitration system is the efforts at the village levels under the supervision of the higher levels. This system is significant until the legal system of state redress establishment. In this respect, it considers the possible from administrative efforts in municipalities of Japan in order to find the legal issues to enact a law on water pollution. The multi-layered form of the legal system can be found here. The national law should be defined the responsibility of administration and delegated regulatory powers of local organs.

To sum up, this chapter illustrates the reason why the legal system in Laos fails to prevent water pollution. When Laos applies the Japanese concepts, the legal system in Laos can be protected the lives and health of residents for inaction of the state. Therefore, Laos refers to Japan for determination changed from violators' responsibility for the state to administrative responsibility. This part is the final chapter of this paper. The next part will be a conclusion, and it will summarize the main points of this study. The next following part will further reconsider the legal perspective of Japan for Laos.

Conclusion

Laos transformed from centrally planned economy into market economy in 1986. As a result, the Laotian government faces the protection of lives and health of residents. It is unrealistic in Laos that the courts decide the certain proper remedies in civil disputes as in many Western societies. It is the most important to pay attention to the legal structure that administrative organs have supervised powers to violators. Therefore, this study referred to the historical developments of the environmental protection legal system in Japan for objectively analysis in the current situation in Laos and to find the legal issues in the future (see Chapter III).

In Laos, where the laws for water pollution have been enacted in 1996, the implementation is unclear and the legal system is not used in effective manner. The current situation is that some disputes are so to speak personally arbitrated at the village levels (see Chapter II). While examining Japanese experiences, this research paper found that the present situation of water pollution crises in Laos similar to Japan faced in the past. Under examining the legal mechanism in Laos and Japan's experiences in Chapters II and III, this will propose three legal problems that would be solved in the future as follows.

First, this study proposes the legal problems of how does the legal system in Laos fail to prevent water pollution. Accordingly, the legal system in Laos considers to violators responsible for the state. In this sense, even when an administrative organ has regulatory powers such as monetary sanction a private company, whether or not exercises power decides conveniently or arbitrarily by the members of organs. For instance, when the serious impact on water pollution causes, it can be held as the light punishment and even inaction are not uncommon.

In this respect, Laos is in the opportunistic form of administrative punishment against violators. In general, the environmental laws provide missions and obligations of the environmental organs, but some of them ignore, inaction, or non-exercise regulatory powers to prevent water pollution, sanction, and punish the violators. Many diseases have caused the lives and health of residents due to inaction by the state. Therefore, the kind of paradigm changed and structural

transformation are required in the logic. In order to discuss this structural changed from violators' responsibility to administrative responsibility, the author needs to discuss the general concept of responsibility in the previous chapter (see Chapter I).

Second, in order to structural transformation in the future, this study discusses on what are aspects of other countries' legal systems worthy of reference for Laos. In Japan, since the 1970s, the legal phenomenon has been shown in which the victims pursued not only private violators, but also administrative responsibility for ignorance of exercising of regulatory powers. For example, state redress as the concept of legal responsibility of administration protects private persons against the state in Japan. In this regard, when an administrative agency does not perform its mission, inaction, or non-exercise its regulatory powers, a court may be held the state liable for the past damage.

However, it needs to pay attention to the fact that it took nearly 30 years for the Supreme Court to judge that the state and prefectural government inaction to exercise regulatory powers are illegalities in Minamata disease case. It is also noted that scholars such as Harada and Shimoyama have commonly constructed their theories for conversion from discretion to duty, although their logics were different. The role of the legal theory was also significant. As it will see later, without those judicial cases and theories, Laos needs to explore the legal conditions for structural transformation by examining the historical developments of other countries like Japan more specifically rather than this general study. In order to overcome the opportunism in Laos as mentioned above, the legal phenomenon of discretionary shrinking or contraction in Japan should be used as the significant reference.

Third, this study tries to propose the legal issues of how is administrative responsibility in Japan worthy of reference in order to find legal issues for Laos (see Chapter IV). First of all, the study emphasizes the distinction between the medium and long-term issues and short-term issues. For medium and long-term issues, the legal mechanism in Japan guarantees individual rights against the state of inaction should be required because the current legal system in Laos does not universally guarantee the individual rights to the violations caused by water pollution. The concept of legal

responsibility of administration: state redress of inaction and administrative case litigation of mandamus action is useful in the future for Laos.

Needless to say, these legislative efforts do not seem to be so easy for some reasons. That is why this study used the word “medium and long-term” problem. In reality, village level arbitration for addressable conflicts has been tried in many years of practice. There has been the practice of making the “request” (application), “claim” (complaint), or “petition for justice” (proposal) against the competent persons. Especially, the second type is presented to the Office of the People’s Prosecutor (procurator). It is not uncommon to “apply” for higher organs to order administrative organs at the village levels for arbitration. In the short run, these practices will be continued. It may be said that it is the system for victims to require the correction of inaction of administrative organs. It will be continued to analyze how complaint and correction practices evolve in the future. In the future, it needs to consider that what organs should have legal powers to control of inaction of regulatory powers of administrative organs. Indeed, the roles of the people’s procurators should be paid more attention as well as the roles of the people’s courts in the future in Laos.

In conclusion, this study is only the introductory research result in the short period of time. Based on the result of this research, it will be necessary to analyze more specific issues in the future. The further research needs to be conducted concerning the legal liability of the administration of village mediators in the future in Laos. It needs to seek for continuing further study in the future in order to protect the rights of residents against the state in Laos.

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