

別紙 4

報告番号	※	第	号
------	---	---	---

主 論 文 の 要 旨

論文題目

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

氏 名

DONKEODAVONG Latdavanh

論 文 内 容 の 要 旨

This research project is to attempt administrative responsibility for water pollution prevention in Laos by referring to Japan. The main aim of this doctoral dissertation is to answer three main research questions: first, how does the legal system in Laos fail to prevent water pollution, second, what aspects of other countries' legal systems are worthy of reference for Laos, and third, how could the concept of administrative responsibility in Japan be worthy of reference in order to find legal issues for Laos.

In order to realize the above research purposes, this paper consists of four chapters, and the Introduction and Conclusion. Chapter I describes the reason for paying attention to the concept of responsibility, which is a “leading thread” of this study. The general differences between Laos and Japan's legal system are discussed here. 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 will describe main points as follows. As far as the research's findings in this paper, in Laos, when a private company violated environmental law, instead of a civil law dispute resolution by the courts, some administrative organs such as the Ministry of Natural Resources and Environment have sanctioned on a 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.

This result in a kind of opportunistic action or inaction of regulatory powers against the polluters and therefore, in only some cases of a low-impact of pollution conflict occurs, an organ at a 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 sanction in any conflicts, the phenomenon of arbitration at a village level has arisen only in the same cases.

In this sense, it can find a 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 organs' inaction to exercise their regulatory powers for the prevention of water pollution. In fact, one of the main reasons for an increase in water pollution crisis in Laos is related to attempts by the government to engage in rapid economic development. Some state-owned and joint investment venture companies with the government have not only resulted in increasing of water pollution, but have impacted the lives and

health of residents. 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 a 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 the administration. This concept determines to protect the resident’s rights of lives and health caused by the inaction of legal regulatory powers by the administrative agency 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 residents’ lives and health in order to supplement the prefecture 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 development and water pollution have raised the legal phenomenon of the pursuit of administrative responsibility. This legal structure can also be a hint for Laos. Because disputes of private persons are not resolved by a people’s court 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 a result of this legal study are as follows. First, when serious water pollution resulting from rapid economic development continues, 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 a “leading thread.” By this, it can find an essential issue of the conceptual turn from the responsibility of a violator (the regulated entity) to the responsibility of administration (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 organization’s mission and requirements for administrative actions is obvious. As long as the substantive responsibility is vague, even if the legal systems of litigation will develop, this is not enough.

However, third, concerning the reality that a village level arbitration conducts in Laos, the actual situation in Japan where municipalities even in a case without legal power have been tried to prevent water pollution also be helpful. In the long-term, it is logical that a 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 a unique foreign case for practice and theory in Laos.

In short, this is a 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 a basis of fair, sound, and reasonable development in the future in Laos.