Thailand's Climate Policy and Law in the Making: Can the Tradition of Thai Civil Law Cope with Climate Governance?

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I Introduction

Climate governance in Thailand has a rather short history. Beginning as recently as 2007, three main developments were set into place: (i) the National Committee on Climate Change as a core body to oversee climate governance at a national level, (ii) the Thailand Greenhouse Gas Management Organization as a designated national agency in response to Clean Development Mechanism Executive Board of the United Nations Framework Convention on Climate Change, and (iii) the National Strategic Plan on Climate Change 2008–2012 to equip with the then soon-to-start, Phase I of the Kyoto Protocol (KP). However, the National Strategic Plan was written in a very broad sense such that it required a corresponding master plan and an action plan in order for any action to take place. By the end of the KP Phase I period, neither the master nor the action plans were fully legitimized. The perpetual postponement also occurs in the case of the enactment of the draft Act on Environmental Fiscal Measures. This legislation is innovatively designed as an umbrella law that would endow government agencies with the right to draft decrees prescribing the use of financial and economic instruments for both environmental and natural
resource protection and conservation. The instruments include tools for climate governance, such as catastrophe bonds, carbon taxation, and tradable permit schemes. However, the interplay between institutional structure, administrative culture, the devolution of power, and, most importantly, the tradition of Thai civil law obstructs such advancement to the extent that doubt is cast on whether the tradition of Thai civil law can truly cope with climate governance.

II Background

Thailand, a relatively new democratic nation state, moved from an absolute monarchy to a constitutional monarchy merely eight decades ago and subsequently unified the fragmented ethnic groups into a nation state. Since then, Thailand has experienced various economic transitions and political reforms, including the devolution of the central government at the turn of the millennium. Currently, the politics of Thailand are conducted with the monarch as the head of state and the Prime Minister as the head of government, while the judiciary is independent of both the executive and the legislative branches.

In 2012, Thailand had a population of 67 million people. It remains a small, open, middle-income, semi-advanced, industrialized service economy that is pro-investment and pro-export. In 1985, Thailand experienced a structural shift from an agrarian to an industrial economy. From 1985 to 1995, Thailand enjoyed high annual growth of 8 to 10% each year. The Asian financial crisis between 1997 and 1998 drastically contracted the economy by 12%. As it recovered from the crisis, Thailand had an average annual growth of over 4% between 2000 and 2008. Export industries (mainly electronic components, jewelry, and agricultural commodities) and the tourist industry are the major drivers behind the economy, accounting for over two-thirds of GDP. Following the global financial crisis of 2008–09, the economy contracted by 2.3% in 2009. However, Thailand’s fast recovery led to an expansion of 6.4 in 2012. The economy is expected to experience at least a moderate long-term growth, with medium to high growth likely, over the next few years.

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