



---

# The Constitutional Court of the Kingdom of Thailand

## under the Rule of Law

Nurak Marpraneet

*President of the Constitutional Court of the Kingdom of Thailand*

Introduction: Overview of politics, economy, society and human rights in Thailand

Section 1 of the Constitution of the Kingdom of Thailand stipulates that Thailand is one and indivisible Kingdom, and Section 2 provides that Thailand adopts a democratic regime of government with the King as Head of State. These two principles prescribed in the Constitution are said to be Eternity Clause of the Constitution, reflecting history and root of the land westerners had known as “Siam,” which has continuously existed over 700 years.

Thailand changed its governmental regime from absolute monarchy to constitutional monarchy in B.E. 2475 (1932), in which parliamentary systems vary in accordance with different constitutions. According to the current Constitution, bicameralism shall be applied, in which Members of the House of Representatives are directly elected by the people; and the Senate is installed from a selection among persons having knowledge, expertise, experience, profession in the various areas of society. The Prime Minister must be nominated and approved by the



Parliament. Courts namely the Constitutional Court, the Court of Justice, the Administrative Court, and the Military Court, shall exercise judicial powers.

Thailand adopts capitalism in line with King Rama IX's sufficiency economy, where the State shall provide opportunities for the people to benefit from the economic growth in a comprehensive, fair and sustainable manner and to be self-reliant in accordance with the philosophy of sufficiency economy. This would eliminate unfair economic monopoly, and develop economic competitiveness of the people and the country. The State shall refrain from engaging in an enterprise in competition with the private sector, except in cases of necessity for the purpose of maintaining the security of the State, preserving common interests, providing public utilities or providing public services. In developing the country, the State should be aware of the balance between the development of materials and the mind, as well as the well-being of the people.

Theravada Buddhism and Asian culture have significant influence on Thai society, encouraging the Thais pay their respects to the elderly, qualified or virtuous people. In addition, they also display loyalty and admiration to the monarchy as the nation's main institution, having governed and patronised the country and people for a long time.

Thailand is a party to the various human rights conventions of the United Nations. To respect constitutional human rights, the National Human Rights Commission plays a significant role in preventing human rights violation and promoting human rights protection. In B.E. 2560 (2017), The Royal Thai Government announced human rights protection as a national agenda.

As the main theme of this symposium regarding the Rule of Law, Section 3 of the current Constitution of the Kingdom of Thailand, B.E. 2560 (2017) Paragraph 2 provides that the National Assembly, the cabinet, the Courts, Independent Organisations and State



agencies shall perform duties in accordance with the Constitution, laws and the rule of law for the common good of the nation and the welfare of the public at large.

Together with the Constitution and laws, “the rule of law” is deemed as a critical principle in the Constitution of Thailand, committing all state agencies. Although that provision is written the rule of law is an abstract concept. As a result, what is the rule of law? Is the Thai rule of law similar to or different from the universal rule of law or that of other foreign countries, and if so how? In this speech, I will start to give the concept of the rule of law – both in a universal meaning and in a Thai context, followed by the Rule of Law in the Constitution of the Kingdom of Thailand, the Constitutional Court’s roles in protecting rights and liberties and maintaining political orders in accordance with the Rule of Law. Then, I will conclude by addressing how the Thai Rule of law is similar to or different from the universal rule of law, and how the Constitutional Court plays its roles in applying the rule of law for the protection of people’s rights and liberties as well as balancing Thai politics and government.

### **Section 1: The Concept of the Rule of Law**

The rule of law has existed since the Ancient Greek period. To seek for the best principle for government, Plato, Greek philosopher, agreed with ‘Philosopher King.’ A ruler or philosopher king must be good and clever, and able to govern by morality and justice. Eventually, he could not find anyone who could be an ideal philosopher king, therefore he attempted to take into account “law.” He pointed out that law was of the utmost importance and the government ought to practice law. If society could create a superb and fair legal system for people to be in compliance, even a wrongdoer can be well conducted.



The development of the rule of law became apparent in Britain during 13<sup>th</sup> century, especially in Magna Carta (1215) as a part of British constitution. This concept began to be globally acceptable as Professor Albert Venn Dicey, one of the most famous British legal scholars of Oxford University at the end of the reign of Queen Victoria, gave a definition and three components of “the rule of law” as follows:

First, there shall be no tyranny. To be more specific, a person shall be punished when disobeying the law and be sentenced by the ordinary Court of Justice. Other methods of punishment shall be illegal.

Second, every person shall be equal in the eye of the law. No person shall have any privilege over the law, no matter who he is, what status he holds. Every person shall be equal under the law and treated normally under jurisdiction of the ordinary Court of Justice.

Third, the British Constitution is not the source of law, but a result of legal effectiveness. A person shall own rights and liberties because the Court of Justice accepts such rights and liberties – regardless of the Constitution acceptance.

However, Dicey’s idea is not deemed as a general principle of the rule of law since it focused merely in a British context. At present, many countries agree that the supremacy of the Constitution and people’s fundamental rights guaranteed by the Constitution are different from Dicey’s as he supported the supremacy of the Court rather than the Constitution. Dicey attempted to describe from the British society as the country’s court system was of the strongest.

Lord Woolf, the Master of the Roll and Lord Chief Justice of England and Wales, provided a recommendation on a practical rule of law that a peaceful society may exist under the rule of law. Each society had different rules, but six fundamental principles must exist. First, there shall be a court to try any cases of conflicts of parties; second,



judges in the court shall be independent, impartial, and able to try the cases; third, the court trial shall be in due course; fourth, after the court judgment, there shall be legal implementation; fifth, court proceedings shall be fair and justifiable; and sixth, the law that court employs shall be certain, explicit, fair and justified.

According to the western rule of law, society shall be governed by law; rights and liberties of the people in such society shall be guaranteed by law as well. To enforce such law, the courts are an organ to make adjudication and judgment in accordance with the law. They shall be independent to proceed fair and justifiable trials under certain procedures, due course, and legal implementation. In short, a universal rule of law is acceptable to be a principle of government with just laws and judicial organs of legal protection.



---

## Section 2: The Rule of Law in the Constitution of the Kingdom of Thailand

As mentioned earlier, Buddhism has an influence on Thailand, where people – governors, monks, Brahman, civil servants, merchants, and ordinary people – live with morals, so the society tranquilly exists.

When considering the western rule of law in limiting the ruler’s powers in order not to violate rights and liberties of the people, ‘Ten Royal Virtues of the King’ as the governor in absolute monarchy may have closely similar meaning of such a universal term.

‘*Ten Royal Virtues of the King*’ consist of code of conduct and restraint. In such code of restraint, it can limit the king in exercising his powers at will. For example, ‘*Ajava*’ refers to honesty: the king shall exercise his powers honestly. ‘*Akkodha*’ means non-anger: the king shall not let anger dominate while exercising powers. ‘*Avihimsa*’ refers to not causing harm: the king shall not exploit powers to maltreat and abuse other lives, bodies, and properties of the people. ‘*Avirodhana*’ means not doing wrong: the king shall rule properly and righteously.

Although ‘Ten Royal Virtues of the King’ do not appear to be enforced, according to the religious belief, unless the ruler practices justifiably, any natural disasters might occur.

As a consequence, ‘Ten Royal Virtues of the King’ are the morality the Thai kings shall always adhere to for instance, according to the first proclamation of His Majesty King Bhumibol Adulyadej on 5<sup>th</sup> May B.E. 2593 (1950), “we shall reign in righteousness for the benefits and happiness of Siamese people.”



However, as society develops, in addition to the righteous rulers, law also takes significant part in social orders. Once the law and ruler are limited by morality and logical conducts of the government, the rule of law will prevail.

According to legal historians, Thai legal systems can be divided into two periods: first, traditional Thai legal period when the root of Thai culture was integrated with the Indian culture; and second, modern Thai legal period when western legal theories and culture have had an influence on Thai system since 19<sup>th</sup> century until the present.

During the traditional Thai legal period (B.E. 2325 (1782) – B.E. 2394 (1851)), the Thai law and the form of government were integrated with ‘*dharma*.’ The ‘*Dharmasastra* scripture’ was a supreme, complete, legitimate, and sacred *dharma* indicator. The ‘*Dharmasastra* scripture’ and traditions would include any laws valid for all the people including kings and judges. Before this, Thailand received an influence from Brahmanism, which believed that the king as a demigod owned sovereign powers, so that he could possess the supreme powers to make a judgment to pass a sentence due to his natural powers.

The modern Thai legal period (B.E. 2394 (1851) – present) can be divided into two intervals: absolute monarchy period and democracy period. At the beginning, it was believed that Thai law was not so strict; it could be changed owing to morals, traditions, and socio-economic progresses. Due to an influence from western ideology, Thai laws, the form of government and legislative enactment were regarded as sovereignty of the monarch who have absolute power in legislature. During the absolute monarchy period, the king focused more upon justice than ‘*Dharmasastra* scripture.’ The king could amend any law or the form of the government if they considered each item unfair. To illustrate, King Mongkut (Rama IV) (B.E. 2394 (1851) - B.E. 2411 (1868)) revoked a tradition in which a



parent or a husband could sell a child or a wife for slavery without the latter's consent, since the king agreed that such a right was unfair to any women. In addition, the king guaranteed land ownership of individuals, which shifted the belief that the king owned the entire land of the kingdom.

Later, King Chulalongkorn (Rama V) (B.E. 2411 (1868) – B.E. 2453 (1910)) started nation-building process in order to maintain the country's independence from western colonialism. To reform society in many aspects, the king employed westerners in various positions such as advisors, and built major infrastructure that never existed before.

Some of those aspects were the legal system, justice affairs, political institutions, public finance, and tax system. Aiming at revoking extraterritorial rights and the old-fashioned Thai legal system, the king had introduced major court and justice reformations. Several important legal principles were changed. For example, the traditional law where a defendant became ostracized person until he or she could prove him- or herself as innocent was altered according to the universal principle where the defendant or the accused was presumed to be innocent until he or she was sentenced as wrongdoer. Moreover, the principle of '*nulla poena sine lege*' was accepted. Some trials involving diving and wading in fire, or investigation by torturing the accused were annulled, therefore modern witness examination was introduced. As a western model, the Civil Code, the Penal Code, the Civil Procedural Code and the Criminal Procedural Code were amended in order to guarantee and protect individual rights.

Paradigmatic shift in this period was the establishment of a law school. As several sons in the royal family and civil servants went to study law in Europe, The term "law" in teaching was explained in a different context far from traditional Thai culture this referenced to Jurisprudence as described by John Austin which became widely known



throughout Britain. This had an influence on the Thai legal paradigm which separated law from ‘*dharma*’ and justice due to legal positivism.

However, in that period, legal enactment and enforcement were mainly in the hand of the governing class. Common people were not allowed to object to any laws they considered unfair. As it was believed, law was separated from justice, individuals usually agreed not to seek for fairness, so they might suffer when they disagreed with such a law.

A significant change occurred in B.E. 2475 (1932). When Thailand shifted from absolute monarchy to **a democratic regime of government with the King as Head of State**, where the kings shall exercise powers through legislative, executive, and judicial branches.

At the beginning, the country focused on the systematization of government. The National Assembly was established to enact laws, and the cabinet was given authorities to administer the country instead of absolute monarchy. The term “law” still had the meaning of sovereignty orders, in which people had a duty to respect and obey the law; that is to say, they could not object to it. Protection of rights and liberties was provided roughly without any explicit mechanism. Even if several Constitutions stipulated that Constitutional Tribunal was authorized to take charge with constitutionality review, such tribunal were originally from Members of the National Assembly and government officials which had the same tenure as that of the National Assembly. It was difficult for people to access the process of constitutionality review. Instead, it was under the Court’s consideration, and investigation on persons holding political positions which would be conducted by the National Assembly. Therefore, it can be said that the period was the time of supremacy of parliament.



The most important paradigm shift was when Thailand's significant political reforms took place. The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was drafted to guarantee several crucial principles as supreme value in such a Constitution; namely kingdomship, democracy, human dignity, rights and liberties, equality, and supremacy of the Constitution. The Constitution protected rights and liberties of the people and provided the Thai political stability. Thai people started taking part in public oversight through Constitutional Independent Organisations – such as the National Anti-Corruption Commission (NACC), or the Parliamentary Ombudsmen.

More importantly, the Constitution B.E. 2540 (1997) contributed to the development of Thai court systems. To be more specific, there was an establishment of the administrative Court, and the Constitutional Tribunal was enhanced to the Constitutional Court, modeled on the Federal Constitutional Court of the Federal Republic of Germany, where justices of the Courts of Justice and the Administrative Court, and qualified persons in the fields of law and political science were selected as the components of the Court

The establishment of the Constitutional Court and the Administrative Court leads to more effective protection of rights, liberties, and human dignity as a result of the Constitutional Court's role in constitutionality review of Acts of the Parliaments, and the Administrative Court's role in constitutionality review of any subordinate laws.

Such establishment of the Constitutional Court brings about a fundamental change as the legislative branch can be examined through a mechanism of constitutionality review from enactment process to enforcement process.

During such development, the Thai rule of law was blended with religious morality and acceptance of a universal rule of law. It inferred many from written laws as well as



many cases of Courts' adjudication. For instance, *ex post facto* appears in both section 2 and section 3 of the Criminal Code. Every person must act in good faith according to Section 5 of the Civil and Commercial Code. The rule of law related to criminal procedures appears in many sections of the Criminal Procedure Code. For instance, Section 232 prescribes that the accused person shall not be cited as a witness by the prosecutor. Section 234 prescribes that a witness is not bound to answer questions which may incriminate him. Furthermore, claiming *bona fides*, the Supreme Court makes judgments despite explicit written provisions – such as rights to file a case in Court proceedings with honesty, which exclude prosecution to defame or take excessive advantage from a debtor or party; or an injured person in a criminal case must not be an accomplice. The Constitutional Court also rules that the rule of law included natural justice.

Nevertheless, the Thai political crisis in B.E. 2548 (2005) resulted in a coup revoking the Constitution B.E. 2540 (1997) in B.E. 2549 (2006). In such a period, Thailand reversed to briefly use the Constitutional Tribunal, consisting of judges from the Courts of Justice and the Administrative Court. Based on experience from the Constitution B.E. 2540 (1997), the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) was drafted, approved by public referendum, and enforced eventually.

In that Constitution, the rule of law was first stipulated because it was previously a non-written principle but acceptable in legal practice. Section 3 paragraph 2 of the Constitution B.E. 2550 (2007) prescribed that “the National Assembly, the Cabinet, the Courts, other Constitutional organisations and State agencies shall perform duties of office in accordance with the rule of law.” This provision was the first one guaranteeing the rule of law in written form and also having both the legal and constitutional sanction. It could reflect the will of the Constitution Drafting Commission which affirmed that the rule of



law shall be practiced by all state agencies – not only appearing in legal concepts or theories.

In addition, that Constitution also assured people’s rights to file a complaint to the constitutional Court whether or not any provision of law violating their rights and liberties were contrary to or inconsistent with the Constitution; that is to say, giving the rights to people to file constitutional complaint, if such people receive no remedy through any channels prescribed in the Constitution, similar to other foreign countries’ Constitutions.

Such affirmation of the rule of law continues existing as constitutional value with sanction under the current Constitution of the Kingdom of Thailand, B.E. 2560 (2017). Section 3 paragraph two states that “the National Assembly, the Cabinet, the Courts, Independent Organisations and State agencies shall perform duties in accordance with the Constitution, laws and the rule of law for the common good of the nation and the welfare of the public at large.” Not only does it accept the existence and sanction of the rule of law, but also reaffirms such rule for the common good of the nation and the welfare of the public.

Moreover, the rule of law is a vital principle for legal enactment. Section 26 paragraph one provides that **“the enactment of a law resulting in the restriction of constitutional rights or liberties of a person shall be in accordance with the conditions provided by the Constitution. In the case where the Constitution does not provide the conditions thereon, such law shall not be contrary to the rule of law, shall not unreasonably impose a burden on or restrict the rights or liberties of a person and shall not affect the human dignity of a person, and the justification and necessity for the restriction of the rights or liberties shall also be specified.”** Section 26 paragraph 2 provides



that “the law under paragraph 1 shall be of general application, and shall not be intended to apply to any particular case or person.” This complies with a universal rule of law as law shall be applied for everyone in each country, and for all cases if they reach all legal conditions anytime. This is neither an order of sovereignty in the form of “law” which enforces individuals, nor sovereignty’s attempt to exploit such power by any provisions for legitimacy.

In short, a Thai rule of law development was based on a ruler’s Buddhist morality combined with a universal one. Such rule of law, then, would be employed as legal principle and interpretation in a non-written form in many Courts’ trials. Eventually, stipulated in written form as constitutional principle having legal value and is enforceable as law.

As a judicial organ responsible for adjudicating and ruling constitutional problems, the Thai Constitutional Court applies the rule of law to make a ruling. Therefore, its roles can be divided into two dimensions: protection of rights and liberties of the people; and maintenance of political orders as in the Constitution. The Constitutional Court always plays such roles based upon the rule of law.

### **Section 3: The Constitutional Court and Protection of Rights and Liberties in Compliance with the Rule of Law**

Having a role in protecting people’s rights and liberties according to the Constitution, the Constitutional Court has powers of constitutional review – both abstract control of constitutionality; for example, review of whether or not the enactment process and contents of a draft act are constitutional by a motion from the National Assembly, and concrete control of constitutionality; for example, review of whether or not any provision of law is constitutional when any parties in the Courts of Justice, the



Administrative Court, or the Military Court make a complaint, or such Courts consider the problem whether or not any provision of law to be enforced in that case is contrary to or inconsistent with the Constitution, and review of whether or not any provision is constitutional by a motion from Independent Organisation responsible for protecting people's rights and liberties – such as the Ombudsmen.

In a legal state, any provision of law is the source of state powers. Unless the provision provides powers, a state shall not be able to exercise its power. State power is related to creating, modifying, transferring, preserving or relinquishing rights, liberties and status of the people. As a consequence, such provision shall be limited by the Constitution in order not to adversely affect such rights and liberties. Constitutionality review is, thus, for protecting people's rights and liberties from violation by using a provisions of law contrary to or inconsistent with the Constitution, or by exercising power of of the National Assembly to enact a law violating individual rights and liberties more than authorized by the Constitution.

As such, the Constitutional Court usually applies the rule of law to adjudicate and rule whether or not a provision of law is constitutional and in compliance with the rule of law.

The Court agrees that although limitation of people's fundamental rights or liberties may be practiced in terms of legal provisions, such provisions must be proportional to the mechanism and protection of people's rights and liberties. In other words, the state can introduce any regulations and enforce its powers for public interest or state benefit, but it shall choose a process or a measure causing the least effect on the rights and liberties of the people.



This principle can be seen in Constitutional Court Ruling No. 11/2549 (2006). In that case the court was requested to consider whether or not section 46/1 of the draft of the Highway Bill, B.E. ...., which stated that no person shall assemble in the highway zone which restricted the liberty of peaceful assembly without weapons, and was contrary to or inconsistent with the Constitution. According to such draft bill, no person shall assemble in the highway zone, without permission to assemble. When considering the term “highway” in such bill, its meaning was too broad describing ways or roads for public transportation. Such provision empowered a state official to make a wide discretion whether or not to permit people to assemble in the highway zone. In addition, there was also other specific law to control public assembly. Such bill restricted the liberty of peaceful assembly without weapons and affected the core value of liberty. It was violating the rule of law and therefore contrary to the constitution.

In some cases, the Constitutional Court makes a ruling that a provision is not contrary to or inconsistent with the Constitution, but note that a relevant organisation or agency should adopt and adapt the rule of law. To illustrate, Constitutional Court Ruling No. 42-43/2554 (2011): whether or not section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968) was contrary to or inconsistent with the Constitution. The Constitutional Court ruled that such provisions, providing an authority to the Electricity Generating Authority of Thailand to install an electricity transmission line on the private land, were not contrary to or inconsistent with the Constitution. In this ruling, the Court suggested that the Electricity Generating Authority of Thailand should be applying modern technology to be fair to the public when to increase the height of a high voltage post, so such land owner could make reasonable use of their land, and also to reduce any risks that might cause harm to health, sanitation, and quality of life of those who lived in such an area.



The Constitutional Court also referred to the rule of law for protecting people's property addition to the Constitution. For instance, Constitutional Court Ruling No. 13/2556 (2013) state that section 30 of the Provincial Waterworks Authority Act, which specified that the Provincial Waterworks Authority did not have to pay compensation to the owner or possessor of the land for the use of land, or remove structures or installations, or chop trees, branches or roots of trees incase of laying water pipelines with a diameter of less than eighty centimeters, was contrary to or inconsistent with the Constitution, the reason was that it unjustifiably interfered with property rights of the people, and such restriction of property rights was contrary to the rule of law where the state must make a fair compensation when depriving people's property rights.

One of the most significant Constitutional Court Rulings could be seen in several cases. The provision of law provided that a person as representative of a juristic person shall criminally liable for a crime committed by the juristic person and was presumed to be the offender without any proof of his or her act or intention, was contrary to or inconsistent with the Constitution as well as the rule of law in terms of presumption of innocence. Example of the said Constitutional Court Rulings are No. 12/2555 (2012), 5/2556 (2013), 10/2556 (2013), and so forth, related to the Direct Sales and Direct Marketing Act, B.E. 2545 (2002), the Copyright Act, B.E. 2537 (1994), and the Telecommunications Business Operation Act, B.E. 2544 (2001), respectively.

Due to the Constitutional Court Rulings, the National Legislative Assembly enacted the Act Amending the Provisions of Law on Criminal Liability of Representative of a Juristic Person, B.E. 2560 (2017) so as to amend such presumption which was contrary to and inconsistent with the Constitution.



The Constitutional Court also reaffirms the rule of law related to the rights of defendants and the accused in criminal cases. In its Ruling No. 4/2556 (2013), section 41 of the Act on Mutual Assistance in Criminal Matters, B.E. 2535 (1992), which provided that all evidence obtained under this Act shall be deemed as evidence admissible by law. The court shall admit such evidence obtained from witness examination by the plaintiff in other foreign courts despite the defendant having no opportunity to cross examine or be confronted with. This provision was held contrary to the rights and liberties of such defendant, affected the essence of the rights in justice administration and contrary to the rule of law, it was therefore contrary to or inconsistent with the Constitution.

Aside from the rule of law, the Constitutional Court also refers to Article 14.3 of the International Covenant on Civil and Political Rights (ICCPR), where a person shall have the rights to be tried in his presence; defend himself in person or through legal assistance of his own choosing; examine the witnesses against him; and obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, to support that the above-mentioned Act was contrary to or inconsistent with the Constitution.

Due to those Constitutional court Rulings, not only is the rule of law a significant principle reaffirmed in the Constitution, but any provisions already enforced or in the process of being drafted shall be in compliance with the rule of law. If not, such provisions would be contrary to or inconsistent with the Constitution.

#### **Section 4: The Constitutional Court, Politics and Government under the Rule of Law**



As mentioned earlier, the rule of law is a constitutional sanction principle, committing power exercise and practice of the **National Assembly, the Cabinet and the Courts, as well as Constitutional Organisations and State agencies.**

In addition to constitutionality review in which it examines and maintains political and governmental orders, other duties and powers of the Constitutional Court refer to ruling on the membership or qualifications of persons holding and exercising with political positions; ruling on conflicts pertaining to the powers and duties of the Cabinet, the National Assembly, and Independent Organisations; and ruling on other constitutional cases such as constitutionality review of conditions and procedures of draft amendment of the Constitution, ruling on conditions for enacting an emergency decree of the executive branch, and ruling on whether or not a treaty must be approved by the National Assembly.

The Constitutional Court also addresses the rule of law on exercising state powers. In Constitutional Court Ruling No. 15 – 18/2556 (2013) as follows. The rule of law is said to be a governmental means of natural justice, which is pure without any bias or individual interests. The rule of law, thus, is a significant fundamental principle of law above any written provisions, to which the National Assembly, the Cabinet, the Courts, as well as Constitutional Organisations and State agencies shall adhere to. Consequently, the claim of majority rule to amend the Constitution without restraint or protection of minority rights may cause any damage and deterioration to the nation, as well as severe disputes and non-harmony of the people as can be seen from the country's previous crises.



Although the amendment of the Constitution may be conducted through the majority rule in accordance with the Constitution, the procedures shall be done under the constitutional and paying respect to the minority rights.

Accordingly, concluding a debate by the majority rule in the constitution amendment consideration in the first agenda without hearing the minority's opinions, speeding up the debate, and closing of the assembly in voting shall be illegal exercising of power benefitting the majority, contrariness of the rule of law, as well as unconstitutionality.

Moreover, even though the majority rule shall be practiced to vote on any agenda in the National Assembly, this practice shall be done legally. Therefore, allowing other members of the National Assembly to vote on his or her behalf is contrary to their duty the National Assembly's fundamental principle, stating that the Members shall perform without any order or mandate, exercise their duties honestly for Thai people's benefits regardless of any conflict of interest. Voting proxy shall, thus, be contrary to the Constitution and *bona fides* principle, therefore the resolution from the National Assembly shall be illegal in Draft Constitution Amendment procedures.

### **Conclusion**

The rule of law is a principle of exercising state powers, enforcing and interpreting unwritten laws, and is in concert with the western rule of law to limit a governor's powers through laws; that is to say kings, consents to restrict own powers to people; And also a Thai rule of law originates from a Buddhist moral, in which the kings agree to limit their powers with the framework of '*dhamma*' by their intention.



Once contemporary legal systems have an influence on Thai law, the rule of law takes part together in Thai legal systems as can be seen in various provisions as well as the Thai Court's legal enforcement and interpretation which is justice foundation both in written and non-written forms.

From the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), the rule of law is prescribed as a constitutional sanction principle, committing any state agencies' power exercise.

The Courts – including the Constitutional Court – are a judicial branch applying each legal provision to solve problems, disputes, or controversies in society and nation. Adjudication and judgment of the Courts can reflect whether or not a case or a principle is the rule of law. It can, hence, be said that the Courts are user and finder of the rule of law in line with natural justice, which agrees that this principle always exists, and the Courts themselves find it by addressing out through adjudication and judgment.

The Constitutional Court of Thailand has adopted the rule of law to adjudicate and rule every constitutional case in order to protect rights and liberties of the people, and maintain fair political and governmental orders under the rule of law. In the meanwhile, it is said that the Constitutional Court addresses what is the principle of the rule of law at the constitutional level to commit legal enactment and exercise of state powers. The rule of law guaranteed by the Constitution and reinforced by the Constitutional Court, which is the result of protection of rights and liberties of the people as mentioned above, is applied to protect political and governmental orders in harmony with the democratic regime with fair majority rule for the nation's and people's utmost benefits.



**Above all, the constitutional Court is a protector of the Constitution not only any particular specific constitution, but it also refers to the fundamental principle and constitutional identity of Thailand, which has continued to develop together with the democratic regime of government with the King as Head of State. This is Thailand's political and governmental identity.**