

Commentary

An Overview of Problems with the Act on Imposition of Non-Criminal (Pinai) Regulatory Fines, B.E. 2565 (2022)

Wiriya Kongsiriwong*

As of 22 June 2023, 240 days after the Act on Imposition of Non-Criminal (Pinai) Regulatory Fines, B.E. 2565 (2022; “Pinai Act”) was announced in the Royal Gazette,¹ it has come into effect. Questions remain over definitions of non-criminal (*pinai*) fines and how the Pinai Act will affect the legal system in Thailand.

“Pinai fines” are fines imposed by the state for a new type of offense called “pinai offense.” However, the appellation *pinai* may obscure the subject matter of the law since the term is not used in current Thai speech. It is a loanword from the ancient Law of Three Seals² in which the word *pinai* means fines charged to the state. This word was also established in the Penal Code of Siam R.E. 127 by the term *Pinai-Luang*.³ However, the current Thailand Criminal Code B.E. 2499 (1956) no longer uses the term, unlike the words, Sin-Mai, or “compensation to the plaintiff,” the usage of which continues from the Law of Three Seals to the current law and litigation.⁴

When referring to the Pinai Act, the purpose of the law is to create a new type of offense in the Thai legal system that is not a criminal offense, or a decriminalized regulatory offense following a concept prevalent in Germany (*Ordnungswidrigkeit*).⁵

* LLM Student (Thammasat University), LLB (Thammasat University), w.kongsiriwong@gmail.com.

¹ Act on Imposition of Non-Criminal (Pinai) Regulatory Fines, B.E. 2565 (2022) s 2.

² “Code of King Rama I” Chunlasakkarat 1116 (1754 AD) Vol. 2, University of Moral and Political Science (Thammasat University), printed according to the royal version.

³ Criminal Law R.E. 127 (1908) s 17.

⁴ See Secretariat of the House of Representatives, Minutes of the Meeting of the Extraordinary Committee on Drafting the Pinai Fine Act B.E. . . . No. 2 (1 March 2022) 12–13.

⁵ Office of the Council of State, Summary Analysis of the Draft Pinai Fine Act B.E. . . . , 10.

Therefore, the *Pinai* Act will transform some criminal and administrative offenses into new misdeeds that are no longer considered criminal.

This Commentary will discuss issues related to the *Pinai* Act, including general principles, criteria for distinguishing *pinai* offenses from criminal or administrative ones, and provide some comments on the Act.

I. GENERAL PRINCIPLES OF THE PINAI ACT

The primary principle behind drafting this law was to decriminalize an over-criminalized system, especially for non-severe or minor crimes in Thailand.⁶ The phenomenon of overcriminalization has affected overviews of the Thai justice system, including lack of equity in fines assigned to defendants from high or low economic status,⁷ imprisonment instead of fines for impoverished or resourceless defendants,⁸ or the problem from criminal records assigned to those guilty of committing minor offenses due to ignorance of legal strictures and overcriminalization of legal sanctions.⁹

Secondly, *pinai* offenses have been altered by the state from criminal or administrative misdeeds, converted under the Act as regulatory offenses (according to criteria stated in Part II), creating new type of offenses in Thailand that are not criminal,¹⁰ administrative, or civil. Consequently, offenders shall henceforth be fined and not be subject to criminal penalties such as imprisonment,¹¹ criminal procedure, or other criminal measures including the case where the offender is detained, instead of being subject to a fine, due to his or her inability to pay such fine.

Thirdly, the person with authority to initiate a *pinai* offense has changed as well. Previously, with criminal offenses, a police officer, as inquiry official under the Thai Criminal Procedure Code, was entitled to initiate and inquire into cases.¹² With *pinai* offenses, criminality is no longer involved.¹³ The officer empowered to initiate cases is the government official competent under the law to impose a penalty. This individual is empowered to initiate the case involving *pinai* fines or gathering evidence to send to the public prosecutor for further prosecution in the event that the perpetrator refuses, or fails, to pay the assigned fine.¹⁴

⁶ *ibid* 6.

⁷ Secretariat of the House of Representatives, Memorandum of Principles and Reasons of the Draft *Pinai* Fine Act B.E. . . . (10 February 2022) 1.

⁸ *ibid*.

⁹ *ibid*.

¹⁰ *Pinai* Act, s 5.

¹¹ Criminal Procedure Code, s 18.

¹² Criminal Procedure Code, s 17.

¹³ *Pinai* Act, s 5.

¹⁴ Office of the Council of State (n 5) 4.

II. CRITERIA FOR THE PINAI ACT

To determine whether criminal and administrative offenses have been converted to *pinai* offenses according to the Pinai Act, two criteria must be fulfilled.

First, such offenses are only punishable by a fine, either administrative or criminal, and must not include other sanctions such as execution, imprisonment, detention or other administrative punishment.

Secondly, the law establishing such criminal or administrative offenses must be listed in one of the Annexes to the Pinai Act as pertaining to three categories:

1) Annex I laws imposing criminal penalties to be automatically converted into *pinai* offenses 365 days after promulgation as announced in the Royal Gazette.¹⁵ The 168 laws in this category include the Act Determining Offence Relating to Registered Partnership, Limited Partnership, Limited Company, Association, and Foundation, B.E. 2499 (1956); Accounting Act, B.E. 2543 (2000); Labour Protection Act B.E. 2541 (1998); and Public Limited Companies Act B.E. 2535 (1992).¹⁶

2) Annex II laws imposing criminal penalties converted to *pinai* offenses if the Cabinet issues a Royal Decree to this effect.¹⁷ They include 33 laws, such as: the Land Development Act B.E. 2543 (2000); Foreign Business Act B.E. 2542 (1999); and Factory Act B.E. 2535 (1992).¹⁸

3) Annex III laws imposing administrative penalties, automatically converted to *pinai* offenses 365 days after promulgation as announced in the Royal Gazette.¹⁹ This annex contains only three pieces of legislation, namely: the Community Forest Act, B.E. 2562 (2019); the Thai Vessel Act B.E. 2481 (1938); and the Social Enterprise Promotion Act B.E. 2562 (2019).²⁰

III. COMMENTARY

The Pinai Act might ostensibly appear to resolve overcriminalization by converting non-severe offenses to non-criminal offenses. However, the two criteria and the legal procedure under the Pinai Act are problematic as discussed below.

First, fine-only offenses are not always an appropriate category for distinguishing between severe and non-severe offenses. Some crimes sanctioned by imprisonment may not always be severe offenses. For example, a petty offense under the Thailand Criminal Code is punishable by a fine of up to 10,000 baht or imprisonment for up to one month. Some offenses, such as under section 368, may be punishable by imprisonment for up to 10 days.

¹⁵ Pinai Act, s 39.

¹⁶ Pinai Act, Annex 1.

¹⁷ Pinai Act, s 40.

¹⁸ Pinai Act, Annex 2.

¹⁹ Pinai Act, s 43.

²⁰ Pinai Act, Annex 3.

Conversely, many other offenses that are sanctioned solely by fines might be considered severe offenses in some aspects. For example, an offense under Section 41 of the National Savings Fund Act, B.E. 2554 (2011) has a fine penalty of up to 200,000 baht, in addition to a further fine of 150,000 baht per day until the law is complied with; an offense under section 54 of the Consumer Protection Act, B.E. 2522 (1979) is punishable by a fine up to 200,000 baht; and an offense under Section 27 of the Computer-Related Crime Act B.E. 2550 (2007) is subject to a fine of up to 200,000 baht.

Secondly, some offenses are punishable solely by fines and are not severe, but yet are not converted into *pinai* offenses under the Pinai Act. For example, petty offenses are provided in the Thai Criminal Code with imprisonment up to one month or fines of up to 10,000 baht.²¹ Some petty offenses are fine-only offenses but still are criminal offenses today as in Sections 367, 369, 370, 372, 373, 378, and 385 for the reason that the Thailand Criminal Code is not included in the Annex 1 list of the Pinai Act.²²

Thirdly, converting a criminal or administrative offense to a *pinai* offense does not resolve individual economic inequality, although the Pinai Act allows for the opportunity to choose public service instead of fine payment and prevents the case of detention in lieu of a fine, due to insufficient funds on the part of the offender.

The Pinai Act only converts criminal and administrative offenses, but fails to change the amount of money defendants are fined for committing offenses. The weight of sanction inflicted on offenders remains the same, as do significant differences between two offenders of different economic backgrounds. For example, if two defendants are fined the same amount of 1,000 baht for speeding, pursuant to the Land Traffic Act, B.E. 2522 (1979), the sanction for defendants of high economic status may represent a small fraction of daily revenue. For those with low economic status, it may be up to an entire week's salary.

Therefore, for the Pinai Act to reduce economic inequality through criminal penalties, changing offense types should be accompanied by altering methods for calculating fines that vary according to income. Several nations use a “day-fine” system instead of a fixed rate as a means to resolve issues of justice system and sanction measure inequalities.²³

Fourthly, procedure and standard of proof in *pinai* cases do not benefit defendants as in criminal cases. Procedurally, *pinai* case defendants may not appeal on factual issues to the Court of Appeals²⁴ and do not benefit from a presumption of innocence or judgment beyond reasonable doubt that a crime has been committed. According to the Pinai Act, the judiciary must issue a procedure in accordance with the

²¹ Criminal Code, s 102.

²² Pinai Act, Annex 1.

²³ ณัฐพงษ์ เรืองปัญญาวุฒิ, “Day-fine ไม่ใช่แค่เรื่องของค่าปรับ” [Natthaphong Ruengpanyawut, “Day-Fine Is Not Only About the Fine”] (2022), <<https://progressivemovement.in.th/article/common-school/6860/>> (Thai).

²⁴ Pinai Act, s 32.

Regulation of the President of the Supreme Court,²⁵ which sets a standard of proof only as “clear and convincing evidence that the defendant committed an offense,”²⁶ a lower criminal proceeding standard that does not require absence of reasonable doubt.²⁷ This significant issue merits further consideration.²⁸

IV. CONCLUSION

Therefore, although the Pinai Act was undoubtedly drafted with the good intention of decriminalizing offenses to resolve the problem of over-criminalization and inequality in the punishing defendants of differing economic status, its rules and provisional contents retain several interrelated problems. These may be divided into three points:

- 1) the use of fine-only criterion for decriminalization under the Pinai Act is not appropriate. The number of fines and days of imprisonment involved should also be considered when identifying the severity of the crime.
- 2) the right to appeal on factual issues should not be denied, so that defendants may fully defend cases, as a fundamental right of citizenship.
- 3) trying to reduce economic inequality by changing offense types does not ameliorate the suffering of offenders from being fined by a fixed-rate cost system. Therefore, to resolve the problem of inequality in the current penalty system, an appropriate and fair approach such as the day-fine system calculated based on the offender’s income should be enforced for *pinai* offenses as well as for criminal or administrative fines in the future.

[Date of submission: 5 July 2023; Revision: 12 July 2023; Acceptance: 19 July 2022]

Suggested Bibliographic Citation:^{*}

Wiriya Kongsiriwong. “An Overview of Problems with the Act on Imposition of Non-Criminal (Pinai) Regulatory Fines, B.E. 2565 (2022).” *Thai Legal Studies*, vol. 3, no. 1, Jul. 2023, pp. 109–113. <https://doi.org/10.54157/tls.268430>.

²⁵ Pinai Act, s 28(2).

²⁶ Regulation of the President of the Supreme Court on Pinai Case Procedure B.E. 2566 (2023) art 15(2).

²⁷ Criminal Procedure Code, s 227.

²⁸ See Secretariat of the House of Representatives, Minutes of the Meeting of the Extraordinary Committee on the Draft of the Pinai Fine Act B.E. . . . No. 9 (3 May 2022) 14–15.

^{*} **Indexing Thai names.** “Although family names are used in Thailand, Thais are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies.” *The Chicago Manual of Style* (17th edn, University of Chicago Press 2017) §16.85.