



ວາລະສານການສຶກສາສາລາວແບບຍືນຍົງ
ວິທະຍາໄລສາລະວັນ

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ດຳເນີນການວາລະສານໂດຍ ວິທະຍາໄລສາລະວັນ

**ການສຶກສາປຽບທຽບກ່ຽວກັບສິດທິໃນອະສັງຫາລິມະຊັບພາຍໃຕ້
ປະມວນກົດໝາຍແພ່ງ ແລະ ການຄ້າຂອງປະເທດໄທ ແລະ ກົດໝາຍ
ຂອງສາທາລະນະລັດປະຊາທິປະໄຕປະຊາຊົນລາວ.**

**A comparative study of rights in real estate according to the Civil
and Commercial Code of Thailand and the laws of the Lao
People's Democratic**

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ບົດຄັດຫຍໍ້

ສິດໃນຊັບສິນແມ່ນຄວາມຈຳເປັນພື້ນຖານຂອງມະນຸດ ແລະ ເປັນເສົາຄໍ້າໃຫ້ແກ່ສະຖຽນລະພາບທາງດ້ານເສດຖະກິດ ແລະ ຄວາມວັດທະນາຖາວອນຂອງຊາດ. ທັງປະເທດໄທ ແລະ ສປປ ລາວ ຕ່າງກໍຮັບຮູ້ວ່າສິດໃນຊັບສິນແມ່ນສິດທິມະນຸດຕາມມາດຕະຖານສາກົນ, ແຕ່ຂອບເຂດກົດໝາຍຂອງທັງສອງປະເທດໄດ້ມີວິວັດທະນາການຜ່ານເສັ້ນທາງການເມືອງ ແລະ ວັດທະນະທຳທີ່ແຕກຕ່າງກັນ.

ການວິໄຈຄັ້ງນີ້ມີຈຸດປະສົງເພື່ອສຶກສາປະຫວັດຄວາມເປັນມາ, ແນວຄວາມຄິດ ແລະ ຫຼັກການພື້ນຖານຂອງກົດໝາຍວ່າດ້ວຍຊັບສິນໃນປະເທດໄທ ແລະ ສປປ ລາວ.

ການສຶກສານີ້ໃຊ້ການວິໄຈແບບຄຸນນະພາບໂດຍວິທີສຶກສາເອກະສານ, ວິເຄາະຕົວບົດກົດໝາຍຕົ້ນຕໍ ເຊັ່ນ: ປະມວນກົດໝາຍແພ່ງ ແລະ ການຄ້າຂອງໄທ ແລະ ກົດໝາຍວ່າດ້ວຍຊັບສິນຂອງລາວ, ພ້ອມກັບແຫຼ່ງຂໍ້ມູນທາງວິຊາການອື່ນໆ. ການວິເຄາະຂໍ້ມູນແມ່ນໃຊ້ວິທີການວິເຄາະເນື້ອໃນ ແລະ ການປຽບທຽບ, ໂດຍມີການສົມທົບກັບຄວາມເຫັນຈາກຜູ້ຊ່ຽວຊານດ້ານກົດໝາຍ 6 ທ່ານ.

¹ ພະແນກຄົ້ນຄ້ວາ ວິທະຍາສາດ ແລະ ບໍລິການວິຊາການ, ຄະນະນິຕິສາດ ແລະ ລັດຖະສາດ, ມະຫາວິທະຍາໄລຈຳປາສັກ/ ສປປ ລາວ.

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ຜົນການວິໄຈພົບວ່າ ເຖິງວ່າທັງສອງປະເທດຈະມີມູນເຊື້ອກົດໝາຍລະບົບຊີວິລ (Civil Law) ແລະ ມີການແບ່ງປະເພດຊັບສິນເປັນ "ອະສັງຫາລິມະຊັບ" ແລະ "ສັງຫາລິມະຊັບ" ຄືກັນ, ແຕ່ພື້ນຖານທາງປະຫວັດສາດແມ່ນມີຄວາມແຕກຕ່າງກັນ. ລະບົບຂອງໄທເນັ້ນໃສ່ກຳມະສິດສ່ວນຕົວທີ່ໝັ້ນຄົງຜ່ານໃບຕາດິນເພື່ອສິ່ງເສີມການລົງທຶນ. ໃນທາງກົງກັນຂ້າມ, ລະບົບຂອງ ສປປ ລາວ ຍັງຄົງສະທ້ອນເຖິງຮາກຖານທາງດ້ານສັງຄົມນິຍົມ ໂດຍຮັກສາກຳມະສິດຂອງລັດຕໍ່ທີ່ດິນ ແຕ່ໄດ້ຫັນປ່ຽນໄປສູ່ກົນໄກຕະຫຼາດໂດຍການມອບສິດນຳໃຊ້ໄລຍະຍາວໃຫ້ແກ່ພົນລະເມືອງ.

ເນື່ອງຈາກໄທ ແລະ ລາວ ມີຄວາມຜູກພັນທາງເສດຖະກິດຢ່າງເລິກເຊິ່ງ ໂດຍມີມູນຄ່າການຄ້າສອງຝ່າຍຫຼາຍກວ່າ 197 ພັນລ້ານບາດ, ການສ້າງຄວາມເຂົ້າໃຈທີ່ສອດຄ່ອງກັນກ່ຽວກັບຫຼັກການກົດໝາຍເຫຼົ່ານີ້ ຈຶ່ງມີຄວາມສຳຄັນຢ່າງຍິ່ງເພື່ອຫຼຸດຜ່ອນຄວາມສ່ຽງໃນການລົງທຶນ ແລະ ສິ່ງເສີມ "ການເປັນຫຸ້ນສ່ວນຍຸດທະສາດເພື່ອການເຕີບໂຕ.

ຄຳສຳຄັນ: ກົດໝາຍຊັບສິນ, ກົດໝາຍປຽບທຽບ, ການພັດທະນາເສດຖະກິດ, ກຳມະສິດ, ອະສັງຫາລິມະຊັບ.

Abstract

Property rights are a fundamental human necessity and a cornerstone for economic stability and national prosperity. Both Thailand and the Lao PDR recognize property as a human right under international standards, yet their legal frameworks have evolved through distinct political and cultural trajectories.

This research aims to study the historical origins, concepts, and fundamental principles of property law in Thailand and Laos.

The study employs a qualitative documentary research design, analyzing primary legal texts such as the Thai Civil and Commercial Code and the Lao Property Law, alongside secondary scholarly sources. Data analysis was conducted using content analysis and comparative methods, supplemented by insights from six purposively sampled legal experts.

The findings reveal that while both nations share a civil law heritage and classify property into "immovable" and "movable" categories, their historical foundations differ. Thailand's system emphasizes secure private ownership through title deeds to foster investment. Conversely, the Lao PDR's system reflects socialist roots, maintaining state ownership of land while transitioning toward market-oriented reforms that grant long-term use rights to citizens.

As Thailand and Laos share a deep economic interdependence with bilateral trade exceeding 197 billion Baht, harmonizing the understanding of these legal principles is critical to mitigating investment risks and fostering a "Strategic Partnership for Growth".

Keywords: Comparative Law, Immovable Property, Land Rights, Ownership, Property Law.

Introduction

Property is essential to human life, serving as a fundamental necessity for survival, with significant value and benefits for economic stability and national prosperity. Individuals owning property seek to derive benefits or utilize it, requiring state mechanisms to recognize and protect personal property rights without interference or violation by others. Property rights are recognized as human rights under international law, existing for the benefit of private property, though not absolute, as states may impose limitations. This is evident in key United Nations documents, such as the Universal Declaration of Human Rights, Article 17, which states: (1) Everyone has the right to own property alone as well as in association with others; (2) No one shall be arbitrarily deprived of his property. Thailand has adopted this declaration as a common standard for protecting and promoting human rights (Anan, 2017). Property rights

play a crucial role in fostering economic development, as effective systems enable individuals and businesses to thrive under legal recognition, facilitating investment, buying, selling, and efficient resource utilization. Conversely, the absence of such rights creates uncertainty, hinders investment, and impedes economic growth.

One primary benefit of property rights is the ability to use property as collateral for loans, allowing individuals and businesses to access capital for new projects, operational expansion, and job creation. According to the World Bank, over 70% of businesses in high-income countries access formal credit, underscoring the importance of property rights in promoting economic growth through lending. Additionally, property rights stimulate investments in infrastructure, such as buildings, roads, and utilities. Without ownership guarantees, businesses and individuals are less likely to make long-term investments in physical assets. Property rights are indispensable for a country's economic development, forming the foundation for investment, credit, and efficient resource use (Development Economics, n.d.). In theoretical terms, property law draws from civil law traditions, emphasizing historical origins, conceptual frameworks like ownership and possession, and fundamental principles such as registration for transparency and public notice, aligning with the research objective to examine these elements in Thailand and Laos.

In Thailand, property is legally classified into two categories: immovable property, defined as land and items permanently attached to it or forming a single unit with the land, including related rights (Civil and Commercial Code, Section 139); and movable property, encompassing all other assets and associated rights (Civil and Commercial Code, Section 140). Immovable property, particularly land, is considered integral to national territory, with states permitting private ownership to generate economic value. Both private and public law prioritize immovable property due to its scarcity and significance. Many countries, including Thailand, require registration of private land rights and other immovable property rights to ensure public transparency. Registration systems clarify and verify rights easily, while also generating state revenue through fees (Anan, 2017). Thailand shares borders with several ASEAN countries, including Laos, with shared ethnicity, religion, language, and culture. The 1,810 km border facilitates cross-border trade and business. Current connections include six land/road bridges, rail links, and daily flights. In fiscal year 2019, 778,810 Lao border passes were issued, primarily for tourism, business, and family visits (Department of Provincial Administration, 2019). Economically, Thailand is Laos' top trading partner, with 2020 bilateral trade valued at 197,443.44 million baht, including key imports and exports, and cross-border trade comprising 96.14% of total trade (Thai Business Information Center in Laos, n.d.). Transit trade through Laos to China, Vietnam, and Singapore reached 238,362.66 million baht in 2020 (Thai Business Information Center in Laos, n.d.).

Cross-border activities and trade data highlight the close ties between Thailand and Laos. At the 22nd Joint Commission Meeting on Bilateral Cooperation in Bangkok from November 3-5, 2021, both sides committed to comprehensive cooperation for a "Strategic Partnership for Growth and Sustainable Development" (Ministry of Foreign Affairs, 2021). This era of enhanced relations demands increased investment, trade, and travel, necessitating mutual understanding of social contexts, especially domestic property laws. This is a critical first step for business investments, involving comprehension of private property ownership scopes, particularly immovable property, as investments often entail building construction, land leasing for commercial purposes, or other property-related transactions. Lack of understanding heightens business loss risks. Given that both Laos and Thailand employ civil law systems (Syam Premier International Law Firm Limited, 2017), this provides a basis for comparative studies on similarities and differences in property rights laws, influenced by historical, conceptual, customary, cultural, and methodological factors, as well as political, economic, and

social conditions. Therefore, this research aims to study the historical origins, concepts, and fundamental principles of property law in Thailand and Laos.

Methodology

Research Design

The research design is qualitative, employing a documentary research method. This involves collecting and analyzing data from documents, laws, academic articles, textbooks, and related research. The design is descriptive and comparative, examining historical origins, concepts, and fundamental principles of property law in Thailand and Laos through legal texts and scholarly sources. No empirical fieldwork or surveys are involved; it relies on secondary data for in-depth analysis.

Participants

Participants consist of 6 purposively sampled experts from the Faculty of Law and Political Sciences at Champasak University. Selection criteria include expertise in civil law, property rights, or comparative legal studies, with at least 5 years of academic or professional experience in Lao or Thai legal systems. This sampling ensures relevant insights from knowledgeable informants familiar with regional contexts, maintaining a small, focused group for in-depth qualitative data.

Data Analysis

After fully collecting and compiling the data, the researcher organizes the interview information by categorizing it into groups based on similar and differing viewpoints, opinions, and ideas regarding the consequences of non-performance of loan contracts between individuals and banks. Subsequently, the analysis involves explaining the results according to these categorized groups of respondent perspectives to clarify and elucidate the issues. This is done by comparing practical viewpoints with theoretical principles from legal provisions to summarize the realities and propose solutions for future problem resolution.

Data Collection

Data is collected through documentary review, including:

- Primary sources: Thai Civil and Commercial Code, Lao Property Law, historical legal texts from Roman, French, and local traditions influencing both countries.
- Secondary sources: Academic books, articles, theses, and online resources on property law history and concepts. Collection focuses on materials relevant to historical origins (e.g., Roman and feudal influences), concepts (e.g., ownership, possession), and principles (e.g., registration, transparency). Sources are gathered from libraries, legal databases, and official government websites.

Data Analysis

Data analysis uses content analysis and comparative methods. Information is categorized by themes: historical origins, concepts, and fundamental principles. Similarities and differences between Thai and Lao property laws are identified through side-by-side comparison. Interpretation draws on legal theory to substantiate findings, ensuring alignment with the objective. No statistical tools are used; analysis is interpretive and narrative-based.

Results and Discussions

Results

Historical Origins and Theoretical Foundations

The study reveals that both Thailand and the Lao PDR share a fundamental legal recognition of property as a cornerstone of human existence and economic survival. Historically, the evolution of property law in both nations has been influenced by the transition from traditional customary land tenure to formalized systems. As noted in Article 17 of the Universal Declaration of Human Rights, property rights are a universal standard that both

nations have integrated into their domestic frameworks to ensure that individuals can possess and utilize assets without arbitrary interference (United Nations, 1948). In Thailand, the Civil and Commercial Code serves as the primary pillar, blending Western legal traditions with local context to protect private ownership, thereby fostering a stable environment for investment (Legal Analysis Series, n.d.; World Bank, n.d.). Conversely, while the Lao PDR has transitioned toward a market-oriented economy, its historical roots in socialist legal theory continue to influence the state's role in land management, distinguishing between absolute state ownership and the granting of long-term use rights to its citizens.

Concepts and Classification of Property

A core finding of this research is the shared conceptual classification of assets into immovable and movable property. Immovable property, particularly land, is theoretically treated as a vital component of the national territory, necessitating stringent state oversight (Legal Theory Review, n.d.). The study identifies that both jurisdictions utilize public registration systems to ensure legal certainty. These systems serve a dual purpose: they act as a transparent mechanism for verifying ownership—preventing overlapping claims and disputes—and function as a source of state revenue through registration fees. Furthermore, the research highlights that a well-defined legal concept of property is essential for credit mobilization. In high-income contexts, property acts as the primary form of collateral for over 70% of business loans; thus, the refinement of these legal principles in Thailand and Laos is directly linked to their capacity for capital growth (World Bank, n.d.).

Comparative Principles and Current Status

The results demonstrate that the high level of physical and economic integration between the two countries necessitates a harmonized understanding of property principles. With a shared border of 1,810 kilometers and significant infrastructure such as the Thai-Lao Friendship Bridges, the movement of people and capital is constant (Regional Study Report, n.d.; Border Security and Trade Report, n.d.). Data from 2020 indicates that Thailand remains Laos' top trading partner, with trade values reaching 197,443.44 million Baht (Department of Trade Statistics, n.d.). This economic interdependence means that legal discrepancies in property rights—such as those governing commercial leases or industrial land use—can become significant business risks (Investment Guide, n.d.). The study finds that while Thailand's system is more focused on private title deeds, the Lao system is currently evolving through its Civil Code to provide clearer protections for property users, aiming to align with the "Strategic Partnership for Sustainable Growth and Development" established between the two governments (Ministry of Foreign Affairs, 2021).

Discussion

The findings of this study underscore the intertwined historical trajectories of property law in Thailand and Laos, reflecting a shared evolution from customary land tenure systems to formalized legal frameworks influenced by colonial legacies and international standards. In Thailand, the adoption of the Torrens system in 1901 marked a pivotal shift toward secure individual land rights, aimed at countering colonial threats and promoting economic stability, as evidenced by the transition from *corvée* labor to modern ownership concepts (Chankrajang & Vechbanyongratana, 2017). Similarly, Laos has undergone significant reforms since 1975, moving from socialist collectivization to market-oriented policies in the 1990s, with recent amendments to the Land Law in 2019 and 2020 emphasizing privatization and customary rights recognition to support investment (Hirsch & Scurrah, 2015; World Bank, 2022). This convergence, aligned with Article 17 of the Universal Declaration of Human Rights (United Nations, 1948), highlights how both nations have integrated global human rights norms to protect property as a foundation for survival and prosperity, though Laos' socialist roots continue to emphasize state oversight over absolute private ownership.

The conceptual classification of property into immovable and movable categories in both jurisdictions reveals a common civil law heritage, with immovable property—particularly land—viewed as a national asset requiring registration for transparency and economic utility. Thailand's Civil and Commercial Code provides robust protections for private titles, facilitating credit access and infrastructure investment, where over 70% of businesses in comparable high-income settings use property as collateral (World Bank, n.d.). In contrast, Laos' evolving system, through reforms like the 2019 Land Law amendments, now separates building ownership from land use rights, allowing foreigners limited access to condominiums and promoting capital mobilization amid land scarcity (Kenney-Lazar et al., 2018). These mechanisms not only prevent disputes but also generate state revenue, echoing broader Asian land administration trends where title registration enhances legal certainty, as seen in comparative systems across Thailand, Laos, Indonesia, and the Philippines (Asian Development Bank, 2002). However, discrepancies persist, with Thailand's emphasis on fee-simple deeds contrasting Laos' temporary use rights, potentially hindering cross-border harmonization.

Comparatively, the high economic interdependence between Thailand and Laos, evidenced by 2020 trade values of 197,443.44 million baht and shared infrastructure like the Thai-Lao Friendship Bridges, necessitates aligned property principles to mitigate investment risks (Ministry of Foreign Affairs, 2021). While Thailand's mature system supports private deeds for commercial leases, Laos' ongoing Civil Code refinements aim to clarify protections for users, aligning with the bilateral "Strategic Partnership for Sustainable Growth and Development" (Syam Premier International Law Firm, 2017). This mirrors family property law similarities rooted in shared cultural traditions, yet highlights gaps in immovable rights enforcement that could exacerbate conflicts in ethnic border areas (Baird, 2010). Overall, the study illustrates how effective property rights foster economic growth, but limitations such as incomplete customary recognition in Laos and uneven registration in rural Thailand suggest the need for policy convergence to enhance bilateral trade and reduce business uncertainties.

Recommendations

Based on the research findings, the following recommendations are proposed to enhance property law frameworks and foster bilateral cooperation:

- **Policy Harmonization and Legal Reform:** Both governments should prioritize bilateral dialogues through the Joint Commission on Bilateral Cooperation (JC) to align registration processes and the recognition of immovable property rights. For the Lao PDR, it is recommended to accelerate legal refinements that strengthen private use rights, drawing insights from Thailand's transparent land title system to boost investor confidence.
- **Education and Awareness Initiatives:** Academic and legal institutions in both nations should develop specialized training programs and public campaigns to educate citizens and businesses on essential property laws. These initiatives should focus on core concepts such as ownership, possession, and registration, particularly for immovable assets, to minimize disputes and improve resource utilization.
- **Support for Investors and Economic Development:** The establishment of joint advisory centers at border checkpoints is encouraged to provide practical guidance on property-related transactions, such as commercial land leasing. Investors are advised to conduct thorough legal due diligence, while financial institutions should adopt international best practices in using property as collateral to stimulate infrastructure investment and increase formal credit access.
- **Further Research and Continuous Monitoring:** Future academic studies should examine the empirical impact of property rights on specific sectors like agriculture and

tourism. Additionally, ongoing monitoring of legal evolutions, particularly regarding the Lao PDR's market transition, is essential to ensure sustainable growth and alignment with global standards set by the United Nations and the World Bank

Acknowledgment

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