

LEGAL CONTROL NOISE POLLUTION GENERATED BY PUBLIC ENTERTAINMENT PLACES*

*Thanawan Chalayonnawin***

ABSTRACT

Noise pollution can be prejudicial to health and can cause annoyance which can eventually constitute to legal context of nuisance. It crucially impacts on community areas where many activities occur. The important question is that whether the noise is out of ordinary or not.

Operating public entertainment places is one of business activities which are popular in recent years. Long term operation of public entertainment places such as pubs, bars, discotheques, clubs as well as some kind of restaurants is the major source creating noise pollution which affects vicinity, workers and customers of such public entertainment places.

Although, there are various laws relating to the control of noise pollution in Thailand, the standards issued under such laws are insufficient, inappropriate, lack of harmonization among responsible organizations and lack of guidelines for local officials to exercise their powers and use discretion effectively.

This article aims to study governing laws themselves, their loopholes and functions of local official powers. Analyze and compare to foreign countries namely; United Kingdom and Hong Kong. In sum, the thesis proposes that, two major recommendations should be introduced. First, governing laws themselves should be amended. Some inappropriate standards of noise pollution control should be adjusted. Second, the functions of exercising powers by responsible authority should be amended by promoting the coordination among responsible authorities and setting forth standard guidelines for local officers' adoptions in order to handle with noise pollution generated by public entertainment places.

Keywords: Noise, Noise Pollution, Public Entertainment Places, Noise Control, Nuisance Control, License Control, Local officials, Official discretions, Official powers.

* The article is summarized and rearranged from the thesis "Legal Control of Noise Pollution Generated by Public Entertainment Places" Master of Laws Program in Business Laws (English Program), Faculty of Law, Thammasat University, 2015.

** Graduate student of Master of Laws Program in Business Laws (English Program), Faculty of Law, Thammasat University.

บทคัดย่อ

มลพิษทางเสียง คือ เสียงที่สามารถส่งผลกระทบต่อสุขภาพ และทำให้เกิดความรำคาญ ซึ่งท้ายที่สุดสามารถส่งผลให้เป็นเหตุรำคาญตามกฎหมาย มลพิษทางเสียงส่งผลกระทบอย่างมากในพื้นที่ชุมชนที่มีการจัดกิจกรรมต่างๆ คำถามที่สำคัญก็คือเสียงที่กระทบสู่สิ่งแวดล้อมภายนอกนั้น เป็นเสียงที่ออกมาสู่สิ่งแวดล้อมตามปกติหรือไม่

การประกอบกิจการสถานบันเทิงของประชาชนเป็นหนึ่งในกิจกรรมทางธุรกิจซึ่งเป็นที่นิยมในปีที่ผ่านมา การดำเนินงานในระยะเวลายาวนานของสถานบันเทิงสาธารณะ เช่น ผับ บาร์ ดิสโก้เทค คลับ และร้านอาหารบางเป็นแหล่งสำคัญในการสร้างมลพิษทางเสียง ซึ่งมีผลกระทบต่อประชาชนบริเวณใกล้เคียง ลูกจ้างของสถานบริการ และลูกค้าของสถานบริการนั้นๆ

แม้ว่าจะมีกฎหมายต่าง ๆ ที่เกี่ยวข้องกับการควบคุมของมลพิษทางเสียงในประเทศไทยแต่จากการศึกษาพบว่ามาตรฐานต่างๆ เหล่านั้น ไม่เพียงพอ ไม่เหมาะสม และขาดการประสานกันระหว่างองค์กรที่รับผิดชอบ รวมถึงขาดแนวทางปฏิบัติสำหรับเจ้าหน้าที่ท้องถิ่นในการใช้อำนาจตามดุลยพินิจอย่างมีประสิทธิภาพ

บทความนี้มีวัตถุประสงค์เพื่อศึกษากฎหมายที่เกี่ยวข้องกับการควบคุมมลพิษทางเสียงจากสถานบริการ และช่องโหว่ของการใช้อำนาจของเจ้าพนักงานท้องถิ่น รวมถึงการวิเคราะห์และเปรียบเทียบกับกฎหมายต่างประเทศคือ; สหราชอาณาจักรและฮ่องกง ข้อเสนอของบทความนี้มีสองประการสำคัญที่ควรได้รับการแนะนำ ประการแรกกฎหมายควบคุมมลพิษทางเสียงเองนั้นควรจะได้รับการแก้ไข บางส่วนของมาตรฐานการควบคุมมลพิษทางเสียงซึ่งไม่เหมาะสมนั้นควรมีการปรับเปลี่ยน ประการที่สองขั้นตอนการใช้อำนาจโดยหน่วยงานที่รับผิดชอบควรได้รับการแก้ไขโดยการส่งเสริมการประสานงานระหว่างหน่วยงานที่รับผิดชอบและการออกแบบแนวทางมาตรฐานในการใช้ดุลยพินิจของเจ้าหน้าที่ท้องถิ่นเพื่อจัดการกับมลพิษทางเสียงที่เกิดจากสถานบริการ

คำสำคัญ: เสียง, มลพิษทางเสียง, สถานบริการ, การควบคุมเสียงรบกวน, การควบคุมใบอนุญาตเจ้าหน้าที่ท้องถิ่นดุลยพินิจอย่างเป็นทางการ อำนาจอย่างเป็นทางการการใช้ดุลยพินิจของเจ้าหน้าที่ท้องถิ่น

Noise pollution has become an issue rooted from community settlements. Noise pollution can be generated from many sources depending on types of activity such as increase of population, transportation systems, construction sites, industrial activities, loudspeakers, plumbing and boilers. According to complaints statistics recorded by Pollution Control Department, noise pollution generated by public entertainment places and garages have been the first issue while industrial noise came as a second source of noise pollution complaints.¹

The increasing of public entertainment places such as pubs, discotheques, bars, restaurants, karaoke and so on plays significant role in many metropolitans. As a consequence, noise pollution generated by public entertainment places is increased; it affects nearby residents. Though the amount of tourists that continuously come to travel in Thailand reveals a good sign for business development and incomes, the responsibility and liability of public entertainment operators to environment should be considered.

With reference to the tort provision stated under the Civil and Commercial Code of Thailand as “The exercise of right which can only have the purpose of causing injury to another person is unlawful,” it can be implied that though human has his right to exercise any

¹ สำนักงานคุณภาพอากาศและเสียง กรมควบคุมมลพิษ กระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อม. เอกสารประกอบการสัมมนาระดมความคิดเห็น เรื่อง แผนแม่บทการจัดการคุณภาพอากาศและเสียง พ.ศ. 2549-2559 11.(2547), available at <http://www.pcd.go.th/count/airdl.cfm?FileName...59.pdf> (

activities as long as they do not contravene to the scope of law, human rights of other people are the matter that every single individual has to respect. In this sense, though public entertainment places operators have their operation licenses, in order to carry on their business, individual being nearby the premise has the rights to stay peacefully of individual living nearby must be concerned.

Noise pollution generated by public entertainment places normally occurs during late night which is supposed to be the time for human relaxation. This brings about many consequences to vicinity in both short term consequences and long term consequences. Short term consequences, to illustrate, are such as annoyance, impaired communication, decrease of ability to monitor the work, anxiety, irritability, decrease of self-esteem² while long term health consequences are such as sleep deprivation, hearing loss, cardiovascular risks and hypertension.³

Entertainment noise emitted from Public entertainment places is the major problem affecting neighborhood nearby. The method for aggrieved person of relieving such nuisance is to rely on administrative organizations; therefore, legal control over nuisance generated by Nightlife Entertainment Public Place has to be precisely considered in order to make effective noise pollution management.

Entertainment noise covers a wide range of situations including lives events; concerts, permanent premises; pubs, clubs⁴, public entertainment places providing food, beverages, live music performances and any other performances for entertainment that closes after 12.00 pm. etc⁵. Subjected to Public Entertainment Place Act B.E.2509, legal licenses for the operation and the location of entertainment business are required. In other words, public entertainment places have to be separated from living community in order to prevent nuisance problem which may have an impact on residents nearby.

However, it should be concerned that many public entertainment places are situated near religious places, institutions and other academic places. These are also the problems which have been complained by monks and students' parents since such noise pollution disturbs the activities and disvalues way of cultures.⁶

According to statistics recorded by Department of Health, Ministry of Public Health, noise nuisance generated by licensed business Detrimental to Health has been complained most by population in Bangkok.⁷As well, in other municipality areas in Thailand,

² Marisol Concha-Barrientos, Diarmid Campbell-Lendrum, Kyle Steenland World Health Organization Protection of the Human Environment Geneva, Occupational Noise Assessing the burden of disease from work-related hearing impairment at national and local levels 11, (2004).

³ *Id.* at 13

⁴ Rosalind Malcom and John Pointing, Statutory Nuisance Law and Practice, (Oxford University Press New York 2005).

⁵ Public Entertainment Places, Section 3.

⁶ ไทยรัฐออนไลน์, ผวจ เชียงใหม่ จัดโซนนิ่งสถานบันเทิง พื้นที่วัด โรงเรียนกรณีศึกษาปัญหาสถานบันเทิงใกล้กับมหาวิทยาลัย, <http://www.thairath.co.th/content/213947>, <http://pub-geoinformatics.blogspot.com> (last visited October 20, 2013).

⁷ กรมอนามัย กระทรวงสาธารณสุข, คู่มือวิชาการ เรื่อง การควบคุมและจัดการปัญหาเหตุรำคาญ 2 (กรุงเทพมหานคร: สำนักงานกิจการโรงพิมพ์องค์การสงเคราะห์ทหารผ่านศึก พิมพ์ครั้งที่ 1 2553). (Health Department Ministry of Health, Academic Handbook Titled Nuisance Control and Management, 2 (Bangkok : Veteran Organization Office Publication 1st ed. 2553))

the record shows that in 2014 (B.E.2557), 22 percent of the complaints in municipalities of Thailand are mainly about noise and noise nuisance;⁸ this 22 percent is found to be a second place after the 37 percent of complaint about odor.⁹

According to section 420 of Tort under Civil and Commercial Code, a person shall have the liability for wrongful conduct if he intentionally or negligently causes wrongful conduct. The problem with applying section 420 to noise pollution generated by public entertainment places appears when a person affected by the noise has a burden to prove that the public entertainment places operators intend to cause or negligently cause noise pollution. He, moreover, will need to prove causation from the alleged act. Consequently, provided that an injured person is unable to prove the intention or causation mentioned above, the public entertainment operators shall not liable for such conduct. Some of the consequences generated by environmental pollution may take a long time to show its results; this leads to the difficulty in determining the consequences of the alleged act.¹⁰ The effects from hearing exceeding noise (noise pollution) normally take years to appear that it is detrimental to hearing systems. Temporary hearing of exceeding noise will not cause impairment while permanent impairment of hearing may take decades to show its consequences. Therefore, during the time that the symptoms caused by hearing exceeding noise do not appear, an injured person is not allowed by the law of tort to claim for compensation.¹¹

It seems that the rule of tort law is not prescribed for the prevention of causing pollution but for providing remedy to an aggrieved person with evident injury.¹²

Another provision regarding the prevention of nuisance is prescribed under section 1337¹³ of Civil and Commercial Code. It is noticeable that the right to claim for compensation derived from noise generators is limited to the owner of an immovable property. Also, this is required greater injury or inconvenience than one should naturally be expected to be proved.

In this circumstance, although an injured person does not have a burden to prove polluter's intentions, he still has to prove that the effects or the consequences of exceeded noise occurred is much more than one could reasonably expected or anticipated with regard to the nature and situation of the property.

To the problem concerning of the right to claim for compensation of a property's owner nearby public entertainment places which situated in their business area (zoning), Professor Amnat Wongbandit views that though the law of Town Planning has been enacted in Thailand, other relevant factors are required to determine the extent of injury

⁸ สมศักดิ์ ศิริวนารังสรรค์. ระบบจัดการเหตุรำคาญ สำนักงานอนามัยสิ่งแวดล้อม กรมอนามัย, <http://www.env.anamai.moph.go.th> (last visited November 18, 2013).

⁹ *Id.*

¹⁰ อานาจ วงศ์บัณฑิต, กฎหมายสิ่งแวดล้อม คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 541 (กรุงเทพมหานคร: สำนักพิมพ์วิญญูชน 2557). (Amnat Wongbandit, *Environmental Law 541* (Bangkok: Winyuchon Publication House 2015))

¹¹ *Id.* at 542.

¹² *Id.* at 543

¹³ Section 1337 of Civil and Commercial Code states that "If a person in the exercise of his right causes to the owner of an immovable property greater injury or inconvenience than should naturally and reasonably be expected or anticipated, having regard to the nature and situation of such property, the owner is entitled, without prejudice to any claim for compensation, to have such injury or inconvenience abated"

or inconvenience. Thus, merely the nature and situation of the property are insufficient since some areas situated under town planning, still accepts some activities which do not comply with the purpose of the area planned.¹⁴

In addition, it is undeniable that there are difficulties in applying section 1337 to solve the effect of noise pollution generated by public entertainment places. The solution seems to be only a remedy to compensate an aggrieved person instead of prevention for noise pollution method.

LEGAL PROBLEMS ON NOISE POLLUTION GENERATAED BY PUBLIC ENTERTAINMENT PLACES IN THAILAND

In Thailand, comprehensive law governing for noise pollution has not been regulated. Legal control on noise pollution are scattered in Environmental law, Public Health Act and local by laws. Noise pollution generated by public entertainment places should comply with ambient noise standard provided by the Enhancement and Conservation of National Environmental Quality Act B.E.2535. Also, it can be considered as noise nuisance which shall be controlled by Public Health Act B.E.2535. In addition, noise generated from public entertainment places should respect local bylaws at a local stage.

Notification of National Environment Board No.17 B.E.2540 prescribes that the standard of ambient noise and the maximum of Background noise level should not exceed 115 dBA. As well, a weigh equivalent noise level or the average of sound level in 24 hours should not exceed 70 dBA. These standards are limitation for noise occurring in residential area. Additionally, in order to calculate specific noise during interference, it is prescribed in the Notification of the National Environment Board No.29 B.E.2550 that the Specific Noise Level at 10 dBA which means the difference between background noise and specific noise exceeding 10 dBA shall be deemed as specific noise and shall be controlled by laws.

Apart from legal control by the Enhancement and Conservation of National Environmental Quality Act, another legal control of noise pollution is to be controlled by local officials by virtue of Public Health Act B.E.2535. Noise from public entertainment places falls into category of noise nuisance according to Section 25 (4) of Public Health Act B.E.2535 which defines that *“any action which causes odor, light, ray, noise, heat toxic matter, vibration, dust; powder, soot, ash, or any other to the extent that causes impairment or may be harmful to health”* shall be a source of nuisance in the event of an occurrence that may cause annoyance to residents in the neighboring area.

In order for noise assessment, specific Noise Level as stated by National Environment Board No.29 B.E.2550 is also applied by Public Health Act B.E.2535.¹⁵ Although the Public Health Act gives the powers to local authority to forbid any person who causes the nuisance in a public place or private place, abate nuisance, issue written order to abate as well as eliminate and control sources of nuisance,¹⁶ it remains the problems with the local authorities exercising such powers in practice.

¹⁴ Wongbandit, *supra* note 10, at 545.

¹⁵ Health Department Ministry of Health, *supra* note 7, at 18.

¹⁶ Section 26 Public Health Act

It should be noted that after considering through the provisions of Public Entertainment Act B.E.2509, it seems that noise generated by public entertainment places has not been sufficiently paid much attention by the law. The provisions are likely to protect more for social problems and drug issues whilst control of noise emitted by public entertainment place is under the Public Health Act and Municipality Bylaws administered by local officials.

By virtue of Public Entertainment Places Act B.E.2509, the Royal Decree specifying the area of locating public entertainment places have been issued in many areas to control over the noise generated by public entertainment places such as in Chiang Mai and Bangkok. However, residents living nearby such zoning area are still affected because of the excessive noise which disturbs their sleep at night.¹⁷

It should be considered accurately that whether the existing legal controls by laws governing on noise generated by public entertainment places are sufficient, effective and appropriate for controlling noise from entertainment activities.

According to the Pollution Control Department statistics, in 2013 (B.E.2556) Bangkok and Chonburi were complained most about noise pollution as there are crowded by populations and gathered various kinds of public entertainment places. Meanwhile, Chiang Mai, appears to be the first place which has been complained about noise pollution in Northern Area.¹⁸ Therefore, the author would like to illustrate the issues regarding legal control, legal implementations and legal effectiveness of legal control of noise pollution generated by public entertainment places in these provinces.

In sum, after having reviewed relevant laws governing for noise pollution generated by public entertainment places in Thailand, it can be observed that various laws have been set forth functions which can be applied to control noise pollution either direct way or indirect way however, in practice, those provisions are insufficient to handle the problems as some of the laws are obsoleted and ineffective. Particularly, the Enhancement and Conservative of National Environmental Quality Act, the Public Entertainment Places Act B.E.2509, the Public Health Act B.E.2535 and Local Bylaws, which play roles as major and direct laws governing the control of public Entertainment Places, still have loopholes which have been considered as follow;

1). Pursuant to the Enhancement and Conservative of National Environmental Quality Act B.E.2535, noise pollution generated by public entertainment places, is not categorized as specific pointed source and the Notification of the National Environment Board No.15 B.E.2540 Titled: Prescription of Background Noise Level states that the maximum noise level at not exceed 110 dBA and average of noise standard at not exceed 70 dBA is not applied to the noise occurring in rural area with low density of people since the standard aims to control noise pollution generated within residential area.

In addition, breaching those standards does not lead to direct punishment from responsible official since the purpose behind standard set forth by the Enhancement and

¹⁷ ร้องทุกข์ : ปัญหาสถานบันเทิงเสียงดัง ตำรวจช่วยได้แล้ว, <http://www.cm108.com/bbb/index.php/topic/>, เทศบาลเมืองแม่โจ้ อำเภอสันทรายจังหวัดเชียงใหม่, http://maejocity.go.th/webboard_detail.php?id=16 (last visited December 3, 2013).

¹⁸ กรมควบคุมมลพิษ, สถิติการร้องเรียนปัญหามลพิษ ปี 2556, http://www.pcd.go.th/info_serv/pol2_stat2556.html (last visited January 5 2014).

Conservative of National Environmental Quality Act B.E.2535 is to settle general standards for other organizations' adoptions.

2). Noise standard provided under Public Entertainment Place Act B.E.2509 depicted by Ministerial Regulation for Designate the Principle of Obtaining License B.E.2549 which stipulates that noise standard of public entertainment places shall be complied with the National Environmental Quality Act B.E.2535, however, the provision does not seem to be effective in practice.

The reason behind this is that the purpose of the Act aims to maintain public orders and good morals therefore, in case when excessive noise occurs, officials responsible under the Act (police and provincial administration) normally do not exercise their power to suspend operation license in practice.¹⁹

3). At a local stage, Public Health Act B.E.2535 provides direct provisions enabling local official to issue an abatement in case when noise nuisance occurs; either in public places or private places, if the fact appear to meet two major satisfactions; physical Examination and Scientific Examination. In many circumstances, the damage affected to vicinity is not apparently noticed, some of them appear to be only annoyance and, particularly, the extent of annoyance is varied by personal sensitivity.

Thus, the problem arises under the scientific examination which requires proof of causation from the alleged noise, this, in practice, leads to many difficulties to local official to exercise their power since the standard or guidelines for local officials to exercise their discretion are absent.

4). Local bylaws (by virtue of Public Health Act B.E.2535) issued local regulation called 'The Control of business detrimental to Health' provide that the maximum of noise shall not exceed 110 dBA and the average of noise standard occurring within public entertainment places shall not exceed 90 dBA, however, the standard does not apply to noise emitted outside the premises. The regulations aforementioned that the noise emitted outside the premises shall not cause nuisance to vicinity. This ,thus, leaves burdens to local officials to exercise their power under the Public Health Act B.E.2535 mentioned previously.

LEGAL CONTROL OF NOISE POLLUTION GENERATED BY PUBLIC ENTERTAINMENT PLACES IN FOREIGN COUNTRIES

In the United Kingdom, noise standard control from public entertainment premises is prescribed by the Noise Act 1996 which focuses on night noise or noise emitted from 11 pm. to 7 am.²⁰ from public entertainment premises which in the Act called "offending premises".²¹ In connection with Licensing Act 2003, the term "offending premises" under the Noise Act 1996 refers to any premises in respect of which a premises

¹⁹ Mr.Thanorm Kuikaew, Governing officer, Professional level, Chiang Mai Provincial Administration Office, interview by author, 21 November 2013 (นายถนอม กุ้ยแก้ว เจ้าพนักงานปกครองชำนาญการ ที่ทำการปกครองเชียงใหม่)

²⁰ Noise Act 1996, Section 2(6).

²¹ Noise Act 1996, Section 2(2).

license or a temporary event notice under the Licensing Act 2003 has effect on individual who is in a dwelling during night hours complaining on its excessive noise emitted.²²

Although, the condition which constitutes to offenses under the Noise Act 1996 is based on “The permitted level,” at the initial stage, local authority is able to exercise the investigation and issue a warning notice to the noise maker.²³ A responsible person of the premises shall be guilty of an offense if it appears that; firstly, the noise is emitted from the premises specified in the notice and secondly, such measured noise exceeds the permitted level.²⁴

As for licensing scheme, United Kingdom provides the Licensing Act 2003 to plays role in noise pollution control as it prescribes public nuisance prevention as one of the four objectives which the operators have to achieve for all the application of licenses.²⁵

Therefore, causing noise nuisance by offending premises may lead to a closure order by a senior police officer at initial stage. Section 161 of the Licensing Act 2003 enables a senior police officer in a rank of inspector or above to give a command to close individual premises. However, four conditions for local authority discretions must be satisfied before the issuance of closure order.²⁶

In Hong Kong, it is interesting that under the Noise Control ordinance; Technical Memorandum for the Assessment of Noise from Places other than Domestic Premises, Public Places or Construction Sites contains the technical procedures for the Authority to adopt before the Abatement Notice is issued. The following criteria are needed to be determined by the Authority before issuing an abatement of Notice;²⁷

- Location of the Noise Sensitive Receiver (NSR) such as hospital, education institute, place of public worship, library and court of law
- Area Sensitivity Rating (ASR) specifies types of area affected by noise such as rural area, low density residential area, urban area, area other than those mentioned previously
- Acceptable Noise Level (ANL) means period of the noise occurrence; day (07.00 am.-7.00 pm), evening (7.00 pm.- 11.00 pm.) and night (11.00 pm.-7.00 am)

²² Department for Environment Food and Rural Affairs : *The Noise Act as amended by Anti-social Behavior Act 2003 and the Clean Neighbourhoods and Environment Act 2005 Guidance to Local Authorities in England*, 2008 Version 1, available online at www.defra.gov.uk

²³ *Id.*

²⁴ The Noise Act 1996, Section 4.

²⁵ The Licensing Act 2003, Part 2 Paragraph 4(2) it is stated that “The licensing objectives are—

(a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm.

²⁶ Colin Manchester, Susanna Poppleston, Jeremy Allen, *supra* note 221 at 505.

²⁷ Environment Protection Department, Noise Control Authority : *Technical Memorandum for Assessment of Noise from Places other than Domestic Premises, Public Places or Construction Sites, 19 June 1997 (Revised)*, available online at www.epd.gov.hk

LEGAL ANALYSIS

According to the study of legal control of noise pollution generated by public entertainment places of Thailand and foreign countries including problems and obstacles of law enforcements, the author would like to propose some recommendations for legal control of noise pollution in Thailand as followed;

1. Since section 55 of the Enhancement and Conservation of National Environment empowers the Minister by the advice of the Pollution Control Committee and National Environment Board to prescribe the standards in control of pollutants from specific point sources into the environment in order to meet the environmental quality standard set by virtue of the Enhancement and Conservation of National Environmental Quality Act B.E.2535, noise generating from public entertainment places should be specified by section 55 a specific point source as to be controlled, inspected and examined by responsible authority under section 82 of the Act.

2. The standard of noise level generating from public entertainment places under Public Entertainment Places Act B.E.2509 and Local bylaws Titled; Business Detrimental to Health should be amended in regard to the nature of entertainment noise and location of public entertainment places.

The factors relating to this point of amendment including location and zoning where public entertainment places are situated as well as time of their operations and type of activities should be taken into account. For example, noise emitting from outdoor live music performance during nighttime from public entertainment situating out of zoning area surrounded by academic institutes and temples should be controlled by higher noise standard than that for noise from indoor music or live performance indoor occurring in daytime.

In author's opinion, criteria on determination of the acceptable noise level of Hong Kong Noise Control Ordinance should be a good role model.

3. Conditions for operation licenses application under Public Entertainment Place Act B.E.2509 and local bylaws should be improved by imposing some provisions regarding to noise pollution prevention. Local officials should also examine their operations before issuing operation license. Examples of the conditions which public entertainment places operators should be satisfied are the operators strictly providing noise nuisance management policy, preparing a sound limiting devices and locating entertainment facilities.²⁸

4. Details on exercising discretions to issue abatement notice under public Health Act B.E.2535 of local officials should be provided.

Section 28 of the Public Health Act B.E.2535 enables local officials to issue a written order to the owner of private place requiring him to abate the nuisance within a reasonable time. Also, local officials may prescribe the method of prevention for future nuisance and specify such method in the order. Additionally, The Public Health Act B.E.2535 provides provision for local official to use their discretions on the method of nuisance abatement at the present and in the future. In practice, local officials use their discretions on the method to abate the nuisance case by case depending on the matter of fact. Nevertheless, the scope and criteria of applying such discretions provided by law whether it be in terms of

²⁸ *City of London Code of Good Practice for Licensed Premises*, available online at www.cityoflondon.gov.uk/.../licensing/.../CoL-code-of-good-practice.pd.

how the method would be in a circumstance occurring, period for the operator to comply with the method, and any other condition for the abatement are still unclear.

Since local official of municipality is the organization which directly involves with the controlling of nuisance , precise and flexible guidelines of conduct for using discretions for local officials should be enhanced.

5. Cooperation of Organizations which are responsible for public entertainment places control should be promoted. Agreement between local bylaws and provincial administration in order to solve the issue of overlapping power to suspend and revoke the operation license under the Public Entertainment Place Act B.E.2509 and the operation license under local Bylaw should be imposed.

The author would like to suggest that the Public Entertainment Places Act B.E.2509 and local bylaws should be amended, the punishment under both laws should be complied with each other in the same way as to eliminate the difficulties which may arise in practice.

6. Stricter punishments for causing noise nuisance should be imposed. It is stated under section 74 of public Health Act 2535 that a person who fails to comply with an abatement notice under section 27 and section 28 is liable to an imprisonment not exceeding one month or fine not exceeding 2,000 Bath

The author views that the punishment imposed on a person who causes noise nuisance from public entertainment premises should be increased; the fine of 2000 Bath seems unreasonable. Furthermore, additional fine in case of repetitive and continual activities of causing nuisance should be forced.

CONCLUSION AND RECOMMENDATIONS

Having studied legal control of noise pollution generated by public entertainment places in Thailand, it was found that many legal measurements regarding noise pollution either in direct way or indirect way have been proposed and enacted to apply with the problems of noise pollution emitted to environment by public entertainment places however the increasing of complaints by vicinity affected by noise pollution generated from such operations can be apparently noticed. Therefore some ineffective noise pollution prevention standards then should be analyzed. By taking some provisions of foreign countries namely United Kingdom and Hong Kong into considerations to adopt as a guideline to Thai legislation.

Two major recommendations are introduced here. First, governing laws themselves should be amended. Some inappropriate standards of noise pollution control should be adjusted. Second, the functions of exercising powers by responsible authority should be amended by promoting the coordination among responsible authorities and setting forth standard guidelines for local officers' adoptions in order to handle with noise pollution generated by public entertainment places.

REFERENCES

Books and Book Articles.

Colin Manchester, Susanna Poppleston, Jeremy Allen. **Alcohol & Entertainment Licensing Law** : Second Edition. New York: USA, 2008.

Robert McCracker, Gregory Jones, James Pereira, Simon Payne. **Statutory Nuisance**. Butterworths Environmental Law Series. Butterworths London Dublin and Edinburgh, 2001.

Rosalind Malcom and John Pointing. **Statutory Nuisance Law and Practice**. Oxford University Place New York, 2005.

กรมควบคุมมลพิษ กระทรวงวิทยาศาสตร์ เทคโนโลยีและสิ่งแวดล้อม. **มลพิษทางเสียง noise**

Pollution. พิมพ์ครั้งที่ 3 , 2544.

(Pollution Control Department, Ministry of Science and Technology, **Noise pollution**, 2001).

อำนาจ วงศ์บัณฑิต. กฎหมายสิ่งแวดล้อม. พิมพ์ครั้งที่ 3, กรุงเทพฯ : สำนักพิมพ์วิญญูชน, 2557.

(Amnat Wongbandhit, Environment Law, Faculty of Laws, Thammasat University, Bangkok: Winyuchon, 2014.)

Electronic Media

“City of London Code of Good Practice for Licensed Premises January 2013”.

[http:// www.cityoflondon.gov.uk/.../licensing/.../CoL-code-of-good-practice.pdf](http://www.cityoflondon.gov.uk/.../licensing/.../CoL-code-of-good-practice.pdf).

Department for Environment Food and Rural Affairs. “The Noise Act as amended by Anti-social Behavior Act 2003 and the Clean Neighbourhoods and Environment Act 2005 Guidance to Local Authorities in England”, [http:// www.defra.gov.uk](http://www.defra.gov.uk) (accessed March 12, 2014).

Thai

“กทม.สั่งตรวจสอบบ้านทิ้งเสียงดัง หลังกรรมการสิทธิฯ ร่อนหนังสือปราบ”,

<http://www.dailynews.co.th/Content/regional> (accessed January 5, 2013).

“คุณภาพชีวิต ผับ เขต เสียงดังเกินมาตรฐาน 100%.”

<http://www.manager.co.th/QOL/ViewNews.aspx?NewsID=9470000092786> (accessed January 5, 2013).

“คำแนะนำของคณะกรรมการสาธารณสุข ฉบับที่ 1 /2548 เรื่อง การควบคุมกิจการที่เป็น อันตรายต่อสุขภาพประเภทกลุ่มบริการ บ้านทิ้ง”, <https://sirchanhod.wordpress.com/2012/02/13/%E0%B8%A1%E0%B8%A5%E0%B8%9E%E0%B8%B4%E0%B8%A9%E0%B8%97%E0%B8%B2%E0%B8%87%E0%B9%80%E0%B8%AA%E0%B8%B5%E0%B8%A2%E0%B8%87-noise-pollution/> (accessed June 5, 2014).

“เสียงใหม่จับสถานบริการลงนามร่วมมือจัดระเบียบสังคม”.

<http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9510000030957> (accessed January 5, 2013).

cm108.com. “ร้องทุกข์ : ปัญหาสถานบันเทิงเสียงดัง ตำรวจช่วยได้แล้ว”,

<http://www.cm108.com/bbb/index.php/topic/> เทศบาลเมืองแม่โจ้

“อำเภอสันทรายจังหวัดเชียงใหม่” http://maejocity.go.th/webboard_detail.php?id=16 (accessed December 3, 2013).

“ที่ว่าการอำเภอบางละมุง ตรวจสอบบริการทั่วเมืองพัทยา”,

<http://www.banglamungdistrict.go.th/?page=news&no=139> (accessed December 3, 2013).

“ไทยรัฐออนไลน์. ผวจ เชียงใหม่ จัดโซนนิ่งสถานบันเทิง พื้นที่วัด โรงเรียนกรณีศึกษาปัญหาสถาน

บันเทิงใกล้กับมหาวิทยาลัย”, <http://www.thairath.co.th/content/213947>, <http://pub-geoinformatics.blogspot.com> (accessed October 20, 2013).

สถาบันสิ่งแวดล้อมไทย. “ความรู้เกี่ยวกับมลพิษทางเสียง”,

http://www.tei.or.th/cef/nonoise/nonoise_knowledge_4detail.html#6 (accessed December 25, 2014).

สำนักงานคุณภาพอากาศและเสียง กรมควบคุมมลพิษ กระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อม.

“เอกสารประกอบการสัมมนาระดมความคิดเห็น เรื่อง แผนแม่บทการจัดการคุณภาพ

อากาศและเสียง พ.ศ.2549-2559”, http://www.pcd.go.th/info_serv/service.html (accessed

January 20, 2015)

Other Materials

The interview. Mr.Noppadol Sawat: Chief of Air Quality and Noise Control Section
Sanitary Engineering Division. Public Work Bureau. Chiang Mai Municipality.
November 7, 2013.

(นายณพล สวัสดิ์ ผู้อำนวยการฝ่ายควบคุมคุณภาพอากาศและเสียง ส่วนช่างสุขาภิบาล สำนักปลัดเทศบาล เทศบาลนคร
เชียงใหม่)