

A COMPARATIVE STUDY OF COMPENSATION FOR DAMAGE RESULTING FROM MINING ACTIVITIES IN JAPAN AND THAILAND

Keiko Nakanishi

ABSTRACT

Thailand has been experiencing severe environmental problems resulting from mining activity such as environmental damage and health damage. Mine pollution and its compensation for victims are one of the serious problems which need to be addressed immediately in order to impose compensation in accordance with Polluter Pays Principle (PPP). This thesis focuses on compensation for health and environmental damage resulting from mining activity and examines how victims can get the appropriate and reasonable value of compensation by identifying defendant properly compared with Japanese and Thai laws.

Focusing on Japanese laws concerning compensation for damage resulting from mining activity, there are three main and significant laws; Mining Act, Pollution Related Health Damage Compensation Act, Water Pollution Control Law. On the other hand, Thai laws such as the Enhancement and Conservation of National Environmental Quality Act of 1992, Mineral Act of 2002, the Navigation in the Thai waters Act of 1992 also impose compensation for mine damage, however, there is still no clear standard and guideline or method to be used in assessing mine pollution damage. Therefore, this leads to one of the most obstacles that victims can't be awarded the appropriate and reasonable value of compensation.

Thus, in order to overcome issues of compensation for damage by identifying defendant more effectively, standards concerning scope of mine damage compensation and calculation methods of compensation had better be established clearly. Thai laws had better adopt concept of "Extended Producer Responsibility" which covers not only prevention of pollution but also remediation.

Additionally, section 131/1 of Minerals Act of 2002 had better revise explicitly to mention what types of activities are applicable to compensation to ease difficulty of identifying defendant. Besides, section 88/12 of Minerals Act of 2002 should not be limited to cover “within the mining area” concerning scope of compensation to be awarded.

Keywords: Compensation for mine damage, Remedy, Mining activity and impact,

INTRODUCTION

This chapter discusses the background and the problems concerning compensation for damage resulting from mining activities. Additionally, chapter 1 shows that why laws concerning compensation for mine damage should be implemented, together with the hypothesis, objective of study, scope of study, methodology, and expected result from the study.

At present in Thailand, there are some provisions imposing compensation on party causing damage resulting from mining activities, however, there is still no clear provision dealing with criteria and guidelines or methods to be used in assessing mine pollution damage such as how compensation for damages is to be calculated concerning total amount of compensation that responsible party has to pay or which items should be compensated for victims. Hence, compensation for pollution damage in Thailand remains practice complex. No clear provision assessing damage to mine pollution creates one of the most important obstacles for court in making decision and awarding an amount of damages that accurately reflects actual value of damage.

Strengthening of environmental consideration and improving some parts of inefficient legislations concerning compensation for mine damage is indispensable for protecting

people who injured and it is further demanded rapidly in Thailand toward expansion of mining activity by foreign business, ASEAN integration. Economic development will lead to increase pollution damage.

This thesis focuses on compensation for health damage and environmental damage resulting from mining activity in order to examine how victims can get reasonable and appropriate compensation which matches to damage as far as possible compared with Japanese and Thai laws.

MINING ACTIVITY AND IMPACT

Mine pollution may be continued and caused terrible damage to a large number of people in a wide area. Besides, as there are many cases that damage may appear by accumulation of hazard substances taking some years after cause of act, identifying polluter is extremely difficult.

Chapter 2 focuses on the overview of mining activity in both countries of Japan and Thailand and it also shows environmental impact and health impact caused by mining activity. What kind of certain mining activities may cause what kind of mine pollution damages? Mine damage might be caused mainly in the step of drilling activity for extraction, emissions of dust or smoke, disposal waste rock, discharge water in mining process. The damages may be a board range of various pollutions such as noise, air, water pollution and soil contamination. Additionally, chapter 2 introduces pollution-related diseases in Japan, Itai-itai disease and Toroku arsenic disease which are certain specific disease caused by mining activity in detail.

COMPENSATION FOR DAMAGE RESULTING FROM MINING ACTIVITY IN JAPAN

This chapter illustrates the conceptual framework of Pollution Pays Principle and Precautionary Principle under the

Japanese laws, together with the object, content of compensation, scope of compensation. Additionally, chapter 3 introduces the calculate methods of compensation of Japan with the formula in detail. The subject matters of this study are the Civil law, Pollution-Related Health Damage Compensation Act (PRHDCA), Mining Act, Water Pollution Control Law and State Redress Law. Also, chapter 3 studies and analyzes landmark cases relating to compensation for mine damage in order to investigate and further research of this study.

Concerning techniques for increasing the value of compensation in Japan, it has become clear that indicating extent of damage clearly that are health damage and labor disability, influence on life by damage such as decrease income would be indispensable. Additionally, if victims can prove negligence or intention of defendant's act, or if victims can reduce percentage of victim's negligence when victims have certain negligence, the value of compensation can be increased.

COMPENSATION FOR DAMAGE RESOULTING FROM MINING ACTIVITY IN THAILND

Chapter 4 shows the conceptual framework of Pollution Pays Principle and Parens Patriae Doctrine under the Thai laws. The subject matters of this study are as follows.

1. Civil Commercial Code
2. The Enhancement and Conservation of National Environmental Quality Act of 1992.
3. The Mineral Act of 2002
4. The Navigation in the Thai Waters Act of 1992
5. The Hazardous Substance Act of 1992

The discussion focuses on Section 420 of the wrongful act, Section 1337 of property damage under Civil Commercial Code, Section 96, Section 97 under the Enhancement and

Conservation of National Environmental Quality act of 1992, Section 131/1 and 88/12 of the Mineral Act of 2002, Section 119, Section 119 *bis* of the Navigation in the Thai Waters Act of 1992 and Section 69 of the Hazardous Substance Act of 1992 by explaining the general concept and principle behind these provisions.

Besides, this chapter provides a comparative study of compensation for mine damage between Japan and Thailand in order to investigate characteristics, including major problems of compensation for mine damage under the Thai environmental laws.

CONCLUSIONS AND RECOMMENDATIONS

Chapter 5 shows the overall analysis of the entire papers and provides some legislative recommendations and other recommendations based on the content of conclusions. The recommendations focus on appropriate, practical solutions concerning compensation for mine damage in order to approach the appropriate and reasonable value of compensation for victims by identifying polluter properly.

There are also several issues in the Japanese laws, however, Japanese laws prescribe more concrete and more strict regulations from the experience of severe mine pollution damage in the past compared with Thai laws. Japanese laws may be applicable to use as references for improving some regulations of Thai laws. We need to face the matter that many people suffer from environmental pollution damage resulting from mining activity on the back side of development. At least, such victims should be awarded the reasonable and appropriate compensation which matches extent of damage as far as possible.

REFERENCES

Books

English

H.Nishimura, **How to conquer air pollution, a Japanese experience**

United Nations Environment Programme, **Liability and Compensation for Environmental Damage**

M.J. Chadwick, N.H. Highton, and N.Lindman, **Environmental impacts of coal mining and utilization**

H. Sebnem Duzgun & Nuray Demirel, **Remote sensing of the mine environment**

Alexandre Timoshenko, **Liability and compensation for environmental damage**

Japanese

Tokumoto Makoto, **Research for Responsibility of the Mine Pollution Compensation**

Awaji Takehisa, **Theory of Compensation for Industrial Pollution**

Yokemoto Satoshi, **Liability for environmental Damage and Burden Expense**

Japan Environmental Management Association for Industry, **Technology and Legislation of prevention of pollution**

Isono Yayoi, **Present Condition and Future Task of Environmental damage lawsuit in Japan**

Articles

Chen-Ju Chain, *“The Liability and Compensation Mechanism under International Marine Environmental Law”*, **LOSI Conference Papers, 2012**

Ondrej Vicha, *“Polluter Pays Principle in OECD Recommendations and its application in international and EC/EU Law”*, **CYIL 2 (2011) P. 57-67**

Nuclear Energy agency organization for economic Co-
operation and Development, “*Japan’s Compensation
System for Nuclear Damage*”, @OECD 2012 NEA
No.7089

Yoshimura Ryouichi, “*Compensation for Environmental
Damage*”, Ritsumeikan University law department
2010(333, 334)

Eri Osaka, “*Reevaluating the Role of the Tort Liability System
in Japan*”,
Law journal V26, N2 2009