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Water Law Reforms in Thailand

Dr. Amnat Wongbandit
Head of Natural Resources and
Environmental Law Department,
Faculty of law, Thammasat University

Thailand is a country with a large number of laws relating to water resources but it does not have a comprehensive water law which lays down a general framework for integrated water use, development, management and conservation. Since the existing water law is unable to tackle water problems efficiently, it needs to be reformed. A serious attempt to reform the water law started around 1991 when a variety of water problems appeared. During that time there were more than 20 departments responsible for water use, development, management and conservation, and no legally-recognized apex body which was able to guide the operation of such departments to the same direction. At the same time, the concept of water right is not clear enough for efficient water use, development, management and conservation. The government agencies concerned, water experts, academics and water users therefore called for water law reforms.

In 1993 the first draft water law was prepared by a group of legal experts from the Council of State, Office of the Attorney General and universities. The draft redefined water right through the introduction of a “permit system” in Thailand with possible collection of water use fee. It proposed to set up the Ministry of Water Resources and the National Water Resources Committee as an apex body for the water sector. This draft however could not get through three major hurdles. First, it was opposed by a large group of politicians and high-ranking officials who suspected that the draft was primarily intended to set up the Water Resources Ministry so that more new positions would be up for grab by some politicians and government officials. Secondly, due to the promulgation of the new constitution in 1997, which encourages public participation in natural resources management and conservation, many claimed that the public had no part in preparing this draft and consequently it was regarded as not conforming to the spirit of the constitution. Finally, some NGOs accused that the introduction of the draft, especially the provision on water use fee collection, was forced by an outsider, the Asian Development Bank, in an exchange for loans to Thailand and such a provision would impose an excessive economic burden upon the poor, particularly farmers. Despite the cabinet’s resolution in 2000 calling for the acceleration of water law enactment, the three hurdles were too strong for the draft to overcome.

In 2002 the Thai government reorganized all of its agencies and as a result the Department of Water Resources was set up within the Ministry of Natural Resources and Environment. This department has been vested with power to implement the 2000 cabinet's resolution. It commissioned a team of experts from Thammasat University to prepare the new draft water law with the emphasis on public participation. To comply with the guideline, this expert team arranged public consultation on water law before and after the drafting process.

Before the drafting, the expert team made field trips to 12 provinces to interview a number of water users, NGOs and government officials responsible for water resources. Based on data from the field trips, identified issues were brought to public consultation in 9 conferences held in different parts of the country. Questionnaires were also distributed to the conference participants. After that the draft water law was prepared and presented to a steering committee for comments. The expert team took such comments into consideration in adjusting, if necessary, the draft and then consulted with the public again by presenting the draft to public conferences held in 14 different locations across the country. More than 7,000 questionnaires were also distributed to target groups. This draft water law therefore is one of a very few draft laws in the Thai legal history, which has gone through extensive public consultation.

The current draft water law is intended to be framework legislation for water resources utilization, development, management and conservation. It would not abrogate laws specifically dealing with a particular matter unless its provisions are directly in conflict with its provision. For example, water in irrigated areas is governed by the Royal Irrigation Act, 1942, but the apex body under the draft water law would be able to issue rules and regulations, if necessary, concerning the use, development, management and conservation of such water.

An important issue addressed by the draft water law is water right. It tries to tackle the vagueness of the current water right by introducing the "permit system" into Thailand. However the permit system is adjusted accordingly to the Thai social context and based on a political compromise. While some water users would be required to apply for a water permit with possible water charges, those who use a small amount of water are under no obligation to do so. This is to ensure the poor would have access to water to meet their basic needs with charge. On the other hand the redefinition of water right would lead to the efficient use of water at all levels. For instance the water right of each river basin would be defined and it has to make sure that it would not use water exceeding its water right or it would have to buy water from other basins.

With respect to institutional arrangements, the draft water law would set up the National Water Resources Committee (NWRC) as an apex body, and a river basin committee would be established for each river basin. NWRC has powers, among other things, to suggest water policies to the cabinet, comment on budget allocation to water projects, assign water right to river basins, issue water permits for large-scale water use, and resolve conflicts between river basins. The composition of NWRC is derived from a compromise which tries to balance the number of committee members from the

government and from the people and civil society. It is hoped that this would get support from the public because they currently do not trust the existing NWRC, whose composition and operation has been dominated by the government.

At the basin level, the Minister of Natural Resources and Environment with the approval of NWRC may issue a ministerial regulation setting up a river basin committee for a particular basin. The composition of the committee would vary from basin to basin. Its main functions are to approve a basin master plan, comment on budget allocation for water projects in the basin, regulate small and medium-scale water use and set up, if necessary, sub-basin committees. The draft water law wants to decentralize some power to people in a river basin through a river basin committee. The government however still retains some power to ensure that river basin committees would function within the limit of law.

Does the water law reforms would make the Thai society better off? The answer is certainly positive. First of all, people in river basins would have more role than before in developing, managing and conserving their own water resources. Secondly those using water for commercial purposes would be required to incorporate water charge into their production costs, which would lead to efficient water use. Finally, the poor would be guaranteed an access to water.