

LAND OWNERSHIP IN THAILAND

by

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1.0 Introduction

The legal pattern of Thailand's land tenure is a product of a long historical process. According to Thai traditions and its laws, all land and natural resources belonged to the King and he grant ownership in the land to his subjects who has cleared and cultivate it. The traditional concept of land ownership which is establish through occupation and productive use is illustrated by the following passage from an early Chiangmai palm leaf legal text which purports to restate the traditional law passed on by King Mangrai in the 13th century which is as follows¹ :

"If a peasant has claimed riceland, has cleared the fields and built homes and orchards on the land, after he has used the land for three years it is right to collect taxes from him. If one man has worked on the land until it is a decent piece of land and there is another man who comes to snatch it away by offering a price for it, this is not proper, so do not remove the man. No matter how much he seeks to impress you with his wealth or status, you should not be persuaded because of those things. If you give in, then the peasant will truly be discouraged from creating and producing in the future".

This means that any Thai can claim ownership to a plot of land he cleared out and cultivated and he has only to register his claim for a small fee after cultivating the plot for three years, whereupon it becomes his property.² This custom which gave ownership to farmers who exercised de facto occupancy and cultivation has long been in practice in Thailand, but in 1901 King Rama V (King Chulalongkorn) introduced the modern idea of land ownership, legally distinguishing factual occupancy from ownership, and he created a system in which no protection is given to occupancy but only to ownership. This led to a confusion in Thailand's land tenure system.³ In 1936, a more flexible land law which reaffirmed this customary practice was legislated, and since then the system has become stabilized. The current land law, *Kotmaai thiidin phoo. soo 2497*, (Land Code) which was legislated in 1954, was introduced and it adheres in its essentials to the ideas of the 1936 law, recognising three different stages in acquiring land that is occupancy, utilization and legal possession. The Land Code

¹ Engel, David M., **Code and Custom in a Thai Provincial Court**, University of Arizona Press, 1978 at pg. 120.

² James C. Ingram, **Economic Change in Thailand Since 1850** Stanford University Press, 1955, pg. 79.

³ see Toru Yano, "Land Tenure in Thailand", **Asian Survey**, October, 1968 at pg. 853.

governs matters concerning land protection, arrangement for the utilization of State lands, land allocation for the people, delimitation of rights in land, issuance of document sharing rights in land, land survey, recording of rights and legal acts, limitation of rights in land for religious purposes and limitation of alien's rights in land. Another important legislation which regulate land matters is Book IV of the Thailand Civil and Commercial Code which came into force on the 1st. April, 1932. The provisions relating to the law of property in this Code are similar to those under German and Japanese laws.

The introduction of modern laws to Thailand in certain aspect were in conflict with the traditional practices, and attempts were made by the Government to reconcile the modern laws to traditional practices but discrepancies arose. Thus, it can be concluded that the current structure of Thailand's land system is influenced by two factors namely,

1. the customary law concept on land possession, abided by for generations, and
2. the modern land law that is the Torrens System launched at the beginning of the 20th century.

2.0 Land Registration System

Land registration system in Thailand is based upon the principles of cost-savings, convenience and rapidity. Land registration is carried out by officials at the Central Land Office (CLO) or at the district offices, depending on the documents of title applied for. If the land is held under title deed and certificate of land utilization, registration is performed by the CLO, whereas, if land held under other types of certificates, then registration is done by the Chief of District or his deputy in charge of a sub-district. Generally, those who wish to register their land title goes to the nearest Land Offices in which their land is situated. However, except for the registration of documents which has not been surveyed, application can also be made to the CLO in the Department of Land. The CLO accepts application for land registration from all over the country but they have no authority to register. After receiving the application and examining it, CLO, will send the documents to the officials in charge in the district office where the land is situated.

There are two types of registration i.e. right and juristic act.⁴ Right registration is when application is made solely by one applicant. This application is usually for the purpose of applying for title deed or other form of document certifying his right in the land. Juristic act is a dual request in which two parties makes an application to the land office to have the contract between the parties such as contract to transfer land or to mortgage it, be registered. It is interesting to note here that such a contract must be drafted by the land officials who follows a standard form.⁵ However, the parties may insert additional clause to the contract as long as it is "not provoking peace and order to society or morals of the people".⁶

⁴ see Siri Keiwalinsrit, Land Administration in Thailand at pg. 25.

⁵ Ibid

⁶ Land Code 1954

Documents evidencing rights in land are prepared in two copies. The original copy is kept at the land office, whereas the duplicate is given to the land owner. When there is a request for registration, the officials will record the necessary information in the index documents in both the copies.

The process of registration is usually completed in one day. After it is completed, the district land offices will send the applications to its headquarters where they recheck and ascertained that the registration is in compliance with the law. If there is no discrepancies, then it will be microfilmed to be used as evidence. However, if the registration is not in compliance with the law, then the parties concerned will be inform so as to have the opportunity to reject or oppose such cancellations or corrections. If these discrepancies causes loss to any of the parties concern and this was due to the negligence of the official, he is liable for damages.⁷

2.1 The Types and Nature of Land Certificate of Title

There are four types of land certificate evidencing rights in land issued by the Land Department under the Land Code i.e.

1. Claim Certificate (*sor kor neung* or SK1)
2. Pre-emptive Certificate *bai chong* or NS2
3. Certificate of Utilization which are in two forms i.e. *nor sarm kor* NS3K and another, *nor sor sarm* or known as NS 3.
4. Title Deed (*chanod* or NS4)

The Claim Certificate (hereinafter mentioned according to its Thai abbreviation as SK 1) consists only of a brief verbal description of the boundaries of the land by the applicant, a rough map, the signatures of the claimant, the village chief (*kamnan*) and two witnesses. It is issued by the district offices without any formal inspection of the land and is therefore questionable with regard to the precise boundaries and the existence of other claimants to the same property. The SK 1 document does not vest upon its holder any claim of ownership nor with the right to dispose of the land (except by inheritance), but merely to establish his prior claim of occupancy and to give him a chance to pay taxes upon the land and put the land to productive use. If after three years of occupation he has not put the land to productive use, then his interest in the land is extinguished. This was done during the transitional period after the Land Code 1954 was passed in which those who were in possession of land and has cultivated it prior to the enforcement of the Land Code, apply for SK 1 from the district offices in which the land is situated. However, this document is transferable but subject to advertisement of the transfer and is convertible to Title Deed or Certificate of Utilization⁸. As the SK1 is made without inspection or survey and is issued on oral

⁷ see Siri Keiwalinsrit, at pg. 26

⁸ Siri Keiwalinsrit, "Land Administration in Thailand", **Chulalongkorn Law Review** (1984) 3 at pg. 14

application, this will result in many discrepancies such as imposition of high tax which is assessed according to the inaccurate size of the land describe in the SK1 and it can even be issued when the applicant mistakes land owned by another person as "ownerless land".⁹

The Pre-emptive Certificate (hereinafter mentioned as NS2) is a certificate authorizing temporary occupation of land in which the land is described by metes and bounds. The certificate is not transferable except by way of inheritance and it's holder's ownership is conditional upon cultivation of the land within 6 months of issue. At least three-quarters of the land must be used before it may be converted to a certificate of utilization. In Thailand the practice of cultivating and acquiring unreclaimed or ownerless land is called *cap chong*. Article 3 of the Land Code provides that ownerless land belongs to the State (*raat*). Thus, the State has power to dispose of land through the *cap chong* practices. The practice of *cap chong* was adopted into the statutory law and is still alive in the contemporary law. At present, legally valid squatting can be distinguish from the invalid. Article 30 and 33 of the Land Code provides for the practices *cap chong*. In order to carry out *cap chong*, the farmer has to ask the District Land Office to inspect and survey the land in question, and to put a public notice for 30 days. If no objection is raised, he will receive a pre-emptive certificate (NS 2) allowing him to temporarily occupy and cultivate the land (*bai chong*). He must start reclamation within 6 months after obtaining the NS2 and prove the utility of his efforts within 3 years (*tham prayoot*). With this condition fulfill he will be granted with the Certificate of Utilization (NS 3) a document certifying that the land has been utilized by him thus leading to the establishment of his right to land. If he does not fulfill the condition, the land will revert back to be State. However, this squatting system does not run smoothly as many farmers, due to ignorance, did not adhere to the Land Code requirement but merely adhere to the customary requirement which provides that whoever wants to occupy ownerless land merely places a certain mark on it and reports this to the village headman. These farmers do not go to the Department of Land to find out whether another person has already establish ownership of the land he intends to squat and does not make any public announcement of his intention. As a result many farmers have no protection to the land that they occupy and cultivate and their position is merely that of a trespasser. Another problem faced by farmers under this squatting system is that there is a decrease in ownerless land for squatting, due to the appropriation of these lands by the State who is empowered under Article 27 to 29 of the Land Code to appropriate it for public purposes. As a result many farmers have trespassed on land designated by the State for public use.

Certificate of Utilization issued by the district office certifies that the holder has put the land to use and has fulfilled all the conditions as stated in the NS2. This certificate is in two form, depending on the method used for survey of its boundaries i.e. *nor sor sarm kor* (NS3K) in which the boundaries are taken from maps prepared from unrectified aerial photography; and *nor sor sarm* (NS3) in which the boundaries are measured in isolation by the triangle method (chain survey method). Both types of certificates are supported by a deed plan showing the shape and size of the holding. As the NS 3 are mapped in isolation, proposed transfers must be advertised for 30 days before the transaction. However the NS3K certificate can be transferred without advertisement.

Title Deed or *chanod* (NS4) issued by the provincial Governor or the Central Land Office is a certificate by which the State formally approves legal ownership. It is supported by a deed plan showing the position of boundary corner stones surveyed by ground method or based on rectified aerial photomaps. It contains particulars of the

⁹ see Toru Yano, at pg. 856

land and owner on one side of it and an index of subsequent dealings such as transfer, lease or mortgage on the reverse. Both the Title Deed and Certificate of Utilization are fully negotiable but they are subject to adverse possession by prescription. The difference between these two form of document is in the manner in which the boundaries are surveyed. In lands held under Title Deed the landholder has permanent heritable and transferable rights. He is thus a full owner of land with unrestricted right of transfer. The rights under "Certificate of Utilization" are also permanent and heritable. Transferability is, however, subject to cumbersome restrictions as it requires prior approval of the district officer and before such approval can be granted the application for transfer is to be notified for a period of 30 days, inviting objections to be heard before permission to transfer is awarded. Due to these restrictions the value of land held under this "Certificate of Utilization" is small, and commercial banks do not consider it as good security for bank loans. Some credit can be raised from private money lenders but the rate of interest is exorbitant, ranging up to 48% or more. Cooperative provide a limited mostly short-term credit and not exceeding 60% of the estimated value of the land which is in any case is small.¹⁰

With less than 13% of the total agricultural land in Thailand held by title deed, the government is giving high priority to an accelerated program of issuing title deeds. The Department of Lands plans to complete the issue of title in 20 years supported by a World Bank loan.

Other than the four types of documents evidencing rights in land as mentioned above, there are other form of documents which provide official evidence in support of a subsequent application for a title deed or certificate of utilization but which is not provided under the Land Code i.e.

1. NK1 and 3 : licence issued in settlement schemes administered by the Public Welfare Department and the Co-operative Promotion Department; not transferable other than by way of inheritance.
2. PBT6 (*por bor tor hock*) : a receipt authorizing use of land issued on payment of tax to the amphur land office; not transferable.
3. STK (*sor tor kor*) : a usufructuary license issued by the Royal Forest Department in forest reserves.

2.2 Legal Effect of Registration

The law gives legal protection to all registered owners of properties. Section 1299 of the Thailand Civil and Commercial Code provides that no acquisition by juristic act of immovable property is complete unless the juristic act is made in writing and the acquisition is registered by the competent official. It further provides that an acquirer of land who does not register his title or interest in land "cannot be dealt with through the register" and cannot be "set up against a third person who has for value and in good faith acquired and registered his right in the property."¹¹ Thus, a person who has registered his right in the land acquires legal protection which means that he has a better claim and priority over all unregistered claims to the property.

¹⁰ Chaiyong Chuchart and Praiswan Resanond, "The Prospects of Land Reform in Thailand" at pg. 308

¹¹ Section 1299 of the Thailand Civil and Commercial Code

Upon registration, the party in whose favour registration has been effected "is presumed to have possessory right over the land" (section 1373 of the Thailand Civil and Commercial Code). Under Thailand's land tenure system, a person obtains possessory right over land by holding or possessing it "in good faith, peacefully and openly". (s. 1367 and 1370 of the Code). The law further provides under section 1382 of the Code that a person acquires ownership of the land if he for an uninterrupted period of 10 years peacefully and openly possessed immovable property belonging to another with the intention of being its owner. Thus, registration confer on the person whose name is on the register, legal protection but at the same time his ownership is subject to adverse possession by prescription or may be defeated by one with a better claim. In other words, it is likely for a registered owner of land in Thailand to lose it to another person who has in good faith accepted and cultivate it for an uninterrupted period of at least 10 years. However, when a transfer of land is registered in a person's name but to the prejudice of another person who was previously in a position to have his right registered then, the latter may claim for the cancellation of the former registration but no cancellation can be made against a transferee for value and in good faith (section 1300). Thus a title or interest acquired by any bona fide purchaser for value and any person or body claiming through him is protected by the law.

Therefore, it can be concluded that a holder of a Title Deed (NS4) or a Certificate of Utilization (NS 3), acquires legal possession and ownership to the land but subject to the adverse possession by prescription. However unlike other system of land registration which confers indefeasibility of title to the registered owner, a registered owner's (*chanod* holder) title to his land in Thailand is merely defeasible that is by adverse possession by prescription.

2.3 Restriction On Land Ownership in Thailand

Subject to the operation of the Investment Promotion Act 1977 and the Industrial Estate Authority of Thailand Act 1979, it is generally not possible for "aliens" to own land in Thailand. A Thai citizen who marries a foreigner loses his right to own immovable property in Thailand. An alien under the Land Code includes companies with more than 49% of their share equity owned by foreigners or a majority of whose shares are held by foreigners and for limited and registered partnership in which more than half of the partners and more than 49% of the capital is owned by foreigners. According to the provisions of the Land Code, land may be acquired by foreigners by virtue of a treaty giving them right to own immovable properties with the permission of the Minister of Interior for the following purposes:

1. For residential purposes, not more than 1 rai ¹² per family
2. For commercial purposes, not more than 1 rai
3. For industrial purposes, not more than 10 rai
4. For agricultural purposes, not more than 10 rai
5. For religious purposes, not more than 1 rai
6. For public charity purposes, not more than 5 rai
7. For burial purposes, not more than 1/2 a rai per family.

¹² One rai is equivalent to 0.395 acre or 0.16 hectare

An exception to the general rule is that promoted company under the Investment Promotion Act may be granted the right to own land necessary for carrying on its activities. Moreover, oil concessionaires under the Petroleum Act 1971 and ventures under the Industrial Estate Authority Act 1979 are permitted to own land necessary for their activities.

2.4 Constitutional Protection on Property Ownership

In Thailand, the right to property is guaranteed under section 33 of the Constitution of the Kingdom of Thailand, which provides that -

"The property right of a person is protected. The extent and restriction of such right shall be in accordance with the provision of law"

This constitutional safeguard therefore demands that before any expropriation of immovable property is made by the State, there must first be enacted a specific law for that purpose. The expropriation of the property can only be made for the purpose of public utility, national defence, exploitation of natural resources, town and country planning, agricultural or industrial development, land reform or other public interest and fair compensation shall be paid in due time to the owner and the person having right to the land who suffers loss as a result of the expropriation.¹³ The provision further provides that the amount of compensation shall be assessed according to the mode of acquisition and nature of the immovable property and also to the purposes of the expropriation. However, if the property acquired has not been used to fulfill the purpose in which it was expropriated within the time prescribed by law, it shall return to the original owner or his heir unless it is used for other purposes as provided under the law.

2.5 Land Use Classification

Land can be classified into three categories that is, State Land (raat), Private land and Undocumented land.¹⁴

2.5.1 State Land

State land can be further classified into four, namely, Forest land; Government Real Estate land; Local Administration and State Enterprise land; and Public Domain land.

¹³ See Siri Keiwalinsrit "Land Administration in Thailand". **Chulalongkorn Law Review**, 1984 at pg. 12

¹⁴ Ibid at pg. 12

- (a) Forest land which is administered by the Royal Forest Department under the Forest Reserve Act 1964 and the National Parks Act 1961, covers the biggest land area of the country i.e. 50.6% of the total area of Thailand.¹⁵ Out of these gazetted reserves and parks, about 32 million rai of land has been used for agriculture purposes by private individuals. However, those who are in possession of Forest Land prior to its gazettelement may claim legal ownership to the land occupied.
- (b) The Government Real Estate Land which is administered under the Government Property Act 1975 is administered by the Treasury Department (Real Estate Division). The category consist of land used by various government agencies, including universities and schools. 40% of it is allocated for use by the Ministry of Defence and 50% for use by other government agencies. However, this category of land can also be leased to private individuals.
- (c) The Local Administration and State Enterprise Land which comprise of an area totalling 3 million rai is administered by the Local Administrators and also used for religious purposes.
- (d) Public Domain Land which is administered by the Department of Land under the Land Code consist of Land "for the common use of the public, waste land, surrendered, abandoned or reverted to the State and includes land under water, foreshores, waterway and lakes. Section 1305 of the Thailand Civil and Commercial Code provides that any property which form part of a public domain land is inalienable except by virtue of a Royal Decree or special law. Unlike other categories of land, ownership can be obtained by occupation and utilization of the public domain land.¹⁶

2.5.2 Private Land

Private Land consist of land which is in the lawful possession of private individuals which is evidenced by the legal documents issued by the provincial or district land office. Private lands comprised of an area of 18.9 million rai out of a total area of 51.5 million rai.

2.5.3 Undocumented Land

Undocumented land consist of those land which are believed to be in the lawful possession of individuals but which have not yet been documented. This category includes land in settlement scheme conducted by the Department of Public Welfare under the Land for Livelihood Act 1968 and the Department of Co-operative Promotion. Under these schemes, the settlers are issued with a license to occupy land, which can be converted to a recognised form of title at a later date. About 5.6 million rai of land falls under this category.

¹⁵ Ibid at pg. 12

¹⁶ Section 1306 of Book IV of Thailand Civil and Commercial Code

However, due to the intense growth of the population, it is estimated that about 1 million families have trespassed on reserve and restricted land especially Forest Reserve and Public Domain land. This is a serious problem which needs to be solved by the Government expeditiously.

3.0 Land Reform

In January 1975, Thailand's legislature passed the first land reform law in the country's history. This land reform was introduced to the country due to political pressures especially from activist farmers and student leaders leading to a large-scale farmers demonstration in 1974 demanding for land, rent control and credit.

The law provides that the Government will buy land from large landowners (over 50 rai if the owner is engaged in agriculture and 100 rai if he is engaged in livestock production) to offer to landless farmers under a long-term hire-purchase plan. Priorities will be given to areas of the country where there are high levels of tenancy or where crop yields are low. The law also includes provisions whereby certain categories of large owners can appeal to retain land up to, and in some cases over, 1000 rai in area. The law also established an Agricultural Land Reform Office (ALRO) to implement the land reform program.

Unfortunately, since its passage, the law has not been strong and enthusiastically backed by any of the governments (except during the Sanya Thammasak period i.e. between October 1973 till November 1974¹⁷). Land reform began under Prime Minister Kukrit Pramoj's government, but the land use for reform purposes by his government was given by the King, not taken from private owners, and amounted to only 53, 686 rai. The Seni Pramoj government which replaced Kukrit, gave emphasis on land reform by promising that the government would implement land reform and distribute land to 40,000 to 50,000 families in 1977. However, Seni faced a number of obstacles namely, lack of preparation and decisiveness in his cabinet and a limited budget drawn up by the previous government which allocated only 45 million baht to land reform.¹⁸ Thus, Seni accomplished very little before a military coup forced the government to step down in October 1976. The Thanin Kraivichien government made little progress in land reform and the Kriangsak Chamanan government which replaced Thanin in October 1977 also failed to back the land reform program.

¹⁷ see Siri Keiwalinsrit, "Land Administration in Thailand", **Chulalongkorn Law Review**, at pg. 15

¹⁸ E.D. Lim, **Thailand - Towards a Development Strategy of Full Participation: The World Bank**, Washington D.C (1980) at pg. 91.

These governments have not supported land reform because shortly after the land reform legislation was passed, the political pressures for improving the plight of farmers diminished significantly with the murder of many activist farmers. Another reason for the failure in land reform is the discrepancy in the land reform law itself. The act sets generous limits for landholding, allowing farmers to hold 50 rai per family. Yet in 1975 the average farm holding was estimated to be 14.7 rai for the whole country. Thus, the act sets a ceiling which is higher than all but a small percentage of farms in Thailand. Other provisions exempt some categories of large landholders from the 50 rai limit (or 100 rai for owners producing livestock). An owner can cultivate up to 1000 rai if he can prove that he had cultivated the land for one year or more before the Act become effective and can prove that he is competent and has enough inputs to fruitfully cultivate such land. Farms even larger than 1000 rai are allowed when the owner has made a great deal of investment in the land with support from the government, or the farms uses modern farming technology. Large and wealthy landowners are likely to have little difficulty in obtaining these kind of exemptions. Even landowners who do not meet the criteria for exemptions are provided ways of delaying and avoiding the purchase or expropriation of their land. If the owner feels that he has not been offered enough compensation for his land, he has the right to appeal to a petition committee. If he is not satisfied with the committee's decision, he can refer his case to the courts.

3.1 Policies and Measures for Land Management, Land Use and Land Development

By virtue of section 67 of Thailand's Constitution, the State is under a duty to secure land ownership or rights in land to all farmers by means of land reform or by other means authorised by law. Thus, the Government in order to raise the standard of living of the people especially farmers, have set up several organizations to manage both State and Private lands by various means such as land reform, land consolidation and land allocation of these lands. The master plan on land policies can be divided into three parts i.e.:

- Part I - Common Policy which consist of Land Classification, master plan for land use, land control, land distribution, issuance of documents showing rights in land and resources and environment conservation and resource management.
- Part II - Policy on specific area namely forest, agricultural, urban and community area and public domain area.
- Part III - Policy on specific case which consist of land allocation to the people, land use and land development.

The purpose of the Land Classification Project is to determine the areas in forest land for allocation purposes. Under this program the Royal Forestry Department has handed over some half a million hectares of heavily encroached forest land to the Agriculture Land Reform Office (ALRO) for permanent agriculture use. Much of this land is in the Upper North and Northeast of Thailand and will undoubtedly require some land development. To date little has been done to plan the use of this land, develop technical packages for sustained cultivation or provision of infrastructure and supporting services. There is an urgent need for the Government to survey these areas to determine their socio-economic characteristics and production potential. Priority areas for development could then be determined and appropriate and technical packages introduced. Progress along these lines is hampered by the fact that ALRO has no previous experience with such programs.¹⁹

¹⁹ see Ramsay, James Ansil "The Limits of Land Reform on Thailand". **The Journal of Developing Areas** January 1982, at pg. 177

The objective of the Land Consolidation Act which was enacted in 1975 is aimed at increasing agricultural products by consolidating plots for irrigation purposes. This project is set up by the government in order to solve the problem of landless farmers which can be classified in to three groups:²⁰

1. Landless farmers who have migrated to the cities to seek employment comprising of 500,000 households.
2. Tenants who rent all or part of land comprising of about 1 million household.
3. Farmers who have trespassed on State land who comprise about 1 million household.

These programs designed to increase the farmer's income are faced with the immediate problem, especially in the outlying areas of the Northeast and Upper North, that is, these farmers have no title to their land. Despite substantial efforts made by the Land Department in the Ministry of Interior using aerial photography instead of ground coverage for the granting of titles, 60 million rai or 40% of the total area of agricultural holdings is still untitled. Moreover, most of this land is in areas classified for forest use. Without title or security to their land it is very unlikely that farmers will be prepared to implement any of the land improvement measures necessary for permanent cultivation, but without changes in the classification of land and in particular a reduction in the area designated as forest, no expansion of the titling program is possible. It is necessary, therefore, to prepare national information on land use, land capability etc. and to develop a revised classification of land for the country as a whole which is appropriate to the current situation. The objective of such a reclassification should be to retain as forest reserves only those areas which are deemed necessary from a production and conservation point of view and which can be effectively controlled.²¹

4.0 Conclusion

The introduction of modern laws namely the land registration system into Thailand often gave rise to conflict with the customary land practices. However, after nearly a century of its introduction to the country, the customary land practices appears to have adjusted to the modern land registration system. But discrepancies that arise now is not due to the conflict between the formal laws and the customary practices but due to the registration system itself. The flexibility of the Land Code in recognising documents such as the SK1 (Claim Certificate), as legal document evidencing rights in land, which have never been formally surveyed and inspected should never have existed under a land registration system. This is because a sound system of registration must not only provide for simplicity but also for certainty. The uncertainty of this form of document certainly does not reflect a good registration system in which a person dealing with a registered owner holding a "title" would feel safe to rely on the document which is guaranteed by the government. Their presence may be due to the need to get land to be registered based on occupation rather than

²⁰ Ibid

²¹ E.D. Lim, **Thailand - Towards a Development Strategy of Full Participation : The World Bank**, Washington D.C. (1980) at pg. 91

accurate surveys, but today the importance must shift to the keeping of accurate registers and the warranting of certainty of titles and interest registered therein.

Another discrepancy in the country's land registration system is that there is no provision in the Land Code and the related laws declaring that the title of registered owner is indefeasible against all unregistered interests which is essential in any system of registration and constitute the government's warranty to title. Registered owners merely obtain "possessory right" over the land which is subject to cancellation by an application by another person with a better claim and by adverse possession by prescription. The exceptions to the indefeasibility of title, such as fraud, must also be clearly stated.

It is interesting to note here that Thailand by adopting and codifying its customary practises "of de facto occupancy and cultivation" into its Land Code which in fact is similar to the Islamic land tenure principle - *Ihya al Mawat*, is something which we have to reckon with as this is one of the major means in solving the problem of the inequitable land concentration in the hands of the few and as to endure an equitable distribution of land amongst the people which is prevalent in other areas in Asia. The Thai experience showed that the assimilation of the traditional practices of "de facto occupancy and cultivation" and the modern system of land registration is possible and in fact practical in solving the inequitable concentration of land in the hands of the few in the country.

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