



CRIMINAL PENALTY ON CYBERBULLYING IN  
ECONOMIC ANALYSIS OF THE LAW

BY

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AN INDEPENDENT STUDY PAPER SUBMITTED IN PARTIAL FULFILMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS  
(INTERNATIONAL PROGRAM)

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ASSUMPTION UNIVERSITY

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Independent Study Title : Criminal Penalty on Cyberbullying in Economic  
Analysis of the Law  
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Major : Master of Laws (Business Law)  
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## ABSTRACT

Thailand has the world's second-biggest number of cases of bullied students. One form of bullying is "Cyberbullying". There are the issues of cyberbullying which is now a critical problem facing Thailand. The behavior of Bullying, especially among children and juveniles. It has changed due to the digital evolution of communications among humans resulting in Cyberbullying through emails, networking, mobile phones, instant messages, and social networking.

The research aims to study the Theories and Principles of Legal Measures on Cyberbullying, and the Legal measures on Cyberbullying under Megan Meier HR Prevention Act 111<sup>th</sup> Congress.

The research analyzes the Penalty of Cyberbullying under Thai laws and foreign Law (Missouri State, USA) with Economic Analysis of The Law. The research also gives recommendations in domestic law and adds provisions that are related to Cyberbullying.

The references are mainly conducted from many tools, such as surveys (500 students), books, articles, thesis, journals, and Internet resources.

The research discusses the Cyberbullying problems in Thailand based on Thai Laws: Thai Criminal Code Section 326, Section 328, Section 393, and Thailand Computer Crime Act B.E.2560 (2017) including the comparisons with foreign provisions, namely Missouri Revised Statutes, and the Megan Meier Cyberbullying Prevention Act of the U.S. (Missouri State).

## ACKNOWLEDGEMENT

This independent research paper would not have been successfully completed without the support of many people. I would like to express my deepest appreciation to all concerned who have contributed to its completion.

I would like to express my deepest appreciation to Asst. Prof. Dr. Nattapat Limsiritong, as an advisor for my research paper. He dedicated all his precious time and knowledge including providing not only the document, book reference with this research paper, and valuable advice to support me in completing this research paper but also the recommendation and encouragement throughout the period of this study. Therefore, he helps me to revise both the content and grammar which also gives me a guideline on how to write and conduct research which has been helpful assistance to the author. I would like to thanks A. Vichai Ariyanuntaka and Dr. Pattawee Sookhakich, the members of my independent research committee for their significant comments and questions, which motivate my thoughts on the independent research paper.

I also would like to thank Asst. Prof. Dr. Sthianrapab Naluang, Dean of Graduate School of Law, for his dedicated precious time and attention from his busy schedule to kindly advise and consultation.

I would like to thank kk who encourage and give me all the guidelines to fulfill my independent research paper, Jae and Marvin who dedicate their time to checking my grammar mistake and the content of my research paper, Bee who help me to collect all the statistic survey, my family. Lastly, I would like to thank my parents who always gave supports and assistance.

If this independent research paper would have some benefits for studying in law, all the goodness that I might have I would like to dedicate to Assumption University, School of Law, and all the persons as mention.

Piyakorn Yongvanich



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# Chapter 1

## Introduction

### 1.1 General background of the Research

Bullying is now happening around the world, including Thailand, and according to data from the Department of Mental Health (Ministry of Public Health), Thailand has the world's second biggest number of cases of bullied students. One form of bullying is "Cyberbullying". Cyberbullying is a significant problem especially for teenagers and students, who are increasingly addicted to social media. e.g., Facebook, Twitter, and Instagram that can easily be accessed through smartphones. According to one survey of 500 students in secondary school (M.1-3), almost 90.2% of Thai children and juveniles have experienced being bullied physically or verbally in daily life, and another 6.2% had experienced virtual or only bullying - Cyberbullying.<sup>1</sup>

As shown in Table (Annex 1), this survey is designed to answer the doubt of the behaviour Legal Measures to Protect Child and Juvenile from Cyberbullying averaged 13-18 years old to find out that Thai Criminal Law and Computer Crime Act does not cover enough for the Cyberbullying and Juvenile agree that Thailand should have specific law for Cyberbullying with 95.2% and 4% did not agree lead to the best solution is to enact the new specific law on Cyberbullying which can also save the put down on crimes and save the budget take an action to arrest the offence.<sup>2</sup>

There are the issues of Cyberbullying which is now a critical problem facing in Thailand. The behavior of bullying, especially among children and the juveniles has changed due to the digital evolution of communications among humans resulting in Cyberbullying through emails, networking, mobile phones, instant messages and social networking instead of physical or face-to-face bullying.

Technology and communication are increasingly easy-to-access, and thus broadcasting messages and images in this fast-paced period has resulted in the persecution of children and juveniles online, at any time and any place.

In Thailand, Cyberbullying occurs in various cases. Victims of Cyberbullying might not end with suicide or herself compared with the cases that happened in the United

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<sup>1</sup> Online Survey of Legal Measures to Protect Child and Juvenile from Cyberbullying with 500 students, Piyakorn Yongvanich, 2020

<sup>2</sup> Ibid., Result of the Question 23 in the Survey (Annex 1).

States. Many victims are strong and receive comfort through family and, friends who support them through tough times.<sup>3</sup>

Legal measures are problematic as they do not yet bring full compensation and healing for injured children and juveniles because Thai Laws do not clearly specify the definition of Cyberbullying. Unclear and ambiguous definitions Cyberbullying, defamation, and molestation have led to confusion. Presently, since there is no specific law regarding Cyberbullying in Thailand, whenever there is a bullying case, defamation is applied as an offensive legal strategy from the Thai Criminal Code despite differences in action and consequences of defamation and Cyberbullying.

## 1.2 Hypothesis

Thailand does not have any specific laws on Cyberbullying. The definition and scope of interpretation and penalties do not align directly under current laws, as compared with U.S. Laws, especially in Missouri. In the USA, many states have specific Cyberbullying laws. Missouri State is the first state to pass anti-Cyberbullying laws, namely the Megan Meier Cyberbullying Prevention Act. The Act covers the definition and provides the penalties for Cyberbullying crimes specifically. To protect victims and limit the number of Cyberbullying cases in Thailand, an authorized department should enact an anti-Cyberbullying law which covers the definition, scope of interpretation, and penalties. Additionally, penalties for Cyberbullying crimes should be designed and scaled using the Theory of Law Economical Analysis.

## 1.3 The Objectives of the Research

1.3.1 To study the Theories and Principles of Legal Measures on Cyberbullying.

1.3.2 To study the Legal Measures on Cyberbullying under Megan Meier HR Prevention Act 111th Congress.

1.3.3 To analyze the Definition, Scope of Interpretation and Penalty of Cyberbullying under Thai laws and a benchmark foreign Law (Missouri State, USA) with Theory of Law Economical Analysis.

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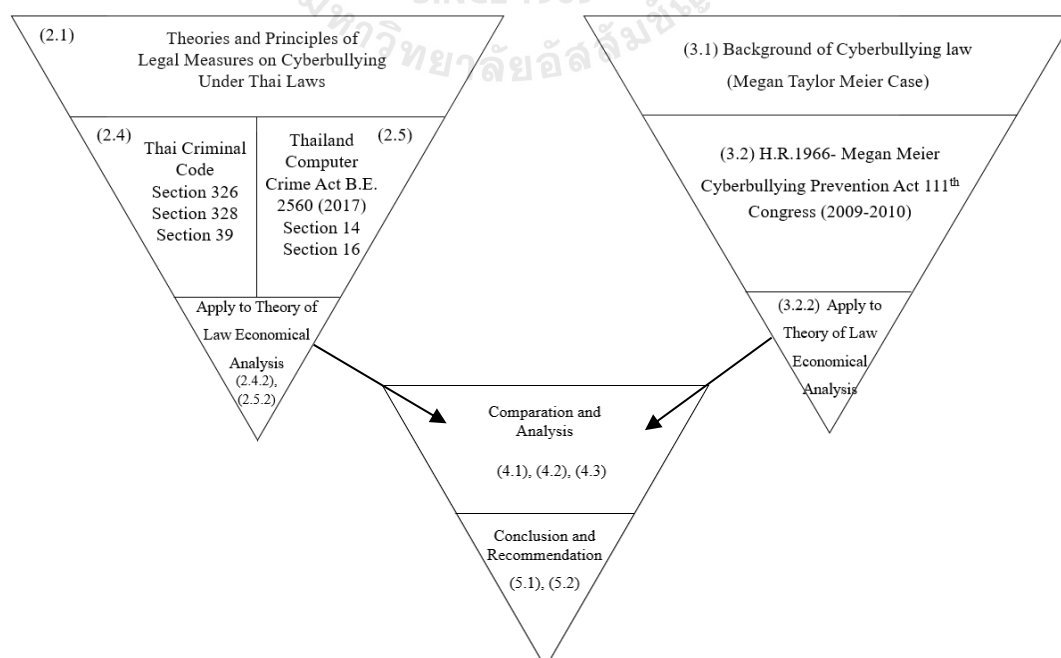
<sup>3</sup> **Droidsans**, Research reveals Thais often mock their appearance and gender in online, [Online], Available at <https://droidsans.com/stop-cyber-bullying-campaign/>, (accessed 18 January 2021).

1.3.4 To give recommendations for domestic laws by adding a provision specifically related to Cyberbullying.

## 1.4 The Scope of Research

This research focuses on an emerging societal problem of Cyberbullying in Thailand based on these Thai Laws: (i) Thai Criminal Code Section 326, Section 328 and Section 393 and (ii) Thailand Computer Crime Act B.E. 2560 (2017) including comparisons with the foreign provisions, namely Missouri Revised Statutes, and the Megan Meier Cyberbullying Prevention Act of the U.S. (Missouri State). Comparison with U.S. statutes will focus on definitions, scope of legal and judicial interpretation and penalties. Also, the Economic Analysis of The Law which studies on human behavior will help calibrate appropriate penalties for Cyberbullying crimes. Economic Analysis of The Law is an acceptable basis for international standards because public interest is a priority given the complexity of the problems. However, the limitation of Economic Analysis of The Law is the limitation in behavior and the limitation in legal. Economic Analysis of The Law cannot explain completely the complication of human behavior; e.g., morals, ethics, emotional, sensibility of the human.

### Literature Map





## 1.5 Methodology

This research is undertaken through documentary approaches such as research of Thai laws and the foreign laws, while also referencing the Thai Criminal Code B.E.2499(1956); Thailand Computer Crime Act B.E.2560; Megan Meier Cyberbullying Prevention Act 2013; and the related regulations. Moreover, this research draws from books, articles, published thesis, rulings, and Internet resources related to the aforementioned documents, both from Thai and overseas sources. Also, applying the formula “ $C = M \times P$ ” of Economic Analysis of The Law which “C” stands for Expected Cost, “M” stands for Magnitude of Punishment, and P stands for Possibility of Apprehension. In this research, the researcher fixes the Possibility of Apprehension “P” at 0.1 and will not calculate the Probability of Impartibility “I” because the focus of this research is an only reasonable criminal penalty of Cyberbullying. Finally, the researcher analyzes the problems and compares the domestic laws with the foreign laws to arrive at conclusions and recommend appropriate measures to solve the problem of Cyberbullying.

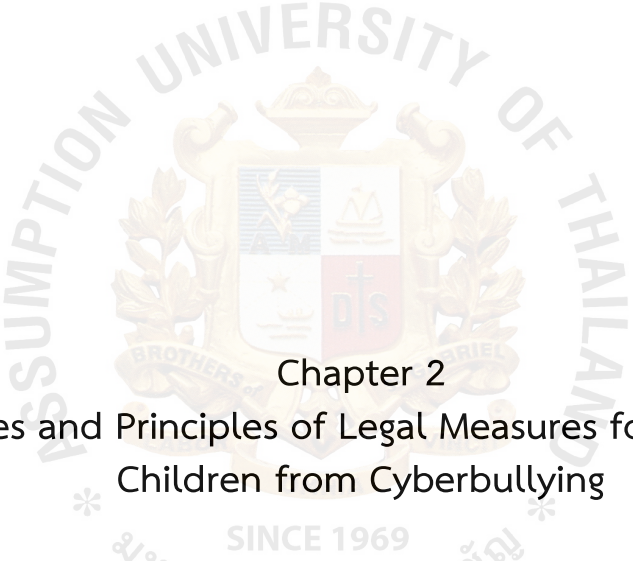
## 1.6 Expectation of the Research

1.6.1 To understand the Theories and Principles of Legal Measures on Cyberbullying.

1.6.2 To understand the Legal Measures on Cyberbullying under Megan Meier HR Prevention Act 111th Congress.

1.6.3 To find the result of analyse in the Definition, Scope of Interpretation and Penalty of Cyberbullying under Thai laws and foreign Law (Missouri State, USA) using Theory of Law Economical Analysis.

1.6.4 To give conclusion and recommendations for domestic Thai laws, adding provisions specifically for Cyberbullying.



## Chapter 2

### Theories and Principles of Legal Measures for Protecting Children from Cyberbullying

This Chapter will define a traditional bullying, Cyberbullying and then compare both using these related Thai laws: Section 326, Section 328, and Section 393 of the Thai Criminal Code, and Section 14 and Section 16 under the Thailand Computer Crime Act. Also, this chapter explains the Theory of Punishment and Economic Analysis of The Law. Additionally, the chapter will compare penalties in the different Sections and under different laws and using Economic Analysis of The Law.

#### 2.1 The General Principle

Bullying is a human behavior that may occur with age, especially in the childhood and teen years. A survey from 500 students in between ages 12 – 15 years old showed

that more than 90% had experienced being bullied before.<sup>4</sup> Some people may be not consider bullying as a problem, but for other people it is a real concern and a serious problem. In an age where technology is rapidly advancing, people not only bully each other face to face, but now the number of people bullied using technology and digital channels (cyber channels) has also increased significantly.

### 2.1.1 Definition of Bullying and Cyberbullying

Bullying is a repeated and habitual behavior. One essential prerequisite is the perception (by the bully or by others) of an imbalance of physical or social power. Also, it is a pervasive problem affecting school-age children.<sup>5</sup> In schools, bullying may occur in the form of behavior from a student who tries to dominate, control, and intimidate others. This behavior usually comes from physically bigger and stronger students who often are academically weak performers, but who would like to press or control physically smaller and weaker students.<sup>6</sup>

Bullying means acting violently. It aims to harm the mind by various means such as coercion, threats, beatings, ridicule, or social isolation, or limits the freedom of the mind because the bullies have the intention of harming the body or mind, which is a form of violence.<sup>7</sup>

Bullying behavior is a form of aggressive behavior where the bullies have the intention of harming the abused. Often, it happens repeatedly, with bullies having power above the bullied.<sup>8</sup> Bullying behaviour takes many forms as follows; (1) Verbal

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<sup>4</sup> The Result of Question 14.1 in Appendix 1

<sup>5</sup> Juvonen, J.; Graham, S. (2014). "Bullying in Schools: The Power of Bullies and the Plight of Victims". *Annual Review of Psychology*. 65: 159–85. doi:10.1146/annurev-psych-010213-115030. PMID 23937767. S2CID 207640520.

<sup>6</sup> Kasetchai and Pomom, "Bullying behavior among students," *Kasetsart Science Social Science* 32, 1 January 2011): 158-166.

<sup>7</sup> Nansel, T.R.....et al., "Bullying behaviour among US youth : Prevalence and association with psychosocial adjustment", *Journal of American Medical Association*, 16(April 2001), Ref Supawadee Charoenvanich, "Cyber Space Bullying: Impact and Prevention in Adolescents," *Journal of Science and Technology*. Thammasat University 25, 4 (July - August 2017): 641.

<sup>8</sup> Rango, bullying or tease, can you tell me?, at <http://boonying stop Rango>,

bullying. Using words that hurtful language and teasing. (2) Bullying by assault, - punching, kicking, hitting, smashing, shoving, pushing, restraining or confining a person, or excluding a person from joining a group or event. (3) Ignoring, excluding, or discouraging others from joining a group of friends (4) Spreading damaging rumours or make lies to make others dislike a person (5) Sexual harassment, and (6) Cyberbullying.

Squadron Leader Dr. Boonruang Tri Ruangworawat, Director-General of the Department of Mental Health, spoke about bullying among school children as reported in the news. He noted that bullying in schools is violent behaviour with various forms: 1) Physical bullying which is often seen in every school, such as pushing, punching, pinching, pulling hair, and using a device instead as a weapon for intimidation, 2) Arousal bullying, such as making fun of a person, creating a sense of shame, excluding a person from the group to ignoring them or pretending they do not exist, 3) Verbal bullying such as use of profanity, and 4) Internet bullying, such as using social networks to make false claims about a person in order to humiliate the person.<sup>9</sup>

As mentioned above, bullying is a form of violent behavior which causes physical, mental, and emotional pain to the bullied person (victim) or a group of people.

### **2.1.2 Characteristics of Cyberbullying**

The European Commission gives a broad definition of “Cyberbullying”, as repeated verbal or psychological harassment carried out by an individual or group against others. It can take many forms: mockery, insults, threats, rumors, gossip, "happy slapping", disagreeable comments or slander. Interactive online services (e-mail, chat rooms, instant messaging) and mobile phones have given bullies new opportunities and ways in which they can abuse their victims.<sup>10</sup>

In the U.S., U.S. legal definitions, describe “Cyberbullying” as any harassment that occurs via the internet, cell phones, or other technological devices. Communication technology is used intentionally to harm others through hostile behavior such as sending text messages and posting unflattering comments on the internet. The

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bullying or tease, can you tell me?, (accessed 14 January 2021).

<sup>9</sup> Department of Mental Health, The way to prevent bullying in the school, at <http://voicetv.co.th/read/SJvNgbEyg>, (accessed 14 January 2021)

<sup>10</sup> European Commission, Safer Internet Day 2009: Commission Start Campaign against Cyber Bullying, at [http://europa.eu/rapid/press-release\\_MEMO-09-58\\_en.pdf](http://europa.eu/rapid/press-release_MEMO-09-58_en.pdf). (accessed January 14, 2021).

U.S. National Crime Prevention Council defines cyber-bullying as “the process of using the Internet, cell phones or other devices to send or post text or images intended to hurt or embarrass another person.” Cyber-bullying could be limited to posting rumors or gossips about a person on the internet bringing about hatred in the minds of observers, or it may go to the extent of personally identifying victims and publishing materials severely defaming and humiliating them.<sup>11</sup>

In Thailand, the Department of Mental Health has explained that Cyberbullying is a form of insult, comparable to satire. Blaming others by using communication devices such as smartphones, tablets, computers, and so on to connect to social networks: Facebook, Twitter, Instagram, chat-application, or websites as the channels to bully the target person which mostly is persistent bullying. Bullying is not just a one single incident, but more commonly, it will happen more repeatedly and even around the clock on devices. The bully does not face the other party (victim) online. Also, in the online world, news distribution spreads very fast which may make humiliate the victim or make daily life unbearable.

Not only is Thailand now facing Cyberbullying as emerging serious social problem, but also in Europe, many parents are concerned about Cyberbullying. More than 80% of parents in France, Greece, and Portugal are concerned that their children could be bullied when they use the Internet or a mobile phone. Parents in Denmark, Slovakia, Sweden, and Finland seem more confident about their children's safety as over 69% are not at all, or not very, worried about their children being cyberbullied by peers.<sup>12</sup>

Although many different definitions of Cyberbullying exist popular literature, most academics define it as an aggressive act or behavior that is carried out using electronic means by a group or an individual, done repeatedly and over time against a victim(s) who cannot easily defend himself or herself. The following elements characterizing Cyberbullying emerge in mass media: <sup>13</sup>

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<sup>11</sup> U.S. Legal, Cyber Bullying, Legal Definitions, at <https://definitions.uslegal.com/c/cyber-bullying/>, (accessed January 14, 2021).

<sup>12</sup> Ibid.

<sup>13</sup> European Parliament, Cyberbully among the Children, Policy Department C – Citizen’s right and Constitutional Affairs, Study for the Libe Committee 2016, Page 23, [Online], at [https://www.europarl.europa.eu/Reg\\_Data/etudes/STUD/2016/571367/IPOL\\_](https://www.europarl.europa.eu/Reg_Data/etudes/STUD/2016/571367/IPOL_)



1) The use of electronic or digital means through which the abuse is perpetrated.

2) Intentional harm, which represents the intention of the perpetrator to inflict harm on the victim putting in place unpleasant and distressing behaviors against him/her.

3) Imbalance of power, which is the advantage of the perpetrator over the victim, where the latter cannot easily defend him/herself. Although some scholars consider this element hard to align with Cyberbullying because both the victim and the perpetrator may have advanced ICTs skills, the imbalance of power is still considered to be present in Cyberbullying since the bully holds a dominant position compared to the victim at least at a psychological level. Therefore, while recognizing the complexity of measuring the imbalance of power online, some scholars stress the need to assess the difficulty of the victim to defend him/herself on a case-by-case basis.

4) Repetition should be interpreted as the possibility to quickly share harmful content with a broad audience in a virtual environment with one single action. Moreover, harmful content can be reposted, shared, or liked causing significant harm to the victim even without repetition of the act over time.

5) Sense of anonymity and lack of accountability offer the possibility for the perpetrator to remain anonymous and the feeling of not being accountable for his/her actions. Anonymity may intensify the negative perception of the act by the victim who feels powerless as a result of not knowing where the attack comes from. For some authors, anonymity may reduce the need for an imbalance of power as a criterion for defining Cyberbullying because not knowing where the attack comes from puts the cyberbully in a powerful position compared to that of the victim. Moreover, the perceived anonymity of the online environment encourages adolescents to act in ways they would not in face-to-face interactions. Therefore, anonymity may empower those who are unlikely to carry out traditional bullying to perpetrate bullying online.

Publicity refers to the ability for cyberbullies to share their actions with multiple people, exponentially increasing the breadth of the audience (i.e., the Cyberbullying action may register numerous views by bystanders.)<sup>14</sup>

### 2.1.3 Form of Cyberbullying

Forms of Cyberbullying on the “No-bully” website have divided the actions into seven categories as follows.

- 1) Gossip: sending messages to gossip friends which can hurt friends.
- 2) Exclusion: expelling a person from online groups such as LINE or Facebook groups.
- 3) Nation: sneaking in by log in someone's account who play the computer further and posted that the child had been a prosecutor and make this child has been humiliated.
- 4) Harassment: admonishment or, cursing with rude words, reinforcing inferiority, causing a loss of confidence, such as people on the Internet who think fun and type that the bad looking person raped by the thief said he felt sorry for the thief.
- 5) Cyber Stalking: sending messages, pictures, videos, or anything else that embarrasses others on the Internet, including through intimidation, such as when women go to work at the beach and put on a bikini. And the man working at the same place secretly took a photo and then took a look at the woman's figure on Facebook, and there were make fun commenters.
- 6) Outing and Trickery: teasing that provokes anger that makes the other party reveal they are embarrassing secret online.
- 7) Cyberthreat: bullying online also can join others as wells.<sup>15</sup>

### 2.1.4 Traditional Bullying vs Cyberbullying

Traditional Bullying may be seen in daily life; it is a normal situation that happens in schools, offices, or and in society. Usually, it is caused by conflicts between friends, and, colleagues. Sometimes, traditional bullying also happens due to discrimination based on nationality, skin color, religion, and sex.

The difference between bullying Cyberbullying and Traditional Bullying is the reaction of people, including law enforcement, trying to help victims. Many people believe that violations or online threats are impossible to be harmful and are not seriously impactful when compared with bullying or stalking in the physical world. In

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<sup>15</sup> Bhat,C.S., “Cyberbullying: Overview and strategies for school counselors, guidance officer and all school personnel”, Australian Journal of Guidance & Counseling 18 January (2008): p.53-66.

one case that occurred in New York, United States, William Cassidy wrote and tweeted many messages about Alyce Zeoli, who is the victim. Almost 8,000 messages, mostly harassing was brought as evidence to the court, but the court made the decision that Cassidy had the protection of rights under the First Amendment. Furthermore, the judges commented that the victim (plaintiff) could protect herself from sensitive feelings easily by avoiding reading the defendant's blog or simply blocking his tweets.

Critics of the presiding judge in this case pointed out that he may lack understanding of the role of technology and the fact that the Internet has become part of daily life. Today many people cannot live in the world without connecting to the Internet, and even if the victim may be able to avoid the internet, other people around the victim - employers, relatives, co-workers, etc. - cannot be forced to avoid the online world which brings danger to the victims.

There are many reasons because it can happen all the time. In every place, and that shame is widely acknowledged. Both forwarding or reproduce the shame happens quickly and easily causing the victim to leave no time or place for isolation. It makes it difficult to get past the trauma caused by shame. Organization for Economic Co-operation and Development-OECD) agrees that Cyberbullying is a real extension of physical bullying, but the problem is complex and frightening heavy because the area of action extends to endless possibilities. The Internet makes harassment possible even in the home. In the past, it was a safe place and was used to hide from being mistreated in a public place.<sup>16</sup>

## 2.2 Theory of Punishment

When a person is subjected to criminal liability, the person will be punished by criminal penalties. The criminal penalty shall have enough power to prevent, intimidate, and deter recurring criminal offences. "The value of punishment must not be less in any case than what is sufficient to outweigh that of the profit of the offence."<sup>17</sup> If there is no

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<sup>16</sup> See "New Millennium Learners Blog 'Cyber Bullying'," OECD Centre for Educational Research and Innovation CERI, <https://www.oecd.org/edu/ceri/centreforeducationalresearchandinnovationcerithenewmilenniumlearnersblog.htm>. (accessed January 18, 2021).

<sup>17</sup> Jeremy Bentham, An Introduction to the Principles of Morals and Legislation

efficiency of the criminal penalty, there will be recidivism leading to a repetition of the crime.

Section 18 of the Thai Criminal Code states that “Punishments for inflicting upon the offenders are as follows: Death; Imprisonment; Confinement; Fine; Forfeiture of property.”

### 2.2.1 Objective of punishment

The objective of punishment has been used for a long time and has been adopted and applying to current law. There are five objectives of punishment: Retribution, Intimidation and Deterrence, Incapacitation, Rehabilitation, and Resocialization.<sup>18</sup>

**Retribution** is an objective of ordinary punishment. When there is still no model state and the privacy revenge is acceptable, (vengeance priv) in the primitive society, the Talion Law (Lex Talionis) provided that “Criminal should receive as punishment precisely those injuries and damages they had inflicted upon their victims”<sup>19</sup> This is called “an eye for an eye principle. At the present, some may understand that this principle seems to be a violent response, but it came out from the principle of proportionality which is still applied in the model laws and made the revenge not exceed the damages which the victims received. Although, in the part, the primitive society can accept and open to revenge by the victim himself, (vengeance priv) however, the revenge which could be acceptable from today’s society is the revenge by the judicial process is the objective of the punishment for the social benefits. The effectiveness of punishment also deterrence offenders not to do it again and restrain others from duplicating offense punishment. Therefore, punishment gives some benefits consistent with the theory of “Utilitarianism”. Execution and long-term imprisonment

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(1789, reprinted New York: Hafner Press, 1948), Ch. 14 Section 8 in Mark Tunick, Punishment Theory and Practice, Page 73, <http://publishing.cdlib.org/ucpressebooks/view?docId=ft4q2nb3dn;brand=ucperess>, (accessed January 30, 2021).

<sup>18</sup> Pokpong Srisanit, Advance Criminal Law, 3<sup>rd</sup> (Edited) publication, 3 September 2020, Winyuchon, Bangkok. Refer: Kreadkajon Watjanasawat, Explanation of Criminal Law (Tittle 1), Page 846-848.

<sup>19</sup> Pokpong Srisanit, Advance Criminal Law, 3<sup>rd</sup> (Edited) publication, 3 September 2020, Winyuchon, Bangkok. Refer <http://global.britannica.com/topic/talion>,

have characteristics of intimidation, and caning which is the punishment in Singapore, Malaysia, Brunei that comply with intimidation as well and capable to intimidate offenders. It can be noted that the offensive writing in public areas causes dirty (Graffiti) not often seen in Singapore because in Singapore, perpetrators will be punished by caning. According to Thailand also mostly appear because it's just only fine not more than 1,000 baht by the Cleanliness rules anyway if make more additional characteristic of intimidation on punishment will affect to the human right as well such as, in the International Covenant on Civil and Political Rights (ICCPR) that Thailand also states party rules no.7 will determine it is forbidden to punish by cruel, brutal and disgrace.<sup>20</sup> Therefore, the characteristic of intimidation with human rights also fluctuates.

**Interception** is the ability to commit an offence. Imprisonment is illuminated to prevent an offender with the length of stay in prison as well as execution illuminate the ability to prevent the offender forever. Forfeiture of assets used or held for the commission of an offense according to the civil and commercial code Section 33(1) comply with this purpose as well and the injection to reduce lust with an offense assault also be new types of sanctions are used in some countries by objective.

**Rehabilitation** is an objective of sanction which consists mostly of human rights. If the rehabilitation succeeds, society will earn benefits from the sanction because the offender will never repeat the crime. Most people will notice that every criminal will seem to be a patient who able to rehab and modified criminals can return to society. The rehabilitation might not be intimidation crime imitators because people who have never done wrong may not be afraid of the punishment clause, which is the only dimension of rehabilitation. Furthermore, the reconstruction in prison that success will make an offense reform oneself to be a good person but after acquittal. The prison allows the inmates to find themselves unconscious without any preparation. Those who are punished will be stigmatized by society, especially the employers to accept the perpetrator for a job. Thus, the perpetrator will have a chance to be lonely and repeat the crime. The only restoration cannot solve the problem, as the result, to bring the perpetrator back to society is necessary.

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<sup>20</sup> ICCPR Article 7 “No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”



**Resocialization** is an objective that extends from the rehabilitation offense which is the concept of allowing bringing the perpetrator back to society. An example of bringing the perpetrator back to society is that before the impunity the prison agreed with the employer to be punished, went to work during the day, and returned to the prison at night. To prepare society, prepare work and environment for prisoners. When the punishment is released, it will be accepted and not do it again. Furthermore, after being released from prison, there should be a system that allows prisoners to request that their records be cleaned so that their employers or people in society could not know their criminal history if they had been in prison before, as it appears in the French Code. It can be seen that there are several levels of criminal record registration and at the level disclosed to third parties including employers Those who are acquitted can remove their name from the register at that level (rehabilitation judiciaries) which allow the offender to reform oneself.

### 2.2.2 Principle of Punishment Ratio

Principle of Punishment Ratio (“Le principe de necessit et de proportionlit des prines”) is certified under the Declaration of Human Rights and Civil Rights 1789, Article 8 that “the laws must provide a necessary penalty”<sup>21</sup> As the result, criminal penalty must consist of both “necessary” and “proportionate” Also, Cesare Beccaria stated that “None of any criminal penalty should be too violent for a person or persons, and the criminal penalty shall disclose, necessary, less violence, proportion, and provide by the laws”<sup>22</sup> In Thailand, the principle of punishment ratio does not align directly to the Thai Criminal Code; however, we may bring the provision under Thai Constitution of Thailand, Article 26, Paragraph 1 to correlate.<sup>23</sup>

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<sup>21</sup> the principle of Punishment Ratio in French

<sup>22</sup> Pokpong Srisanit, Advance Criminal Law, 3<sup>rd</sup> (Edited) publication, 3 September 2020, Winyuchon, Bangkok. Refer: Frédéric Desportes er Francis Le Gunehec, Drot Pénal Général, 10 edition (paris: econmica, 2003), p.697.

<sup>23</sup> Constitution of The Kingdom of Thailand (B.E. 2560 (2017), provided that “The enactment of a law resulting in the restriction of rights or liberties of a person shall be in accordance with the conditions provided by the Constitution. In the case where the Constitution does not provide the conditions thereon, such law shall not be contrary to

## 2.3 Economic Analysis of the Law

Law Economic Analysis is the science of legal' studied, the theory of law, legal interpretation, law designation, analysis value of law and the laws' effect on human behavior and related society, by using neoclassical economics methodology and rational choice model.<sup>24</sup>

“Law” (Jurisprudence) is the science of justice; and, “Economics” is the science of how to manage a limited resource and make it to be the most valuable for society. Both sciences may have some ideas in the same line, and some cannot agree with each other. “Economics” also means mainstream economics or neoclassical economic which created a theory by assuming that a human is a homo economic who has his behavior to seek the highest individual benefit for himself under the limited conditions. Human has economic rationality and will respond on incentives.<sup>25</sup>

Economic interests in human's behavior in the society, not only financial behavior, but also in political, society, legal, and culture. From the hypothesis of Economic theory: the human is homo economicus who has economic rationality and will respond on incentives, the economist believed that a person will make his decision for his highest benefit under the limitation in facing the situation. (Rational Maximizer under constraints)<sup>26</sup>

### 2.3.1 Expected Cost and Benefit of Crime

Most criminals believe that crime is a reason. When the expected benefits beyond the expected cost, they would make a crime; at the same time, there will be no crime when they are expected to cost higher than the expected benefit. Thus, it is

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the rule of law, shall not unreasonably impose burden on or restrict the rights or liberties of a person and shall not affect the human dignity of a person, and the justification and necessity for the restriction of the rights and liberties shall also be specified.”

<sup>24</sup> Pokpong Srisanit, Legal Academic Seminar in the topic of “General principle of Law Economical Analysis”, Rapeepatanasak Institutes, Office of the Court of Justice and Thailand Development Research Institute, 26 June 2010.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., Page 6.

necessary to find the expected benefit and expected cost of criminals.

### **Expected Benefit**

The expected benefit is benefit that criminal expected to earn from crime which criminal may earn the full amount of expectation due to the result of crime success or earn some of it for example the crime succeeds but property earn might be got less crime than an expectation or might not earn it such as; it's a crime but the action was not success which can call attempt to commit an offence. Therefore, the benefit of crime can differentiate into the benefit which can financially benefit and non-financial benefit that leads to imposing fines and forfeiture.

Financial benefit - There is some action of crime that criminal can earn financial benefits such as burglary of property which can calculate in money take a bribe according to criminal law code Section 149 and 201 money that can earn from bribe might calculate in money, the money earns from selling drugs become the financial benefit also nevertheless, these benefits can be seen that the criminal expect after the crime success will earn real financial benefits which can be an incentive thought for a crime. Therefore, these financial benefits if it's has been in criminal prosecution will be forfeited from these benefits according to the criminal law code it will be on the state property Section 33 and 34 unless the benefit of the sufferer that states cannot collect the forfeited and must return to the owner of the property or criminal compensate.

Non-Financial benefit - There is some action of crime that criminals may earn non-financial profits such as the satisfaction by mayhem with revenge or homicide by cover-up crime from yourself, satisfying libido in sex offences. The expectations of this benefit could not be forfeited so, the criminal may earn these benefits only with restrained by the death penalty, imprisonment, and fines.

### **Expected Cost**

Gary Becker said that the expected cost of criminal activity consists of the magnitude of punishment and probability of being caught. Criminals will consider two things: the magnitude of punishment, and the probability of being apprehended before they decide to do wrong. Therefore, these two will combine into the expected costs of

criminals according to the equation.<sup>27</sup>

$$C = M \times P$$

“C” meaning “the expected cost”

“M” meaning “magnitude of punishment”

“P” meaning “probability of being apprehended”

### 2.3.2 Magnitude of punishment and Probability of apprehension

#### Magnitude of punishment

Magnitude of punishment can be differentiating into the type of penalty and probability of apprehended.

The most fearful penalty is the extreme penalty of death sentence unless the death sentence is not recognized under better practices of honoring human rights.<sup>28</sup>

Lifelong imprisonment is an intensive cost second to the death penalty, but lifelong imprisonment may be a higher cost than the death penalty because the misery of lost liberty forever. However, according to the theories of rehabilitation for the offender which in most countries might not be a lifelong imprisonment in real life, if the time in prison pass in a moment will able to get parole and got released before pass out from the prison.<sup>29</sup> Furthermore, the prisoner also gets a pardon before pass out in prison, which including these facts that also affect the expected cost of criminal.

Imprisonment by the duration is the latter from the death penalty. The duration of imprisonment is the higher cost in a vision of criminals which a moment of duration in prison will display to the lowest cost of vision criminals in offence, which moment time of imprisonment in criminals also get higher imprisonment more than admitting to pay fines or forfeiture, due to some of the criminals might recognize with a short term of imprisonment is the average cost in their vision but the lost property is

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<sup>27</sup> Steven D Levitt and Thomas J.Miles, “Empirical study of criminal punishment” in A. Mitchell Polinsky and Steven Shavell, Handbook of Law and Economics, Volume 1, Elsevier, 2007, p.459.

<sup>28</sup> Death penalty ICCPR Number 255-256.

<sup>29</sup> Pokpong Srisanit, Advance Criminal Law, 3<sup>rd</sup> (Edited) publication, 3 September 2020, Winyuchon. Page 105.

fines, or forfeiture might be the calamity that some criminals might think it is the higher cost but in the theory imprisonment is always more intensive than fines and imprisonment will apply with the aggressive offense than fines because it is a penalty suit with liberty but for fines is the penalty with the property.

Fines and forfeiture if it is large such as; the volume of fines, forfeiture with effective will be the expected cost which is able to restrain criminals, however in some situation, fines does not restrain the offence, especially one fine penalty and criminals might thoughts that fines are the cost of offense and expectation of benefits more than the cost, which if it is violated by the laws due to the situation, the fines is the cost of criminal that criminal is acceptable and decides to offense in criminal and accept to pay the fines because of fines is rental in violating the law for higher benefits.

### **Probability of apprehension**

Magnitude and probability are always related in economics and real-life. Both a big magnitude and a high probability are important. In another words, if there is only big magnitude with low probability or small magnitude with high probability will be the second important. If comparing “a big magnitude with low probability” with “small magnitude with high probability”, in some situation, the small magnitude with high probability is more important. As the result, the Probability of apprehension is a key factor to calculate the cost of crime.<sup>30</sup>

### **Fine and Imprisonment**

Crime deterrence by the government sector is used to increase the expected cost of crime, such as, increasing the punishment to be heavier, increasing the opportunity to be arrested by the increasing number of police, increasing the cost for reaching equipment to make a crime by enacted laws to control weapons and bullets, increasing the opportunity cost of criminal to make a crim by providing a better social welfare.<sup>31</sup>

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<sup>30</sup> Pokpong Srisanit, Advance Criminal Law, 3<sup>rd</sup> (Edited) publication, 3 September 2020, Winyuchon. Page 105.

<sup>31</sup> Pokpong Srisanit, Legal Academic Seminar in the topic of “General principle of Law Economical Analysis”, Rapeepatanasak Institutes, Office of the Court of Justice and Thailand Development Research Institute, 26 June 2010, Page 20.



Legal punishments includes both financial punishments: “Fine” and non-financial punishment: “Imprisonment”. Under the Theory of Law Economical Analysis, financial punishment such as fines does not waste society’s resources. As the fine penalty is only to make an alleged person pay money which is to transfer property from the alleged person to the country. In another way, imprisonment penalty may cost in finance to the country. The government has to prepare a financial budget to build a jail or penitentiary, and also a budget for maintenance and management. Nevertheless, the imprisonment penalty has more power than the fine penalty in term of crime deterrence.<sup>32</sup>

### 2.3.3 Limitation of Law Economical Analysis

Limitation of Law Economical Analysis can explain two things: Behaviourism Limitation and Legal Limitation.<sup>33</sup>

Using economic theory, it is hard to explain human behavior completely. Human behavior is too complex to be expressed with a calculation or formula. There are many factors of human behavior that cannot be fixed with formulas, such as morality and morals, goodness, emotion, passion, and feeling of human.

In term of legal, when any action has the public interest higher than the cost on the public, the Economic Analysis of The Law explained that such action should be supported by the government; in contrast, if any action has its cost on the public is higher than the public interested, such action should be prohibited.<sup>34</sup>

### Example Case of Bullying and Cyberbullying in Thailand

**Picture 1 A student in Si Sa Ket province was bullied in School and ended his life with suicided by himself.**

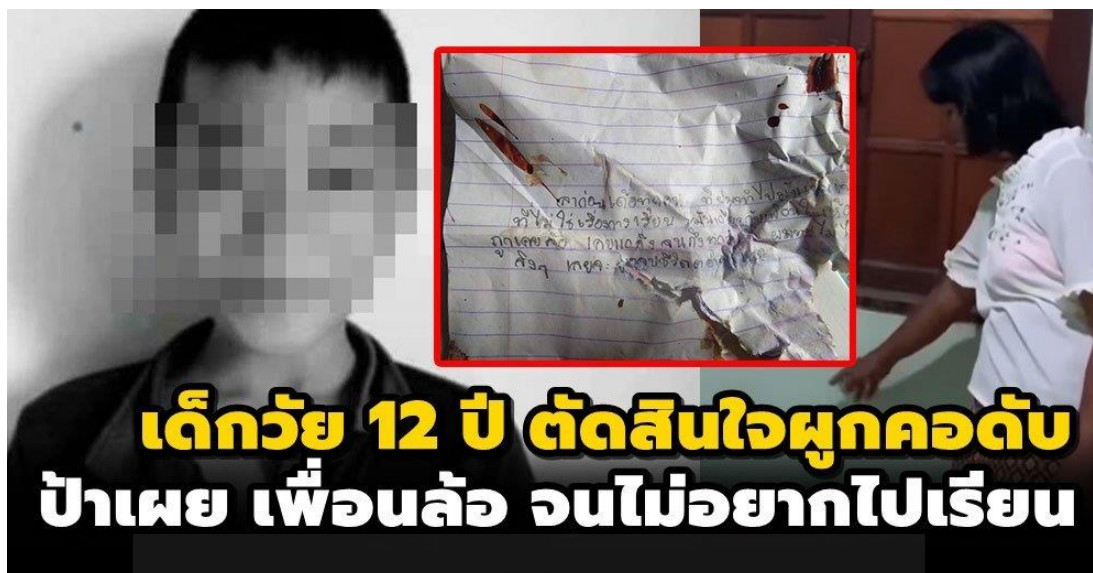
It is the hot news published on 11 March 2563 in Kaosod Online Newspaper reported about the bullying case in Si Sa Ket, Thailand.

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<sup>32</sup> Ibid, page 22.

<sup>33</sup> Pokpong Srisanit, Advance Criminal Law, 3<sup>rd</sup> (Edited) publication, 3 September 2020, Winyuchon. Page 95.

<sup>34</sup> Ibid, page 96.



According to this news, it is about a young boy who studied in Middle School in Grade 8 in Si Sa Ket province, has been bullied by his classmates. He decided commit a suicide by using a red rope from Physical Education class to tie his neck to the window in his bedroom approximately at 1; 00P.M on 5 March 2020. His hand was holding a written letter saying, “Bye everyone. The thing I did this by myself. The reason I did this, it not because of the studying. I have been bullied by my classmates. I cannot handle this anymore, so I decide to suicide myself”. In additional, it was related to the form of Cyberbullying (1) Gossip and (4) harassment which led to the boy suicide himself.<sup>35</sup>

Picture 2 People in Twitter school share a behavior of students bullying others in school.

<sup>35</sup> MGR Online, “Tragedy Mark who studied in Middle School in grade8 got jealous has been bullied by classmates tied his nick and wrote a letter said he could not handle anymore,” <https://mgronline.com/local/detail/9630000024440>, (accessed March 11, 2020).

หวัดเตอร์แท่ง เค้ก.ดั่ง พฤติกรรมฉาว ปม บูลลี่เพื่อนแรง กดดันให้ปิดข่าว แต่ นร.ในรร.ไม่  
หวั่น เดินหน้า เปิดเผยเรื่องราวที่ไม่เหมาะสมของโรงเรียนเพิ่มอีก

เกาะติดข่าว กดติดตาม ข่าวสด



As in the picture shown that the anonymous student has been collected the bullying information of the students which has been various kind of bullying such as; use the mobile to snapshot, steal victim's AirPods to get damages until broken, bring the picture to zoom in and tell the color of underwear to others, splash the water into the victim's toilet and anonymous twitters reveal the picture in messages that “for a child who bullied other the school will be punished by the regulations, So erase the clip video about the truth from the student which Director is not a human we will mass up” and the message that “To the parents of students in the video that has been bullied you deserve to know and be a shame with your child roughness study in grade 8 is not a kid you should be aware of and know how to handle with your child.”

Furthermore, in this case, is also related in the form of Cyberbullying in (5) Cyberstalking (6) Outing and Tricky and (7) Cyberthreat as wells which realized that Cyberbullying is also impacts everyone, any times easily we should well-prepared.<sup>36</sup>

## 2.4 Cyberbullying under of the Section 326, Section 328, and Section 393 of Thai Criminal Code

Thai Criminal Code does not mention the offense of Cyberbullying directly; however, there are provisions related to bullying and Cyberbullying in Section 326, Section 328, and Section 393 which can be explained as follows:

<sup>36</sup> Khaosod, “Twitters has been shared the famous child has scandal with weak point in overrated bullying which pressure to close the news but student in School not afraid go on to revel the inappropriate story in the School,” [https://www.khaosod.co.th/special-stories/news\\_6163776](https://www.khaosod.co.th/special-stories/news_6163776), (accessed March 16, 2021).

#### 2.4.1 Definition and Scope of interpretation under Section 326, Section 328, and Section 393 of Thai Criminal Code

##### 1. Section 326 of Thai Criminal Code

Section 326 of the Thai Criminal Code provides that “Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both”

As the word “A person” in this Section is deemed to an individual person and a juristic person, at the same time, the offender of this Section could also be an individual person and juristic person. As the result, the offense of defamation under Section 326 could be enforced on both an individual person and a juristic person.

“Impute” mean to say that someone is responsible for something that has happened especially something bad, or that something is the cause of something else:<sup>37</sup> According to the Supreme Court Decision No. 380/2503 defined that the imputing in Section 326 may or may not be the truth, only just to confirm the fact, i.e., telling a hearing story to the third party also could be deem as imputing.<sup>38</sup>

The imputing content must be a clear fact, not an unclear or undefinable fact. The Supreme Court Decision No. 121/2490 defined that the defendant said to the plaintiff acted badly, the Court had opinioned that the word “badly” is unclear and undefinable, cannot understand how is badly, as the result, this cannot count as a defamation.<sup>39</sup>

These are interesting Supreme Court Decisions explaining the action of imputing others which shall be subject to Section 326 of Thai Criminal Code.

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<sup>37</sup> Cambridge Dictionary, “Impute,” <https://dictionary.cambridge.org/dictionary/english/impute>, (accessed January 18, 2021).

<sup>38</sup> Supreme Court Decision No. 380/2503, <https://deka.supremecourt.or.th>, (accessed March 7, 2021).

<sup>39</sup> Supreme Court Decision No. 121/2490, <https://deka.supremecourt.or.th>, (accessed on 7 March 2021)



### **Supreme Court Decision No. 3252/2543**

The defendant reported to the Lieutenant Police as evidence, if some of the statements are false or wrong, some of them are still not a cause for the Lieutenant Police to investigate as they are not complaints, according to Criminal Procedure Code, Section 2 (7) when the defendant has no intention of delegating the matter to the investigator to prosecute the plaintiff. The report of the defendant would not cause the damage to the plaintiff, which would cause the plaintiff to prosecute the defendant for the offense of reporting a false statement to the official.

The word "accused" under the Thai Criminal Code; Section 326 does not define the term that it means. However, according to the Royal Institute's dictionary explains it means talking to find the evil accusing others of being damaged. The plaintiff has an affair with the defendant that does not create the right to the defendant to accuse the plaintiff with a defaming statement with the plaintiff when the defendant reported for evidence only has no intention of prosecuting the plaintiff. It can be seen that the defendant intended to be disrespectful, hate, and destroy the plaintiff's reputation. The defendant's actions are defaming to the plaintiff. Both defaming texts of the plaintiff is a personal statement that is not useful to the public even if the allegation is true. The defendant could not raise the cause to protect himself or to protect his or her interests legally, denying the offence.<sup>40</sup>

### **Supreme Court Decision No. 83/2501**

The Defamatory advertising based on what others is not accused.<sup>41</sup>

### **Supreme Court Decision No.894 - 897/2506**

The letter of impeachment of others, even if only sent to the Prime Minister, is considered to impeach the third person according to Section 326 of the Thai Criminal Code. When the plaintiff is a judge of the Supreme Court and has a ruling on the case that caused the defendant to lose and the defendant made insulting the

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<sup>40</sup> Supreme Court Decision No. 3252/2543, <https://deka.supremecourt.or.th>, (accessed on 7 March 2021).

<sup>41</sup> Supreme Court Decision No. 83/2501, <https://deka.supremecourt.or.th>, (accessed March 7, 2021).

plaintiff, as a judge of the Supreme Court, was an offense against the Section. 198 Thai Criminal Code<sup>42</sup>.

### **Supreme Court Decision No.1142/2516**

The defendant said that “corpulent, do not take the stick to poop.” While the plaintiff was arguing with Mr. Tu, the defendant's husband when the judges, along with the plaintiff, the defendant in civil cases went to inspect the place of the dispute, even though the word poop refers to the plaintiff. But it is only disgraceful not enough can be considered as meaning in the Thai Criminal Code, Section 326 the defendant is guilty of defamation to the plaintiff.<sup>43</sup>

As for the matter in violation of the jurisdiction when someone has done wrong is the power of the court, especially to order the punishment of that person, others do not have the right to present the case to the court to consider punishing the offender in such cases. The plaintiff has no power to sue for this offense in Thai Criminal Code, Section 328 describes that “If the offense of defamation is committed by means of publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or another recording instrument, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years and fined not exceeding two hundred thousand Baht.”

## **2. Section 328 of Thai Criminal Code**

Section 328 of Thai Criminal Code provided that *“If the offense of defamation be committed by means of publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or another recording instruments, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years and fined not exceeding two hundred thousand Baht.”*

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<sup>42</sup> Supreme Court Decision No. 894 - 897/2506, <https://deka.supremecourt.or.th>, (accessed March 7, 2021).

<sup>43</sup> Supreme Court Decision No.1142/2516, [deka.supremecourt.or.th](https://deka.supremecourt.or.th), (accessed March 7, 2021).



As the provision of Section 328 mentioned “the offense of defamation” which means as the offender under 328 must also be committed to defamation crime and subjected to the Section 326. The difference between Section 328 and Section 326 is that the offender under Section 328 must have published an offense of defamation to the public widely. The publication can be anything, such as drawing a poster, saying something out loud, and posting to a public website or platform.

These are interesting Supreme Court Decisions that explains the intention of imputing by publication. If there is not forcing or threat to the publication, it shall be not guilty by Section 328 as below.

#### **Supreme Court Decision No.5599/2530**

The defendant gave an interview with a newspaper reporter with defamatory information about the plaintiff. Then, the newspaper took that message to print on the advertisement as following: When it did not appear that the defendant had used to force, threaten, hire or incite the newspaper to print. The newspaper brings the message to print, it is an especially in matter of newspapers, therefore the plaintiff's case, not guilty of defamation by advertising according to the Thai Criminal Code.<sup>44</sup>

#### **Supreme Court Decision No.418/2523**

The defendant wrote the statement as the result of the front page of the daily newspaper in headline, the defendant's actions were taken to further criticize the news which is not a new author therefore, the defendant wrote and published an ad in the daily newspaper saying the car Jot was at fault.

Police Sergeant Charoen, the police officer treats the parties based on reality after the defendant said the plaintiff that "Stupid not working" then the plaintiff let the driver away from the plaintiff even he was a former Minister of the Interior, but abusing the law. The statement that the defendant wrote which not only just comment the actions of the plaintiff, but it also confirms the fact that the plaintiff blamed the police officer, who performed his duties despite the plaintiff's car seated at fault. The plaintiff also let the car driver getaway which is not true. Therefore, it is inserting the

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<sup>44</sup> Supreme Court Decision No.5599/2530, [deka.supremecourt.or.th](http://deka.supremecourt.or.th), (accessed March 7, 2021).

plaintiff as a midst of defamation.<sup>45</sup>

### 3. Section 393 of Thai Criminal Code

Section 393 “Whoever, insulting the other person in his presence or by publication, shall be imprisoned not out of one month or fined not out of one thousand Baht, or both.”

Section 393 is the petty offences, under Book III of the Thai Criminal Code.

Cambridge Dictionary gives the definition of “Insult”: an offensive remark or action.<sup>46</sup> In Section 393, “Insult” also means an action that looks down the other person, cynical, Humiliate, be hated and nervous, disdain, expressed by modality, speech, manner and/or an action which is not the same as the offense of Defamation.<sup>47</sup> The weight on how seriously in insulting is based on the feeling of common people and does not depend on the victim.<sup>48</sup> The offense of insulting under 393 is nearly similar with 326 (the offense of defamation) and Section 328 (the offense of defamation by publication), the difference is that Section 393 is not requested the offender to confirm the fact of defamation, only done an action to insulting other person could be subjection to the offense of insulting.

#### 2.4.2 Penalty under the Section 326, Section 328, and Section 393 of Thai Criminal Code apply to Economic Analysis of The Law

The Thai Criminal Code provides both imprisonment and fined penalty in Section 326, Section 328, Section 393 differently depend on the violence of crimes which is defined in the table below:

**Table 1 Summary of Definition and Penalty under Section 326, Section 393 of**

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<sup>45</sup> Supreme Court Decision No. 418/2523, [deka.supremecourt.or.th](http://deka.supremecourt.or.th), (accessed March 7, 2021).

<sup>46</sup> Cambridge Dictionary, “Insult” <https://dictionary.cambridge.org/dictionary/english/insult>, (accessed January 18, 2021).

<sup>47</sup> Parinya Jitakarnateekit, the offense of insulting, (Bangkok), Nittitum, 2538, p. 47.

<sup>48</sup> Voravit Ritithit, Legal Liability of the media, 1<sup>st</sup> Publication, (Bangkok: Vinyuchon) 2538, Page 148-149.

## Thai Criminal Code

|                     | Offense of Defamation   | Offense of Defamation by Publication   | Offense of Insulting   |
|---------------------|---|--|--|
|                     | Section 326 <sup>49</sup>   | Section 328 <sup>50</sup>  | Section 393 <sup>51</sup>  |
| <b>Definition</b>   | <i>Imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned.</i> | <i>Defamation committed by means of publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or another recording instruments, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means</i> | <i>Insulting the other person in his presence or by publication.</i> |
| <b>Imprisonment</b> | ≤ 1 year  | ≤ 2 year   | ≤ 1 month  |
| <b>Fine</b>         | ≤ 20,000 THB  | ≤ 100,000 THB  | ≤ 10,000 THB   |

From Table 1, when the criminal offense provided both imprisonment and fined penalty as under Section 326, Section 328, and Section 393, the Thai Criminal Code gives a value of freedom at 500 Baht which is the average value of Thai's people per day according to Section 30, Paragraph 1 of the Thai Criminal Code.<sup>52</sup>

<sup>49</sup> Section 326 of Thai Criminal Code

<sup>50</sup> Section 328 of Thai Criminal Code

<sup>51</sup> Section 393 of Thai Criminal Code

<sup>52</sup> Thai Criminal Code, Section 30, Paragraph 1, provided that "In case of the detention on lieu of fine, it shall be taken hold of rate of two hundred Baht per one day, and irrespective of whether one offense or several offences, it is prohibited the

The value of 500 Baht per day for the freedom cost is only an average value, some may be lower and some may be higher.

From a formula “ $C = M \times P$ ” of the Theory of Law Economical Analysis, the expected cost of crime under Section 326, Section 328 and Section 393 which is assumes that  $P = 0.1$  shows as below:

**Table 2 Summary of Penalties under Section 326, Section 328, and Section 393 applied to Economic Analysis of The Law**

| “ $C = M \times P$ ”   |  |  |                                      |
|--|--|--|--------------------------------------|
| Expected Cost = Magnitude of Punishment $\times$ Probability of Apprehension |  |  |                                      |
|  | Thai Criminal Code                         |  |                                      |
|  | Section 326 <sup>53</sup>                  | Section 328 <sup>54</sup>                              | Section 393 <sup>55</sup>            |
| Magnitude of Punishment (M)  | (365 $\times$ 500)<br>+20,000<br>= 202,500 | (365 $\times$ 2) $\times$ 500<br>+100,000<br>= 465,000 | (30 $\times$ 500) +10,000<br>= 35000 |
| Probability of Apprehension (P)  | 0.1  | 0.1  | 0.1                                  |
| Expected Cost (C)  | 20250                                      | 46500  | 3500                                 |

As shown Table, the expected cost of crime under Section 328 is the highest at 46500 while the action of crime is more specific when compared to Section 326 at 20250. The offense of insulting under Section 393 has the lowest expected cost of crime at 3500. From the result means that the offense under Section 393 most likely be committed by the criminal more than Section 326 and Section 328 due to the lower cost of expectation.

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detention in excess of one year period unless in case of the Court gives a judgment on fine as from eighty thousand Baht upwards, the Court will issue an order to detain on behalf of fine as the period of time in excess of one year but not out of two years.”

<sup>53</sup> Section 326 of Thai Criminal Code.

<sup>54</sup> Section 328 of Thai Criminal Code.

<sup>55</sup> Section 393 of Thai Criminal Code.

## 2.5 Cyberbullying under the Section 14 and Section 16 of Thailand Computer Crime Act B.E. 2550 (2007)

Besides the mentioned provisions under Section 326, Section 328, and Section 393 of the Thai Criminal Code, there are provisions in Section 14 and Section 16 under Thailand Computer Crime Act B.E. 2550 (2007) which are related to Cyberbullying.

### 2.5.1 Definition and Scope of interpretation under Section 14 and Section 16 under Thailand Computer Crime Act

#### 1. Thailand Computer Crime Act, Section 14

In Section 14 provided that *“Whoever commits the following offences shall be liable to an imprisonment for a term not exceeding five years, or a fine not exceeding One Hundred Thousand Baht or both.*

*(1) Dishonestly or by deception, entering wholly or partially distorted or false computer data into a computer system in a manner likely to cause damage to the general public; which is not a defamation under the Thai Criminal Code;*

*(2) Entering false computer data into a computer system in a manner which is likely to cause damage to the protection of national security, public safety, economic safety of the Kingdom of Thailand, infrastructures which are for public benefit; or to cause panic to the general public;*

*(3) Entering into a computer system, any computer data which is an offense related to national security of the Kingdom of Thailand or related to terrorism under the Thai Criminal Code;*

*(4) Entering any obscene data into a computer system which could be accessed by the general public; or*

*(5) Disseminating or forwarding computer data despite knowing of the fact that it is computer data under (1), (2), (3), or (4) above.*

*In case the offense under Paragraph (1) is not committed against the general public but rather against a certain person, the offender, the disseminator or the forwarder of such computer data shall be liable to an imprisonment for a term not exceeding three years, a fine not exceeding Sixty Thousand Baht or both; and such*

*offense shall be deemed a compoundable offence.”*<sup>56</sup>

The offense under Section 14 is the offense of using a computer system to do crimes in different actions. Section 14 has been adjusted by Section 8 of the Computer-Related Crime Act (No. 2), B.E. 2560.<sup>57</sup> *“The intention of Section 14 does not intend to punish the offender of defamation by advertising which such the offense of defamation with advertising had been specifically stipulated in the Thai Criminal Code”*<sup>58</sup>

### **Royal Thai Navy v. Big Island Media Co., Ltd (Phuketwan Study Case)**

The reporters and Phuket Sweet Website Editor which is the local website in English of Phuket City. The Navy was prosecuted for defamation and the Computer Crime Act. After the publication of a Reuters report claiming that Thai naval forces earn benefit from the trafficking of Rohingya

In the defense of the case, the defendants fought that the report published in Phuketwan was based on a Reuters report. The publication of the news is just a duty of publication which has the intention to discredit the Navy. Also, when the

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<sup>56</sup> Section 14 is repealed by the Computer-Related Crime Act (No. 2), B.E. 2560.

<sup>57</sup> The previous of Section 14 provided “Any person who perpetrates the following offenses shall be subject to imprisonment up to five years and a fine not exceeding one hundred thousand baht, or both

(1) put into a computer system forged computer data, partially or entirely, or false computer data, in a manner that is likely to cause damage to other person or the public

(2) put into a computer system false computer data in a manner that is likely to damage the national security,

(3) put into a computer system any computer data which is an offense about the security of the Kingdom or is an offense about terrorism, according to Thai Criminal Code;

(4) put into a computer system any computer data which is obscene and that computer data may accessible by the public;

(5) disseminate or forward any computer data when being aware that it was the computer data as described in (1), (2), (3) or (4).”

<sup>58</sup> Royal Thai Navy v. Big Island Media Co., Ltd. (Black Case No. 2161/2557 Red Case No. 6565/2558), at <https://freedom.ilaw.or.th/case/554>, (accessed February 13, 2021).



Navy clarified the report that Phuket Wan also publishes the notice of Royal Thai Navy.<sup>59</sup>

There are 3 defendants that was sued by the Royal Navy empowers Col. Phanlop Komalok to proceed with the litigation as Plaintiff as follows;

1<sup>st</sup> Defendant: Big Island Media Company Limited, Big Island is the operator of the Phuket is a news website, with Alan Morrison as the founder and the authorized director.

2<sup>nd</sup> Defendant: Alan Morrison which is an Australian reporter age 65-year-old of the Phuketwan website.

3<sup>rd</sup> Defendant; Chutima Sidaasathien age 31-year-old has been a reporter for Phuketwan since 2009.

Therefore, these 3 defendants have been imputing the navy as victims by reference in English article name “Thai Military Profiting from Trade in Boatpeople, Says Special Report” identify that *“The Thai naval forces usually earn about 2,000 baht per Rohingya for spotting a boat or turning a blind eye, said the smuggler, who works in the southern Thai region of Phang Nga (north of Phuket) and deals directly with the navy and police.”* This implies that the Thai navy also got benefit from the Rohingya for spotting a boat that is which is false and it is slanderous to the navy leading to the navy being disgraced. These 3 defendants have cooperated to spread the article through the internet system which published on the Phuket Wan website and shares a false statement to the public on the Phuket Wan website.<sup>60</sup>

Besides, the defendant offense into defamation by advertising according to the Thai Criminal Code Section 326<sup>61</sup>, Section 328<sup>62</sup> and offense as cooperate into the computer system that is a false computer data and reveal to the public or share the computer data which already known that the computer data is a false statement according

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<sup>59</sup> Navy case against Phuketwan: examples of cases that may not be sweet for journalists and alternative media online, at <https://freedom.ilaw.or.th/blog/phuketwanscoop>, (accessed March 8, 2021).

<sup>60</sup>Thai navy sues Phuketwan journalists over Rohingya trafficking report, CNN website, 23 December 2013, at <https://edition.cnn.com/2013/12/22/world/asia/thailand-media-defamation/>, (accessed March 8, 2021).

<sup>61</sup> Section 326 of Thai Criminal Code.

<sup>62</sup> Section 328 of Thai Criminal Code.

to the Thailand Computer Crime Act B.E.2550 Section 3<sup>63</sup> and 14.<sup>64</sup>

Furthermore, If the judge decides that the defendant makes a mistake so the defendant print all or some part of the Judge adverts in one edition or several editions by allowing the defendant to pay for advertising fees according to the Thai Criminal Code Section 332.<sup>65</sup>

For the conclusion of the Judgement of the Court of First Instance to dismiss the case which can be divided as follows;

Litigation power issues -The judge saw that the navy has authority to report complaint due to the words of the lawsuit such as “Naval Forces” even though not mention meaning as the navy which in English name as “Royal Thai Navy” but the word “Naval Forces” means Waterborne troops, the navy counts as Waterborne troops in the letter s behind the word “Naval Force” the readers can understand that the writer refers to several Water forces which including the navy so the navy has the authority to report complaint this case.<sup>66</sup>

In offense issue according to the Thai Criminal Code Section 328<sup>67</sup> - It is defamation by advertising, texting of the lawsuit in this case which taken from Reuters which is a reliable news agency that accepted and verified that can believe to verify the information to be true before publishing. The defendants also referred to the message from the Reuters which wasn't written by himself is not considered as defamation by advertising.

In offense issues according by Thai Computer Crime Act - It is not shown that the statement claimed from Reuters was false computer data or is an information

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<sup>63</sup> Section 3 of Thai Computer Crime Act B.E.2550

<sup>64</sup> The prosecutor postpones the reading of the Navy case against the Phuket reporter Wan 17 April, prachatai website, 12 March 2014, [www.prachatai.com/journal/2014/03/52233](http://www.prachatai.com/journal/2014/03/52233), (accessed March 8, 2021).

<sup>65</sup> Alan Morrison and Chutima Sidaasathien, Thai Military Profiting from Trade in Boatpeople, Says Special Report, Phuketwan, at <http://phuketwan.com/tourism/thai-military-profiting-trade-boatpeople-says-special-report-18454/>, (accessed 8 March 2021).

<sup>66</sup> Thailand Trafficking Downgrade Likely to be Maintained, Says Phuketwan Editor, Phuketwan website 9 July 2014, at <http://phuketwan.com/tourism/thailand-trafficking-downgrade-likely-maintained-says-phuketwan-editor-20584/>, (accessed March 8, 2021).

<sup>67</sup> Section 328 of Thai Criminal Code

that may damage to the state security or an offense under the Thai Criminal Code Security Division. Furthermore, the intent of the Computer Crime Act did not condone the offense of defamation by advertising due to there is the Thai Criminal Code, Section 328<sup>68</sup> provides for this offense already. The Judge dismiss this case.<sup>69</sup>

The reasons of adjusting are to develop the elements of crime under Section 14(1), the intention is to prevent a problem, damage which occurred from dishonestly or by deception defraud and forged the computer data in a manner likely to cause damage to the general public, such as, fake website, forge of shopping online platform.<sup>70</sup>

From the adjustment of Section 14(1), the intention of the new provision explains clearly that this provision will not apply for defamation by using the computer. As the result, Section 14 is the provision for deterrence of other computer crimes.<sup>71</sup>

The offences under Section 14 may define as below:

(1) Entering distorted or false computer data into a computer system – by dishonestly or by deception, no matter wholly or partly. This provision is aimed to prevent the public interest as its main target. In Addition, it is clearly from the new provisions that it must not be the offense of offender of defamation under Thai Criminal Code; thus, if it is subject to the offense of defamation under Thai Criminal Code, this provision shall not be applied. The violence of crime under (1) may be different as provided under Paragraph 2: *“if the crime is not committed against the general public but rather against a certain person, the penalty will be lower”*<sup>72</sup>

(2) Entering false computer data into a computer system in a manner which is likely to cause damage to the protection of national security that are important sectors: A) maintenance of national security; B) public safety; C) national economic security; D) public infrastructure serving national public interest; or F) cause a panic in

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<sup>68</sup> Section 328 of Thai Criminal Code

<sup>69</sup> Navy v Phuket Wan News Agency Case, ilaw, [https://freedom.ilaw.or.th/case/554#the\\_verdict](https://freedom.ilaw.or.th/case/554#the_verdict), (accessed March 8, 2021).

<sup>70</sup> Supith Parneatparakang, Computer – Related Crime Act 2007, 1<sup>st</sup> (Edition), September 2017, Nitithum. Bangkok, Page 32.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, page 35.

the public.<sup>73</sup>

(3) Entering into a computer system, any computer data which is an offense related to national security of the Kingdom of Thailand or related to terrorism. The national security of the Kingdom and the offense of terrorism is very important; therefore, it is necessary to specifically stipulate. In fact, the national security has also mentioned in (2), but in (3) the provision provided “any computer data”, so it is not necessarily false or true which is different from (2).<sup>74</sup>

(4) Entering any obscene data into a computer system and be able to accessed by the general public - this offense related to public order and public morality which also provided in Section 287 (Offences Relating to Sexuality)<sup>75</sup> and Section 388 (Petty offence)<sup>76</sup> in the Thai Criminal Code.

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<sup>73</sup> Ibid, page 36.

<sup>74</sup> Ibid.

<sup>75</sup> Thai Criminal Code Section 287 provided “Whoever:

(1) For the purpose of trade or by trade, for public distribution or exhibition, makes, produces, possesses, brings or causes to be brought into the Kingdom, sends or causes to be sent out of the Kingdom, takes away or causes to be taken away, or circulates by any means whatever, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene;

(2) Carries on trade, or takes part or participates in the trade concerning the aforesaid obscene material or thing, or distributes or exhibits to the public, or hires out such material or thing;

(3) In order to assist in the circulation or trading of the aforesaid obscene material or thing, propagates or spreads the news by any means whatever that there is a person committing the act which is an offense according to this Section, or propagates or spreads the news that the aforesaid obscene material or thing may be obtained from any person or by any means,

shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both.”

<sup>76</sup> Thai Criminal Code, Section 388 provided “Whoever, doing any shameful act in public by indecently exposing one self’s person, or by committing the other indecent act, shall be fined not out of five hundred Baht.”

(5) Disseminating or forwarding computer data – To commit under this provision, the offender shall have an intention that despite of knowing the fact, and sharing or forwarding such the computer data under (1), (2), (3), and (4)

In the case that the sharing the computer data under (1) which the crime is not committed against the general public but rather against a certain person (Paragraph 2), the offender shall also subject to the Paragraph 2 as well.

## 2. Thailand Computer Crime Act, Section 16

Section 16 *“Whoever enters a picture of another person into computer system where such picture is created, edited, added or amended electronically or by any other means in a manner which is likely to cause such other person to be defamed, denounced, detested or humiliated, shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding Two Hundred Thousand Baht.”*

In case the offense under Paragraph 1 is committed against a picture of a deceased person, where upon such action is likely to cause the parents, spouse, or offspring of such deceased person to be defamed, denounced, detested or humiliated; the offender shall be subjected to the penalty as specified in Paragraph 1.

In case the act of entering such picture into a computer system as described in Paragraph 1 or Paragraph 2 is made in good faith, with fair comments given towards any person or thing which is considered to be of a regular manner of the general public, the offender shall not be guilty.

The offences stated under Paragraph 1 and Paragraph 2 are compoundable to the offences.

In case the injured person under Paragraph 1 or Paragraph 2 has died before filing a complaint with an inquiry official, their parents, spouse or offspring can file a complaint and shall be deemed the injured person.”<sup>77</sup>

In Section 16, it is related to the retouch of computer data in case of person's picture led to the damage which is a type of being insulted or defamed by electronic or other processes. For the differentiate from Section 14 is a perform actions by bringing data into a computer system but in case of Section 14 which is an action which is not an insulting or defamatory according to that criminal law that is separated,

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<sup>77</sup> Section 16 is repealed and replaced by the Computer-Related Crime Act (No. 2), B.E. 2560.



which not bringing defamation to apply to Section 14.<sup>78</sup>

Section 16 is a newly amended provision by Computer-Related Crime Act (No.2) B. 2560 (2017) in Section 10 identify for adding the amendment and appears on the draft law on adjusting the penalty rate, in case of importing data into the computer which editing of other person picture in which dishonoring others, insulting, hating, shaming and increasing the principle by imposing the penalty if such actions are done on the image and the action might cause harm to the parents or couples or son or daughter of the deceased which is dishonor, insult or defame or be shamed both of these comparing with the provisions offense of defamation on Thai Criminal Law.

Therefore, the essence of Section 16 can be considered as the following;<sup>79</sup>

1) Related to the actions

(1) Being brought the data into the computer systems which the general public may ably the access. If it is their computer system which is not an opportunity for the general public to access that does not combine into the conditions.

(2) The data of computer which is a person's picture which is being created, edited, added or retouched with an electronic process or other types of processes which from the condition being shown that it's an action of a person's picture that might be a case that a picture which is a new creating or a picture that has already existed and also being retouched, added or edited, however it must have proceeded by the electronic or other processes which changes the data of computer.

(3) In another way it might affect the people's dishonor or defamed or be hated or be shamed that might not occur from this case but it's the case might affect in other types according to the law provisions which can compare to the offense to the defamation by Section 326 of criminal law can be seen that it's similar nature, but in the case of Section 16 also has effect on being shamed, and also broader than the provision from Section 326 of Criminal Law.

(4) an action of well-considered

2) Related to the case of performing on the image of the deceased

In this case, according to Section 16 paragraph 2 in other words if

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<sup>78</sup> Supith Parneatparakang, Computer – Related Crime Act 2007, 1<sup>st</sup> (Edition), September 2017, Nitithum. Bangkok, Page 46.

<sup>79</sup> Ibid., p. 47-48.



an action may affect the parents, spouse, or son of the deceased by dishonor, be defamed, or be hated or be shamed. The offender must be punished by the provisioned space 1, therefore, this is similar to the defamation of the deceased by criminal Section 327 which in case of parents or son is based on real fact or by blood but for the case of the spouse must be the legal spouse.

3) Relating to the exception on offense

Section 16 paragraph also regulates an exceptional offense namely if an offense by a case of space1 or 2 is access into the computer system with a good faith which person or others that is the nature of the people will do. The offender is not guilty in which, when comparing the defamation case, the criminal law will match Section 329 (3).

4) Relating to the status of the offence

The offense of Section 16 by the law regulates that it's a compoundable offense (Section 16 paragraph 3) which able to the settlement of the case has caused the case to the end or at the beginning of the case, the victim has made a legal complaint according to the law. In the case of victims not only in case of offense by paragraph 1 or 2 die before complain. The law regulates that parents, spouse, or son of the deceased can file a complaint and be considered as victims (Section 16 last paragraph).

### **2.5.2 Penalty under Section 14 and Section 16 under Thailand Computer Crime Act Apply to Economic Analysis of the Law**

Thailand Computer Crime Act provides both imprisonment and fined penalty in Section 14 and Section 16 differently depending on the violence level of crimes which can defined as in the table below:

Table 3 Definition and Penalty under Section 14, Section 16 of Thailand Computer Crime Act

|            | Thailand Computer Crime Act   |  |
|------------|---|--|
|            | Section 14 <sup>80</sup>  | Section 16 <sup>81</sup>   |
| Definition | <p>1) Dishonestly or by deception, entering wholly or partially distorted or false computer data into a computer system in a manner likely to cause damage to the general public; which is not a defamation under the Thai Criminal Code;</p> <p>(2) Entering false computer data into a computer system in a manner which is likely to cause damage to the protection of national security, public safety, economic safety of the Kingdom of Thailand, infrastructures which are for public benefit; or to cause panic to the general public;</p> <p>(3) Entering into a computer system, any computer data which is an offense related to national security of the Kingdom of Thailand or related to terrorism under the Thai Criminal Code;</p> <p>(4) Entering any obscene data</p> | <p><i>enters a picture of another person into computer system where such picture was created, edited, added or amended electronically or by any other means in a manner which is likely to cause such other person to be defamed, denounced, detested or humiliated,</i></p> |

<sup>80</sup> Section 14 of Computer Crime Act.

<sup>81</sup> Section 16 of Computer Crime Act.

|                     |   |              |
|---------------------|---|--------------|
|                     | <p>into a computer system which could be accessed by the general public; or</p> <p>(5) Disseminating or forwarding computer data despite knowing of the fact that it is computer data under (1), (2), (3), or (4)</p>                 |              |
| <b>Imprisonment</b> | <p>≤5 year; and</p> <p>≤ 3 year</p> <p>[Paragraph 2] In case (1) is not committed against the general public but rather against a certain person, the offender, the disseminator or the forwarder of such computer data.</p>          | ≤3 year      |
| <b>Fine</b>         | <p>≤ 100,000 THB; and</p> <p>≤ 60,000 THB</p> <p>[Paragraph 2] In case (1) is not committed against the general public but rather against a certain person, the offender, the disseminator or the forwarder of such computer data</p> | ≤ 20,000 THB |

Form table 3, it takes the penalties provided under Section 14 and Section 16, the Thailand Computer Crime Act and compute with the formula “ $C = M \times P$ ” of the Economic Analysis of The Law to find the expected cost of crime, the result is shown as below: (In this case we still mark up the Probability of Apprehension (“P”) at 0.1 and assumed that the value of freedom is 500 Baht per day.)

Table 4 Summary of Penalties under Section 14 and Section 316 of Thailand Computer Crime Act applied to Economic Analysis of The Law

| “C = M x P”   |   |   |   |
|---|---|---|---|
| Expected Cost = Magnitude of Punishment x Probability of Apprehension |   |   |   |
|   | Thailand Computer Crime Act                 |   |   |
|   | Section 14 <sup>82</sup>                    | Section 14 P.2 <sup>83</sup>              | Section 16 <sup>84</sup>                  |
| Magnitude of Punishment (M)   | [(365 x 5) x 500]<br>+ 100,000<br>= 1012500 | [(365 x 3) x 500]<br>+ 60,000<br>= 607500 | [(365 x 3) x 500]<br>+ 20,000<br>= 567500 |
| Probability of Apprehension (P)                                       | 0.1   | 0.1                                       | 0.1                                       |
| Expected Cost (C)   | 101250                                      | 60750                                     | 56750                                     |

From the result shown in Table 4, the expected cost of crime under Section 14 is the highest at 101,250 while the action of crime has more violence when compare with Section 14 Paragraph 2 at 60,750. The offense of insulting under Section 16 has the lowest expected cost of crime at 3,500.

## 2.6 Conclusion

The conclusion of this chapter shows that:

(1) Definition - Thai laws provided provisions related to the offences of Cyberbullying in both the Thai Criminal Code and Thailand's Computer Crime Act. The definitions and the scope of interpretation have been described in different ways. In the Thai Criminal Code, Section 326 defines the offense of defamation and requires an action to impute anything to another person. Such action must be done before the third person, and the imputation shall be in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned. Section 328 defines

<sup>82</sup> Section 14 of Thailand Computer Crime Act.

<sup>83</sup> Section 14 Paragraph2 of Thailand Computer Crime Act.

<sup>84</sup> Section 16 of Thailand Computer Crime Act.

the offense of defamation by publishing. The offense under this Section must have an action of defamation done by any publication using a document, drawing, painting, cinematography film and any other medium. Section 393 defines the Offense of Insulting. The offense of insulting is to insult the other person in his presence or by publication. In Thailand's Computer Crime Act, Section 14 defines the offense of entering false computer data into a computer system in a manner causing damage to the general public and weakening the protection of national security. Section 16 is to enter a picture of another person into a computer system where such picture was created, edited, added, or amended electronically or by any other means in a manner which is likely to cause such other person to be defamed, denounced, detested or humiliated.

(2) Scope of Interpretation - As Section 326, Section 328, and Section 393 of the Thai Criminal Code do not provide definitions of "Imputes" and "Insult"; however, from a prior Supreme Court Decision, we can conclude that "Imputes" and "Insult" are nearly similar, but they are not identical; they are different. The word "Imputes" means to say that someone is responsible for something that has happened especially something bad, or that something is the cause of something else. The word "Insult" means an action that looks down on the other person, cynical, humiliate, be hated and nervous, disdain, expressed by modality, and speech. Also, the intention of exposing such another person to be hated describes such action clearly. From Supreme Court Decision, even the same wording, the result may be different because it has to be dependent on facts and situation. For Thailand's Computer Crime Act; Section 14 First Paragraph, it clearly describes that this Section is not defamation under the Thai Criminal Code. However, Section 16, does not provide clearly that it is the same as Section 328 in the Thai Criminal Code or not, but if the fact appears that the defamation done by the publication and entering photos into a computer system, such action may be liable to both offense under Section 16 of the Thailand Computer Crime Act and Section 328 of the Thai Criminal Code.

(3) Penalty - The penalty for the offense of defamation under Section 326 is no more than one-month imprisonment and a fine not exceeding One Thousand Baht. The penalty for the offense of defamation by publication under Section 328 is no more than two years imprisonment and a fine not exceeding Two Hundred Thousand Baht. The offense of Insulting under Section 399 is a petty offense which is no more than one-month imprisonment and fine not exceeding One Thousand Baht. The penalty under Section 14 of Thailand's Computer Crime Act is quite severe, the highest penalty may

reach imprisonment in a term of not exceeding five years and a fine not in excess than One Hundred Thousand Baht, while the penalty under Section 16 which is to enter a picture of another person into the computer system in a way to make the damage of such person shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding Two Hundred Thousand Baht.

According to the formula “ $C = M \times P$ ” of the Theory of Law Economical Analysis, Section 14 Paragraph 1 of the Thailand Computer Crime Act has the highest expected cost of crime. Next is Section 16 which has the second-highest of Expected cost. Section 393 of the Thai Criminal Code has the lowest cost. Section 328 is higher than Section 326. A summary of definitions and penalties is shown in the tables below:

**Table 5 Summary the Criminal Penalty under the Law related to Cyberbullying in Thailand with Economic Analysis of The Law**

| Summary the Criminal Penalty under the Law related to Cyberbullying in Thailand with Economic Analysis of The Law |                           |                           |                           |                             |                              |                          |
|---|---------------------------|---------------------------|---------------------------|-----------------------------|------------------------------|--------------------------|
|   | Thai Criminal Code        |                           |                           | Thailand Computer Crime Act |                              |                          |
|   | Section 326 <sup>85</sup> | Section 328 <sup>86</sup> | Section 393 <sup>87</sup> | Section 14 <sup>88</sup>    | Section 14 P.2 <sup>89</sup> | Section 16 <sup>90</sup> |
| Imprisonment  | ≤ 1 year                  | ≤ 2 year                  | ≤ 1 month                 | ≤ 5 year                    | ≤ 3 year                     | ≤ 3 year                 |
| Fine  | ≤ 20,000 THB              | ≤ 100,000                 | ≤ 10,000 THB              | ≤ 100,000                   | ≤ 60,000                     | ≤ 20,000                 |
| “ $C = M \times P$ : Expected Cost = Magnitude of Punishment $\times$ Probability of Apprehension” <sup>91</sup>  |                           |                           |                           |                             |                              |                          |

<sup>85</sup> Section 326 of Thai Criminal Code

<sup>86</sup> Section 328 of Thai Criminal Code

<sup>87</sup> Section 393 of Thai Criminal Code

<sup>88</sup> Section 14 of Thailand Computer Crime Act

<sup>89</sup> Section 14 Paragraph 2 of Thailand Computer Crime Act

<sup>90</sup> Section 16 of Thailand Computer Crime Act

<sup>91</sup> “Theory of Law Economical Analysis’s formula to find the Expected Cost Crime”



|   |   |         |      |           |         |         |
|---|---|---------|------|-----------|---------|---------|
| <b>Magnitude of Punishment (M)<sup>92</sup></b>     | 100,000   | 200,000 | 3500 | 1,012,500 | 607,500 | 567,500 |
| <b>Probability of Apprehension (P)<sup>93</sup></b> | 0.1 (assume that the Probability of Apprehension equally) |         |      |           |         |         |
| <b>Expected Cost (C)<sup>94</sup></b>               | 20250   | 46500   | 3500 | 101250    | 60750   | 56750   |

From Table 5, it shows the different penalty of the offences in the different Sections. As the Thailand Computer Crime Act is the specific law to prevent crimes online, the penalty under the provisions of the law is higher than the penalty under the offences in the Thai Criminal Code. One of the reasons is that cyber world is worldwide and everything that is online is generally accessible by the public, so it is considered “public”.

Pokpong Janvit, “Economic Analysis of Laws : Concept and Literary review”, Economic Analysis of Criminal Laws , Office of the Thailand Development Research Institute, 2554, page19 Steven D Levitt and Thomas J. Miles, “Empirical study of criminal punishment” in A. Mitchell Polinsky and Steven Shavell, Handbook of Law and Economics, Volume 1, Elsevier,2007,p.459.; Pokpong Janvit, “Economic Analysis of Laws : Concept and Literary review”, Economic Analysis of Criminal Laws , Office of the Thailand Development Research Institute, 2554, page19

<sup>92</sup> Probability (“P”) at 0.1 and assumed that the value of freedom is 500 Baht per day.)

<sup>93</sup> Thai Criminal Code, Section 30 Paragraph 1 give a value of freedom at 500 Baht.

Table 6 Summary the Definition under the Laws related to Cyberbullying in Thailand

| Summary the Definition under the Laws related to Cyberbullying in Thailand |   |
|--|---|
| Keyword and Definition   |   |
| Section 326 <sup>95</sup>  | <i>Offense of Defamation: To imputes anything to the other person.</i>  |
| Section 328 <sup>96</sup>  | <i>Offense of Defamation by Publication: To imputes anything to the other person by any publications.</i>   |
| Section 393 <sup>97</sup>  | <i>Offense of Insulting: To Insult the other person in his presence or by publication.</i>  |
| Section 14 <sup>98</sup>   | <p><i>(1) Dishonestly or by deception, entering false computer data into a computer system.</i></p> <p><i>(2) Entering false computer data into a computer system which is likely to cause damage to the protection of national security, public safety, economic safety of the Kingdom of Thailand, infrastructures which are for public benefit; or to cause panic to the public.</i></p> <p><i>(3) Entering into a computer system, any computer data which is an offense related to national security of the Kingdom of Thailand or related to terrorism under the Thai Criminal Code.</i></p> <p><i>(4) Entering any obscene data into a computer system which could be accessed by the general public; or</i></p> <p><i>(5) Disseminating or forwarding computer data despite knowing of the fact that it is computer data under (1), (2), (3), or (4).</i></p> |
| Section 16 <sup>99</sup>   | <i>To enters a made picture of another person into computer system.</i>   |

<sup>95</sup> Section 326 of Thai Criminal Code

<sup>96</sup> Section 328 of Thai Criminal Code

<sup>97</sup> Section 393 of Thai Criminal Code

<sup>98</sup> Section 14 of Thailand Computer Act

<sup>99</sup> Section 16 of Thailand Computer Act

From Table 6, it shows the different definitions under the laws related to Cyberbullying in Thailand which can determine into 2 types of Laws; Thai Criminal Code and Thailand Computer Crime Act. To start with Thai Criminal Code on Section 326 state that “Offense of Defamation”, Section 328 is about the Offense of Defamation by Publications and Section 393 is state that Offense of Insulting. For Thailand Computer Crime Act, Section 14 mainly focus on the Offense of Entering fake data into a computer system”, and Section 16 focus on the Offense of Entering a made picture of another person into a computer system.



## Chapter 3

### Legal Measures on Cyberbullying under H.R.1966- Megan Meier Cyberbullying Prevention Act 111<sup>th</sup> Congress (2009-2010) (Missouri State, USA)

#### 3.1 General Legal Measures for Cyberbullying in U.S

All 50 states of the U.S. now have implemented physical bullying laws and 48 of them have included electronic harassment, but Cyberbullying law has been adopted in only 23 states. Most of the states pay attention to the importance of bullying and electronic harassment by implementing the laws. This chapter will define the background of analyzing and comparing laws in both countries (Thailand and U.S.). An example case (Megan case) is cited and because it later led to enactment of the first Cyberbullying law in the USA: Meier Cyberbullying Prevention Act 111th Congress (2009-2010). Finally, this chapter will examine penalties of such offences under the *Meier Cyberbullying Prevention Act* with the Theory of Law Economical Analysis.

##### 3.1.1 Background of Cyberbullying law (Megan Taylor Meier Case)

Megan Meier was an American girl who committed suicide by hanging herself just 3 weeks ago before her 14th birthday. A year later, Meier's parents prompted an investigation into the matter and her suicide was attributed to Cyberbullying through a social networking website Myspace. Lori Drew, the mother of a friend of Meier, was indicted on the matter in 2008 but was acquitted in the 2009 case *United States v. Drew*.<sup>100</sup>

Megan Taylor Meier was born on November 6, 1992, to Christina "Tina" Meier and Ronald "Ron" Meier in O'Fallon, Missouri.<sup>101</sup> During Megan's childhood, she lived in the nearby Dardenne Prairie. Soon after opening an account on Myspace, Meier received a message supposedly from a 16-year-old boy, Josh Evans. Meier and "Josh" became online friends, but never met in person or spoke. Meier thought "Josh" was attractive. As Meier began to exchange messages with this person, her family said she

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<sup>100</sup> Zetter, Kim )November 20, 2009.( "Prosecutors Drop Plans to Appeal Lori Drew Case." Wired News.

<sup>101</sup> Frankel, Todd C )20 October 2012.( "Megan Meier's mom is still fighting bullying." stltoday.com. Retrieved 4 November 2012.

seemed to have had her "spirits lifted". This person claimed to have moved to the nearby city of O'Fallon, was homeschooled, and did not yet have a phone number. A 16-year-old male named "Josh Evans" was registered on the account used for sending bullying messages to Meier. But Lori Drew, the mother of Sarah Drew, a former friend of Meier, later admitted creating the Myspace account. At the time of the suicide, the Drew and Meier families were neighbors, living four doors apart.<sup>102</sup>

Lori Drew was aided by Sarah and by Ashley Grills, an 18-year-old employee of Lori. Lori and several others ran the hoaxed account.<sup>103</sup> Witnesses testified that the women intended to use Meier's messages sent to "Josh" to get information about her and later humiliate her, in retribution for her allegedly spreading gossip about Drew's daughter.<sup>104</sup>

On October 16, 2006, after Megan got home from school, Tina Meier signed onto Myspace for Megan. She was in a hurry because she had to take her younger daughter, Allison, to the orthodontist. Before she could get to the door, Megan was upset. "Josh" sent troubling messages to Megan, including one that said: "I don't know if I want to be friends with you anymore because I heard that you are not very nice to your friends."<sup>105</sup> Some of Megan's messages were shared with others, and bulletins were posted about her. Tina told her daughter to sign off and went to the orthodontist. She called her daughter to ask her if she signed off, and she did not. Megan was sobbing hysterically. When her mother got home, she was furious that she had not signed off. She was shocked at the vulgar language her daughter was firing back. Megan then told her mother, "You're supposed to be my mom! You're supposed to be on my side!" and then left from the computer and went upstairs. According to her father Ron Meier and a neighbor who had discussed the hoax with Drew, the last message sent by "Josh" read:

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<sup>102</sup> Frail egos caught in killer net, The Sydney Morning Herald 30 November 2007.

<sup>103</sup> "Cyberbullying case goes to jury." United Press International .Retrieved 2008-11-26. They say Drew created a false 16-year-old male persona in an attempt to woo Meier and extract information from her to determine if she had been spreading gossip about her daughter.

<sup>104</sup> *Steinhauer, Jennifer (2008-11-26.) "Verdict in MySpace Suicide Case." The New York Times.* ISSN 0362-4331 .Retrieved 2016-12-11.

<sup>105</sup> Rich, Free, and Miserable :The Failure of Success in America, John Brueggemann, Rowman & Littlefield Publishers, 2010, page 135

"Everybody in O'Fallon knows who you are. You are a bad person, and everybody hates you. Have a shitty rest of your life. The world would be a better place without you".<sup>106</sup>

Meier responded saying, "You're the kind of boy a girl would kill herself over." The last few exchanges were made via AOL Instant Messenger instead of Myspace. Twenty minutes later, Tina suddenly froze in mid-sentence and ran up to Meier's room. Meier had hanged herself with a belt in the bedroom closet. Despite attempts to revive her, Meier was pronounced dead the next day on October 17, three weeks before her 14th birthday.<sup>107</sup>

Several weeks after her death, Megan Meier's parents were told that the mother of one of their daughter's friends—with whom Meier had a falling out—had created the "Josh Evans" account. The parent, Lori Drew, who created the fake account, admitted that she and her daughter had the password to the account, and characterized the hoax to a reporter as a "joke". Initially, Drew denied knowing about the offensive messages that were sent to Meier. She told the police that the account was aimed at "gaining Megan's confidence and finding out what Megan felt about her daughter and other people".<sup>108</sup> The neighborhood mother who had told the Meiers that Drew had the hoax account said "Lori laughed about it", and said she had intended to "mess with Megan". While Drew's name was excluded from most early news stories, CNN disclosed her name through the inclusion of the police report in its broadcast of the story; it was featured on many blogs.<sup>109</sup>

In the legal proceedings, the persecutor tried to use the law to process the case with Drew under Criminal Law, but it showed that no regulations could be applied to the case. Drew was sued by accusing in jointly violate in U.S.C. (United States Code: U.S.C) Section 371 and follow by 3 charges for (Computer Fraud and Abuse Act: CFAA) on Section 18 of U.S.C Section 1030(a)(2)(c) and (C)(2)(A) and U.S.C.

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<sup>106</sup> Bullied :Tales of Torment, Identity, and Youth, Keith Berry, Routledge, 2016, page 62

<sup>107</sup> Steinhauer, Jennifer )2008-11-26.( "Verdict in MySpace Suicide Case." The New York Times. ISSN 0362-4331 .Retrieved 2016-12-11.

<sup>108</sup> Pokin, Steve (2007-11-11). " 'MySpace' hoax ends with suicide of Dardenne Prairie teen." St .Louis Post-Dispatch .Retrieved 2007-11-16.

<sup>109</sup> How Lori Drew became America's most reviled mother." The Age . Melbourne .2007-12-01 .Retrieved 2007-12-03.



Section 1030(c)(2)(B)(ii) which violate excess into a computer without authorization in acquisition Information from computer process that lead to serious criminal or violate.

### 3.1.2 Development of Megan Taylor Meier Case to Anti Cyberbullying laws

When the case ended, the jury made a decision that Lori Drew was the wrongdoer according to the 18 United States Code, Section 1030(a)(2)(c) and (c)(2)(A) which only carries a minor sentence, but in a separate charge on conspiracy, the jury was unable to reach a verdict. Ultimately, the jury concluded that Lori was not guilty. Moreover, the Megan case led to emotional effect especially that the government officials admit that there are no laws can adapt with Morgan case which leads to Megan Meier Cyberbullying Prevention Act 2009 which had objective to adjust federal criminal code determine protection on Cyberbullying and add characteristic of wrongdoing such as coerce, intimidate, harass and an action which leads to depressing any person emotion by using electronic as a device.<sup>110</sup> Megan Meier Cyberbullying Prevention Act had passed to the House Judiciary Subcommittee on Crime, Terrorism but it was ultimately considered by the House of United States because of no federal online bullying Law. However, if bullies are discriminated against based on race, color, religion, sex, also still applicable laws. In 15 states, there are state laws that require public schools to have policies to deal with Cyberbullying.<sup>111</sup> Furthermore, the Megan Meier Foundation had been established, including a prominent website “meganmeierfoundation.org”<sup>112</sup> that has an objective to support awareness and understanding of online cyber bullying to help percent suicides.

## 3.2 H.R.1966- Megan Meier Cyberbullying Prevention Act 111<sup>th</sup> Congress (2009-2010)

Megan Meier Cyberbullying Prevention Act 111th Congress (2009-2010) states that: Four out of five United States children aged 2 to 17 live in a home where either

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<sup>110</sup> H.R.1966-111<sup>th</sup> Congress (2009-2010) : (Megan Meier Cyberbullying Prevent . [www.congress.gov/bill/111th-congress/house-bill/1966/text](http://www.congress.gov/bill/111th-congress/house-bill/1966/text),

<sup>111</sup> The Megan Meier Cas and its Implications, at [www.sites.duke.edu/Cyberbullying/2014/12/03/the-megan-meier-case-its-implications/](http://www.sites.duke.edu/Cyberbullying/2014/12/03/the-megan-meier-case-its-implications/), (accessed February 16, 2021).

<sup>112</sup> Meganmeier website, at [Meganmeierfoundation.org](http://Meganmeierfoundation.org), (accessed February 19, 2021).

they or their parents access the Internet. Youth who create Internet content and use social networking sites are more likely to be targets of Cyberbullying. Electronic communications provide anonymity to the perpetrator and the potential for widespread public distribution, potentially making them severely dangerous and cruel to youth. Online victimizations are associated with emotional distress and other psychological problems, including depression. Cyberbullying can cause psychological harm, including depression; negatively impact academic performance, safety, and the well-being of children in school; force children to change schools, and in some cases, lead to extremely violent behavior, including murder and suicide. Sixty percent of mental health professionals who responded to the Survey of Internet Mental Health Issues reported having treated at least one patient with a problematic Internet experience in the previous five years; 54 percent of these clients were 18 years of age or younger.<sup>113</sup>

### **3.2.1 Definition, Scope of interpretation and Penalty on Cyberbullying under Megan Meier Cyberbullying Prevention Act**

Megan Meier Cyberbullying Prevention Act, Section 3 Chapter 41 of title 18, United States Code, is amended at the end with the following:

#### **Section 881. Cyberbullying**

*“(a) Whoever transmits in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behavior, shall be fined under this title or imprisoned not more than two years, or both.*

*“(b) As used in this Section—*

*“(1) the term ‘communication’ means the electronic transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received; and*

*“(2) the term ‘electronic means’ means any equipment dependent on electrical power to access an information service, including email, instant messaging, blogs, websites, telephones, and text messages.”<sup>114</sup>*

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<sup>113</sup> Megan Meier Cyberbullying Prevention Act 111th Congress (2009-2010), Section 3.

<sup>114</sup> H.R.1966 - 111th Congress (2009-2010): Megan Meier Cyberbullying Prevention

### Definition and Scope of interpretation

In Section 881. (b) the provision provides the meaning of “Communication” and “Electronic”.

Cyberbullying of title 18, United States Code provides a very clear the definition of Cyberbullying. Although it does not define the definition of Cyberbullying directly, the word “Communication” under this Section has a clear meaning in electronic transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received as is provided in (b) (1) of the Section.

“Electronic” is defined as “any equipment dependent on electrical power to access an information service, including email, instant messaging, blogs, websites, telephones, and text messages”, according the (b) (2) of the Section.

When read together, the definition of “Communication” and “Electronic” under (a) of this Section, it is easily understood what the intentions of the law are for Cyberbullying.

In Section 881. (a) explain the action of the crime that to transmits or any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic.

### 3.2.2 The Penalty under Megan Meier Cyberbullying Prevention Act Apply to Theory of Law Economical Analysis

Megan Meier Cyberbullying Prevention Act specifies both imprisonment and financial penalties for Cyberbullying crime under the United States Code Section 881. “..., shall be fined under this title or imprisoned not more than two years, or both.”<sup>115</sup>

Section 881 of the United States Code is the sub-title of title 18 of the Code, and the fine penalty of any Section under this title shall follow the 18 U.S. Code Section 3571 - Sentence of fine.<sup>116</sup> In this case, the financial penalty when a defendant is

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Act | Congress.gov | Library of Congress, <https://www.congress.gov/bill/111th-congress/house-bill/1966/text>, (accessed February 25, 2021).

<sup>115</sup> Megan Meier Cyberbullying Prevention Act, Section 3 Chapter 41 of title 18, United States Code, amended Section 881.

<sup>116</sup> 18 U.S. Code Section 3571 - Sentence of fine | U.S. Code | US Law | LII / Legal

an individuals and crime does not cause serious damage and does not result in death, the amount of the fine shall be no more than is 5,000 USD according to Sub-Section (b) (5).

Summary of definition and penalty under the Megan Meier Cyberbullying Prevention Act show as below table:

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Information Institute (cornell.edu), <https://www.law.cornell.edu/uscode/text/18/3571>, (accessed February 26, 2021).

18 U.S. Code Section 3571 - Sentence of fine

(a) In General. — A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Fines for Individuals. — Except as provided in sub-Section (e) of this Section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under sub-Section (d) of this Section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000

(c) Fines for Organizations. — Except as provided in sub-Section (e) of this Section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under sub-Section (d) of this Section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and
- (7) for an infraction, not more than \$10,000.

**Table 7 Summary the Criminal Penalty under the Megan Meier Cyberbullying Prevention Act**

|                     | <b>Megan Meier Cyberbullying Prevention Act</b>   |
|---------------------|---|
|                     | <b>Section 881. Cyberbullying<sup>117</sup></b>   |
| <b>Definition</b>   | <i>Whoever transmits in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behavior.</i> |
| <b>Imprisonment</b> | ≤ 2 year  |
| <b>Fine</b>         | ≤ 5,000 USD   |

When transferring the number of fine Thai Baht under the 18 U.S. Code Section 881 and Section 3571 (b) (5), by using the average six-month exchange rate of USD to Thai Baht, the amount of fine at 5,000 USD is equal to 152,796 THB. (The average exchange rate is at 1USD: 30.5592THB)<sup>118</sup>

For the imprisonment penalty, Section 881 provides that for more than two years. In Missouri State, it is not clear how much for a value of freedom per day; however, Missouri provides compensation only for individuals exonerated through DNA evidence. In that specific circumstance, the individual is eligible for \$50 per day of post-conviction confinement if filed within one year of release.<sup>119</sup> That compensation amounts to fifty dollars per day<sup>120</sup> of incarceration and a waiver of all costs of

<sup>117</sup> Section 881 Cyberbullying of Megan Meier Cyberbullying Prevention Act

<sup>118</sup> Exchange rate (THB to USD), Average Six months from 30/8/2020 และ 26/2/25021, at Available as <https://th.exchange-rates.org/history/THB/USD/G/180>, (accessed February 16, 2021).

<sup>119</sup> Compensation, Midwest Innocence Project (themip.org), at <https://themip.org/issues/compensation/>, (accessed February 26, 2021).

<sup>120</sup> Vernon's Annotated Missouri Statutes Currentness, Title XL, Additional Executive Departments Chapter 650, Department of Public Safety (Refs & Annos) DNA Profiling System (Deoxyribonucleic Acid) 650.058. DNA profiling analysis, finding of "actually innocent", restitution, expungement- -DNA confirmation of guilt, liability for costs:

incarceration. The award would be paid by the Department of Corrections, but yearly payments cannot exceed \$36,000 per year. The exonerated are entitled to payments until the full amount is paid. No award is given if the prisoner was serving a concurrent sentence for an unrelated crime.<sup>121</sup>

As mentioned above, we can assume that Missouri laws gives the cost of freedom cost at 50 USD or 1,500THB per day. From formula “ $C = M \times P$ ” of the Theory of Law Economical Analysis, the expected cost of crime under Megan Meier Cyberbullying Prevention Act which is assumes that  $P = 0.1$  shows as below:

**Table 8 Summary of Penalty under the Megan Meier Cyberbullying Prevention Act with Economic Analysis of The Law**

| “ $C = M \times P$ ”  |  |
|---|--|
| Expected Cost = Magnitude of Punishment x Probability of Apprehension |  |
|   | Megan Meier Cyberbullying Prevention Act 111 <sup>th</sup>                           |
|   | Section 881. Cyberbullying <sup>122</sup>  |
| Magnitude of Punishment (M)   | $[(365 \times 2) \times (50 \times 30.5592)] + (5,000 \times 30.5592) = 1,268,206.8$ |
| Probability of Apprehension (P)                                       | 0.1  |
| Expected Cost (C)   | 126820.68  |

1) “...any individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such crime solely as a result of DNA profiling analysis may be paid restitution. The individual may receive an amount of fifty dollars per day for each day of post-conviction incarceration for the crime for which the individual is determined to be actually innocent. The petition for the payment of said restitution shall be filed with the sentencing court.”

<sup>121</sup> | Prison Legal News, Missouri Legislature Allows Wrongfully Convicted to Receive Compensation, Refer: Senate Bill No. 1023, 93rd General Assembly, Missouri 2006; Washington Monthly; KDSK.com <https://www.prisonlegalnews.org/news/2007/jun/15/missouri-legislature-allows-wrongfully-convicted-to-receive-compensation/>, (accessed February 26, 2021).

<sup>122</sup> Section 881 Cyberbullying of Megan Meier Cyberbullying Prevention Act



According to the Missouri Labor Department, in 2021 the Missouri minimum wage is set to 10.30 USD per hour<sup>123</sup> while in Thailand, the Thai Ministry of Labor Notification sets the minimum wage rate is 331 baht per day.<sup>124</sup>

Computing the amount of Missouri to Thai Baht per day, (the average exchange rate is at 1USD: 30.5592THB) is  $[(10.30 \times 50) \times 8] = 2518.07$ . As the result, the minimum wage of Missouri and Thailand, there is a bit different amount at 2,187 THB. In another word, the minimum wage of Missouri is 7.6 times higher than the minimum wage of Thailand. When we take the Expected Cost of crime under Megan Meier Cyberbullying Prevention Act 111th and divided it by 7.6, the result is equal to 16686.93.

### 3.2.3 Conclusion

Megan Meier Cyberbullying Prevention Act - Amends the federal criminal code to impose criminal penalties on anyone who transmits in interstate or foreign commerce a communication intended to coerce, intimidate, harass, or cause substantial emotional distress to another person, using electronic means to support severe, repeated, and hostile behavior.<sup>125</sup> And, the Conclusion of this Chapter shows that:

(1) Definition: under Section 881 of the U.S. Code defines “Communication” as a mean electronic transmission, between or among points specified by the user; and, “Electronic” means electrical power to access an information service. When combining these two words with the provision of Section 881 can understand than any conversation by using an electronic device will be counted under this Section.

(2) Scope of the interpretation: for the scope of interpretation, the U.S. law divided the offense of Defamation and Cyberbullying. Any communication using an

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<sup>123</sup> Minimum Wage, Missouri Labor (mo.gov), at ‘Minimum Wage’ <https://labor.mo.gov/DLS/MinimumWage>, (accessed 16 February 2021).

<sup>124</sup> Under the National Wage Committee's Notification on Minimum Wage Rate (No.10) Published to be Effective on January 1, 2020, at <https://www.mol.go.th/wp-content/uploads/sites/2/2020/01/Prakadwage10-6Jan2020.pdf>, (accessed 7 March 2021).

<sup>125</sup> H.R.1966 - 111th Congress (2009-2010), Introduction in house on 04/02/2009;: Megan Meier Cyberbullying Prevention Act | Congress.gov | Library of Congress, <https://www.congress.gov/bill/111th-congress/house-bill/1966>, (accessed February 16, 2021).

electronic device in a way of intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behaviour shall be liable under Section 881. Communication under this Section can be any electronic form whether emails, text messages, comments, chats, or other relevant forms.

(3) Penalty: Section 881 of the U.S. Code does not provide the term of imprisonment; however, the provision provides that the financial penalty shall be according to the Section that the offender of Cyberbullying invokes according to Section 3571 which has the difference due to the result of an action.



## Chapter 4

### Analysis the Definition, Scope of Interpretation and Penalty of Cyberbullying under Thai laws and Foreign law (Missouri State, USA) with Theory of Law Economical Analysis

#### 4.1 Analysis of the Definition, Scope of Interpretation and Penalty under Section 326, Section 328 and Section 393 of Thai Criminal Code with Economic Analysis of the Law

Section 326 and Section 328 of the Thai Criminal Code provided actions which deemed to be the offense of Defamation. Any action to impute anything to the other person before a third person in a manner likely to impair the reputation of such other person, or to expose such other person to be hated or scorned, is a rather wide definition which also includes bullying. The scope of interpretation and definition of imputing does not provide in the provision of Section 326 or Section 328; however, there are many Supreme Court Decisions that provides a standard and gives an explanation of imputing.

Section 393 of the Thai Criminal Code provides a definition of Offense of Insulting which is to insult a person in his presence or by publication. The definition of “insult” does not provide clarity in the provision. Bullying any person before the third person may also be deemed as an action that commits to an offense of insulting under this Section. Also, sometimes bullying any person behind others may be deemed as an action that commits to offense of defamation under Section 326; or Cyberbullying may be deemed as an offense of defamation by publication under Section 328. In fact, an offense under Section 326, Section 328, and Section 393 has different sizes of penalties. Section 393 is in the title of petty offense which has the smallest penalty. In the real world, bullying in front of the third person may cause much more negative impact to the victim than bullying behind others.

Although Cyberbullying crime may be deemed an offense of defamation, defamation by publication, or insulting, None of Section 326, Section 328, and Section 393 defined Cyberbullying specifically. Also, the penalty under those Sections still not proper for Cyberbullying when compared with the Megan Meier Cyberbullying Prevention Act:

Table 9 Analysis the Criminal Penalty under Section 326, Section 328 and Section 393 of Thai Criminal Code with Economic Analysis of The Law

| Analysis the Criminal Penalty under Section 326, Section 328 and Section 393 of Thai Criminal Code with the Theory of Law Economical Analysis |                     |               |                      |
|---|---------------------|---------------|----------------------|
| Thai Criminal Code  |                     |               |                      |
|   | <u>Imprisonment</u> | <u>Fine</u>   | <u>Expected Cost</u> |
| <b>Section 326</b> <sup>126</sup>   | ≤ 1 year            | ≤ 20,000 THB  | 20250                |
| <b>Section 328</b> <sup>127</sup>   | ≤ 2 year            | ≤ 100,000 THB | 46500                |
| <b>Section 393</b> <sup>128</sup>   | ≤ 1 month           | ≤ 10,000 THB  | 3500                 |

From the formula “ $C = M \times P$ ” under Economic Analysis of The Law to find the expected cost of crime, as “C” refers to expected cost, “M” refers to magnitude of punishment, and “P” refers to probability of apprehension which represented at 0.1, and the value of freedom represented at 500THB per day for Thailand, the expected cost of crime in different provisions showed as different results. The highest expected cost of crime is the crime under Section 326, and the second is the crime under Section 328, and last is the crime under Section 393 which is at 20250, 46500, and 3500, respectively.

As the result shown in Table 8, the expected cost of crime Section 328 and Section 393 has much different amount at 44900. And the expected cost of crime under Section 328 is higher the cost of crime under Section 326 at 26250. The different amount for cost of crime under Section 326 and Section 393 is 41000.

#### 4.2 Analysis the Definition, Scope of Interpretation and Penalty under Thailand Computer Crime

Section 14 of the Thailand Computer Crime Act is offense of using the computer system to do crimes in different actions: (1) entering distorted or false computer data into a computer system; (2) Entering false computer data into a computer system in a

<sup>126</sup> Section 326 of Thai Criminal Code.

<sup>127</sup> Section 328 of Thai Criminal Code.

<sup>128</sup> Section 393 of Thai Criminal Code.

manner which is likely to cause damage to the protection of national security that is important sectors; (3) Entering into a computer system, any computer data which is an offense related to the national security of the Kingdom of Thailand or related to terrorism; (4) Entering any obscene data into a computer system and be able to access by the general public; (5) Disseminating or forwarding computer data. Additionally, Section 16 is the offense of entering a picture of another person into the computer system in a manner that is likely to cause damage to other person.

For the scope of interpretation and definition, after the law has amended the provision of Section 14 (1), it has been clearly clarified that Section 14 is not defamation under the Thai Criminal Code. Therefore, the offense of defamation will not apply to this Section. However, Section 16 is different. None of the provision mentions if the offense of defamation can apply to Section 16 or not. Thus, if the defamation is done by entering a picture of another person into the computer system, it may be also an offense under Section 16 as well.

The penalty under Section 14 and Section 16 of the Thailand Computer Crime Act are higher than the provision under the Thai Criminal Code. Due to the strong penalty in Section 14, the provision under (1) clearly clarified that the offense under this Section is different from Section 326 and Section 328. The intention of the law may be to limit the size of financial penalties for the offense of defamation.

**Table 10 Analysis the Criminal Penalty under Section 14 and Section 16 of Thailand Computer Crime Act with Economic Analysis of The Law**

| Analysis the Criminal Penalty under Section 14 and Section 16 of Thailand Computer Crime Act with Economic Analysis of The Law |                     |               |                      |
|--|---------------------|---------------|----------------------|
| Thailand Computer Crime Act  |                     |               |                      |
|  | <u>Imprisonment</u> | <u>Fine</u>   | <u>Expected Cost</u> |
| <b>Section 14</b> <sup>129</sup>   | ≤5 year             | ≤ 100,000 THB | 101250               |
| <b>Section 14 P.2</b> <sup>130</sup>   | ≤ 3 year            | ≤ 60,000 THB  | 60750                |
| <b>Section 16</b> <sup>131</sup>   | ≤3 year             | ≤ 20,000 THB  | 56750                |

<sup>129</sup> Section 14 of Thailand Computer Crime Act

<sup>130</sup> Section 14 subsection (1) of Thailand Computer Crime Act

<sup>131</sup> Section 16 of Thailand Computer Crime Act

As the result in Table 10, the expected cost of crime for Cyberbullying under Thailand Computer Crime Act is much higher than the expected cost of crimes under Thai Criminal Code.

#### **4.3 Analysis of the Definition, Scope of Interpretation and Penalty under Megan Meier Cyberbullying Prevention Act with Economic Analysis of The Law and Compare with the Related Thai Laws**

After the serious case happened with a teenager in Missouri State, USA, until the victim of the case died from the Cyberbullying crime. Local and federal government of the USA has realized and became concerned with the Cyberbullying crimes and have attempted to control the problem by enacting a specific law to prevent such crimes. Meier Cyberbullying Prevention Act was enacted in 2010 while online communication has been growing rapidly.

The result of the Meier Cyberbullying Prevention Act adjusted the provision of the U.S. Code, Title 18 by adding “Section 881, Cyberbullying.” Section 881 has provided a definition and Scope of interpretation on Cyberbullying crime. Not only limited to the action which bullies from a computer or a laptop through the website or online window, but also include any action which bullies by the other electronic devices. The Section 881 (b) (1)<sup>132</sup> and (2)<sup>133</sup> give the definition of “communication” and “electronic” which are already cover the definition of Cyberbullying.

For the penalty, Section 881, provided both imprisonment and financial penalty.

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<sup>132</sup> Megan Meier Cyberbullying Prevention Act Section 881 (b) (1) “the term ‘communication’ means the electronic transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” at <https://www.congress.gov/bill/111th-congress/house-bill/1966/text>, (accessed February 25, 2021).

<sup>133</sup> Megan Meier Cyberbullying Prevention Act Section 881 (b) (2) “the term ‘electronic means’ means any equipment dependent on electrical power to access an information service, including email, instant messaging, blogs, websites, telephones, and text messages.” <https://www.congress.gov/bill/111th-congress/house-bill/1966/text>, (accessed February 25, 2021).



However, the provision of Section 881 only gives the term of imprisonment as no more than two years and does not give the amount of the fine. As Section U.S. Code Section 3571, which is the general provision for the sentence of financial penalty, provided various fine amounts.

The different amounts of fine depended on different results or damages of crime. The minimum fine amount for the general damage does not exceed 5,000USD. The computation for expected cost has shown in the table below.

**Table 11 Analysis the Criminal Penalty under Megan Meier Cyberbullying Prevention Act with Economic Analysis of The Law**

| Analysis the Criminal Penalty under Megan Meier Cyberbullying Prevention Act with Economic Analysis of The Law |                     |             |                      |
|--|---------------------|-------------|----------------------|
| Megan Meier Cyberbullying Prevention Act   |                     |             |                      |
|  | <u>Imprisonment</u> | <u>Fine</u> | <u>Expected Cost</u> |
| <b>Section 881.</b> <sup>134</sup>   | ≤ 2 year            | ≤ 5,000 USD | 16686.93             |

From the formula “ $C = M \times P$ ” under Economic Analysis of The Law to find the expected cost of crime, as “C” refers to expected cost, “M” refers to magnitude of punishment, and “P” refers to probability of apprehension which represents at 0.1, and the value of freedom represented at 50USD per day for the freedom cost in USA which the different living cost is at 7.6 times, and the average exchange rate is at 1USD: 30.5592THB.

As the result shown in Table 10, the penalty under Section 881 after comparing the cost of living in USA and Thailand showed that the excepted cost of crime under this Section is equal 16,686.93.<sup>135</sup>

<sup>134</sup> Section881. of Megan Meier Cyberbullying Prevention Act

<sup>135</sup> Theory of Law Economical Analysis: “ $C = M \times P$ ”  $[(365 \times 2) \times (50 \times 30.5592)] + (5,000 \times 30.5592) = 1,268,206.8, \times 7.6$  (which is the different living cost between USA and Thailand according to the minimum wage per day of both countries) = 16,686.93.

#### 4.4 Analysis the definition, scope of interpretation and criminal penalty under Megan Meier Cyberbullying Prevention Act with the Economic Analysis of The Law compare with the related Thai Laws

The result from the formula under the Economic Analysis of The Laws showed that the highest expectation cost of crime is the crime under Section 14 of Thailand Computer Crime Act at 101250 and followed by the crime under the Section Paragraph 2 at 60750. Next, is the crime under the Section 16 of the Thailand Computer Crime Act, the expected cost showed at 56750. The crimes under Thai Criminal Code have lower expected cost than the crime under Thailand Computer Crime Act at 20250, 46500, and 3500 for the Section 326, Section 328 and Section 393, respectively. The expected cost of crime under Megan Meier Cyberbullying Prevention Act set between the Section 326 and the Section 328 of the Thai Criminal Code at 16686.93. The summary of the penalty and expectation cost of the laws related to Cyberbullying crime showed as below.

Table 12 Analysis the Criminal Penalty under Megan Meier Cyberbullying Prevention Act with the Economic Analysis of The Law compare with the related Thai Laws

| Analysis the Criminal Penalty under Megan Meier Cyberbullying Prevention Act with the Economic Analysis of The Law compare with the related Thai Laws |                     |               |                      |
|---|---------------------|---------------|----------------------|
| Thai Criminal Code  |                     |               |                      |
|   | <u>Imprisonment</u> | <u>Fine</u>   | <u>Expected Cost</u> |
| <b>Section 326</b> <sup>136</sup>   | ≤ 1 year            | ≤ 20,000 THB  | 20250                |
| <b>Section 328</b> <sup>137</sup>   | ≤ 2 year            | ≤ 100,000 THB | 46500                |
| <b>Section 393</b> <sup>138</sup>   | ≤ 1 month           | ≤ 10,000 THB  | 3500                 |
| Thailand Computer Crime Act   |                     |               |                      |
|   | <u>Imprisonment</u> | <u>Fine</u>   | <u>Expected Cost</u> |

<sup>136</sup> Section 326 of Thai Criminal Code

<sup>137</sup> Section 328 of Thai Criminal Code

<sup>138</sup> Section 393 of Thai Criminal Code

|   |                     |               |                      |
|---|---------------------|---------------|----------------------|
| <b>Section 14</b> <sup>139</sup>                | ≤5 year             | ≤ 100,000 THB | 101250               |
| <b>Section 14 P.2</b> <sup>140</sup>            | ≤ 3 year            | ≤ 60,000 THB  | 60750                |
| <b>Section 16</b> <sup>141</sup>                | ≤3 year             | ≤ 20,000 THB  | 56750                |
| <b>Megan Meier Cyberbullying Prevention Act</b> |                     |               |                      |
|   | <u>Imprisonment</u> | <u>Fine</u>   | <u>Expected Cost</u> |
| <b>Section 881.</b> <sup>142</sup>              | ≤ 2 year            | ≤ 5,000 USD   | 16686.93             |

From the formula “ $C = M \times P$ ” under Economic Analysis of The Law to find the expected cost of crime, as “C” refers to expected cost, “M” refers to magnitude of punishment, and “P” refers to probability of apprehension which represented at 0.1, and the value of freedom represented at 500THB per day for Thailand, and 50USD per day for the freedom cost in USA which the different living cost is at 7.6 times, and the average exchange rate is at 1USD: 30.5592THB.

As shown in Table 12, the expected cost of crime under Section 881 of Megan Meier Cyberbullying Prevention Act is set between Section 326 and Section 393 of the Thai Criminal Code. However, it is nearer with the expected cost of crime under Section 326 more than Section 393 which the different amount at 2,563.07 and 15,086.93.

Although the expected cost of crime under Section 326 of Thai Criminal Code has the 20250 which is 2<sup>nd</sup> lower amount with the Section 881 of the Megan Meier Cyberbullying Prevention, the definition and scope of interpretation between both Sections are different. The summary showed in the table below.

<sup>139</sup> Section 14 of Thailand Computer Crime Act

<sup>140</sup> Section 14 paragraph2 of Thailand Computer Crime Act

<sup>141</sup> Section 16 of Thailand Computer Crime Act

<sup>142</sup> Section881of Megan Meier Cyberbullying Prevention Act

Table 13 Analysis the definition and scope of interpretation under Megan Meier Cyberbullying Prevention Act compare with the Section 326 of Thai Criminal Code

| Analysis the definition and scope of interpretation under Megan Meier Cyberbullying Prevention Act compare with the Section 326 of Thai Criminal Code |   |
|---|---|
| Thai Criminal Code  |   |
| Section 326   | <i>Imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other persons to be hated or scorned.</i>  |
| Megan Meier Cyberbullying Prevention  |   |
| Section 881   | <i>(a) Whoever transmits in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behavior</i>  |
|   | <i>“(b) As used in this Section —</i><br><i>“(1) the term ‘communication’ means the electronic transmission, between or among points specified by the user, of information of the user’s choosing, without changing in the form or content of the information as sent and received; and</i><br><i>“(2) the term ‘electronic means’ means any equipment dependent on electrical power to access an information service, including emails, instant messaging, blogs, websites, telephones, and text messages.”.</i> |

As shown in Table 13, Section 326 of Thai Criminal Code provided wide definition without a specific describe of the wording under the provision, but Section 881 of Megan Meier Cyberbullying Prevention provided specifically the definition and described the wording of “communication” and “electronic” which are read together is easily understood that the intention of the law is to prevent Cyberbullying crimes.

#### 4.4 Conclusion

As shown on the analysis of the definition, scope of interpretation and penalty under Thai Criminal Code, Thailand Computer Crime Act, and Megan Meier Cyberbullying Prevention Act with the Economic Analysis of The Law found that the expected cost of crime under Section 14 was much higher than the Section 326 and Section 328 and Section 393 of the Thai Criminal Code. The intention of provision of Section 14 did not intend to enforce the offense of defamation as latest amendment of the Section 14 which had added the text in the Sub-Section (1) that “Dishonestly or by deception, entering wholly or partially distorted or false computer data into a computer system in a manner likely to cause damage to the general public; which is not a defamation under the Thai Criminal Code.”<sup>143</sup>

In Addition, according to the Theory of Law Economical Analysis, the expected cost of crime under Megan Meier Cyberbullying Prevention Act Section 881 shows an amount approximately closes with Section 326 of the Thai Criminal Code. The difference of expected cost is only at 3569.07. However, the definition and Scope of interpretation of both provisions are different. The Section 326 provided in widely offense of defamation, but the Section 881 of the Megan Meier Cyberbullying Prevention Act provided specific offense of Cyberbullying.

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<sup>143</sup> Section 14(1) of Thailand Computer Crime Act

## Chapter 5

### Conclusion and Recommendations

#### 5.1 Conclusion

As conveyed in previous chapters, Thailand does not have any specific law on Cyberbullying which defines a precise definition and scope of interpretation and penalty. However, Cyberbullying crimes have become more and more serious problems for society. This research has analyzed the legal measure on Cyberbullying in term of definition, scope of interpretation and an appropriate size for penalties for Cyberbullying crimes. The research objectives are fulfilled by;

1. Objective one – a study on theories and principles of legal Measures on Cyberbullying. This research is fulfilled by the studying definition of bullying and Cyberbullying, characteristic and form of Cyberbullying, the differences of traditional bullying and Cyberbullying, theory of punishment, theory of law economic analysis.

2. Objective Two – a study on legal measures on Cyberbullying under Megan Meier HR Prevention Act 111th Congress. This research is fulfilled by the study on the background of Cyberbullying law in USA with case studies: “Megan Taylor Meier”, the development Megan Taylor Meier Case to anti-Cyberbullying laws, the definition, scope of interpretation and penalty of Cyberbullying under the U.S. Code Section 881 amended by Megan Meier Cyberbullying Prevention Act.

3. Objective Three – analyzing the definition, scope of interpretation and penalty of Cyberbullying under Thai laws and foreign Law (Missouri State, USA) with theory of law economic analysis. This research is fulfilled by the analysis and comparison of the provision under Section 326, Section 328, and Section 393 of the Thai Criminal Code, Section 14 and Section 16 of Thailand Computer Crime Act, and Section 881 of the Megan Meier Cyberbullying Prevention Act, and the computation according to the formula “ $C = M \times P$ : Expected Cost = Magnitude of Punishment x Probability of being apprehended” under Theory of Law Economical Analysis.

4. Objective Four – present conclusions and give recommendations about domestic laws, add provisions that relate to Cyberbullying. This research is fulfilled by analysis of the legal measures and makes recommendations to amend Section 326 of Thai Criminal Code by adding a new Section as 326/1 for Cyberbullying prevention.

The study reveals three problems under this research which are; (1) definition of



Cyberbullying which none of the Thai laws articulates clearly and precisely; a precise definition of Cyberbullying and, the specific provisions are necessary for preventing crimes from Cyberbullying; (2) the penalties for Cyberbullying crimes: Cyberbullying is a dangerous crime which, an imprisonment penalty or financial penalties is necessary according to theory of punishment; (3) ratio of penalty of Cyberbullying. The suitable ratio of penalty can be solved by three problems as follows;

From the first problem which are that the Section 326, Section 328, and Section 393 of the Thai Criminal only provided widely provisions for offense of defamation, offense of defamation by publication and offense of insulting. Also, the Section 14 and Section 16 of Thailand Computer Crime Act which is the specific law for computer and cybercrime does not mention Cyberbullying. Although the crime under Section 16 which is entering fake photos into computer system, and Cyberbullying may be deemed as defamation or insulting, sometime the characteristic of Cyberbullying may be different. At the same time, in foreign countries, especially, Missouri State, USA, had enacted the specific laws for Cyberbullying which has clear definition and scope of interpretation.

Second problem is that to prevent the crime, the criminal penalty is necessary to prevent the crime. According to the theory of punishment, there are five different criminal penalties: death; imprisonment; confinement; Fine; Forfeiture of property. Sometimes, the penalty may have more than one kind of penalties.

Third problem is the size of penalty. According to the Theory of Law Economical Analysis, the magnitude of punishment or the size of punishment related to the expected cost of crime which both are the main factor to motivate a criminal to commit a crime. To effectively prevent the Cyberbullying crime, the size of penalty should be suitable for the expected cost of crime.

In conclusion, the study of all chapters has answered the hypothesis which resulted in the legal measure of Cyberbullying under Thai laws has no specific law, but Section 326 of Thai Criminal Code is the equivalent provision. The penalty of Section 326 has both imprisonment and fine penalty; as well as, the provisions under Section 881 of the Megan Meier Cyberbullying Prevention Act which has higher term of imprisonment penalty, and much higher amount of financial penalty. Section 326 of Thai Criminal Code provided the imprisonment penalty at the term of not exceed one year while Section 881 of the Megan Meier Cyberbullying Prevention Act provided the imprisonment penalty at the term of not exceed two years; additional, Section 326 of Thai Criminal Code provided the fine penalty at not exceed 20,000THB while Section

881 of the Megan Meier Cyberbullying Prevention Act provided the fine penalty at not exceed 5,000USD. However, when comparing with the cost of living and the minimum wage of both countries, the total penalty of Section 881 of the Megan Meier Cyberbullying Prevention Act seem to be higher than Section 326 of Thai Criminal Code although the result of expected cost of crime is lower.

## 5.2 Recommendations

When analyzing the problem and obstacle of the legal measure of Cyberbullying under the related Thai laws: Section 326, Section 328 and Section 393 of Thai Criminal, Section 14, and Section 16 of Thailand Computer Crime Act, comparing with the Section 881 Megan Meier Cyberbullying Prevention, this researcher would like to recommend that the domestic law should be revises, amend the existing provisions, and add new provisions in order to eliminate existing weakness as follows.

### 5.2.1 Add a new provision for the future of Cyberbullying prevention in Thai Criminal Code to provide a clear definition of Cyberbullying.

The problem of Section 326 of Thai Criminal Code is that it does not provide the definition of Cyberbullying. In fact, there has been a number of high-profile Cyberbullying case in the news where offenders have faced criminal charges. Sometimes, the most case involve 9- to 17-year-olds child, for example, Megan Meier case. As the result, the researcher would like to give a recommendation to add a new provision and enact a new Section to describe the definition of Cyberbullying.

Specifically, the definition of Section 326 which reads that “Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both”; therefore, the provision should be added as below:

*“Whoever transmits any communication using electronic means to support severe, repeated, and hostile behavior in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit the offense of Cyberbullying shall be punished with imprisonment*

not exceeding one year and six months or fined not exceeding Eighty Thousand Baht, or both.

*“Cyberbullying” shall include online sexual harassment, attack or threaten with negative content through online, impersonating someone else’s in content through online, Deceitful and create group on social media for harming others.*

*“Communication” means any communication between a person to another through and including, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received ”*

*“Electronic means” means any equipment dependent on electrical power to access an information service, including emails, instant messaging, blogs, websites, telephones, and text messages.”*

From analysis of the definition of related provisions under domestic laws and foreign law, a weak point of domestic laws is that there is a precise the definition of Cyberbullying. As a result, the recommendation to add a new paragraph will fix the loophole of the Cyberbullying problem. With respect to penalties, after analysis of the definition, scope of interpretation and penalties with the theory of Law Economic Analysis, the proper penalty should be set between the Section 326 and Section 328 of the Thai Criminal Code.

### **5.2.2 Amend and add the other paragraphs to describe and define the definition of “communication using electronic means” in the new Section.**

The definition of specific wording is necessary when interpretation of the provision of law. In the new recommended Section has two words: “communication” and “electronic means” In order to amplify the meaning, the researcher would like to give recommendation to provide the definition as below.

*“Communication” means any communication between a person to a person through and including, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. ”*

*“Electronic means” means any equipment dependent on electrical power to access an information service, including email, instant messaging, blogs, websites, telephones, and text messages.”*

From the definition of the two words, it covers the meaning of

Cyberbullying and can fix the loophole of interpretation.

### 5.2.3 Set the reasonable penalty for the Cyberbullying crime

After analyzed penalty of the related laws with the theory of Law Economic Analysis, the researcher would like to recommend to set both imprisonment and / or financial penalty for Cyberbullying crime as below.

*“... shall be punished with imprisonment not exceeding one year and six month or fined not exceeding eighty thousand Baht, or both”*

The recommendation for the penalty has concerned with the damage of crime which may factor and set between Section 326 and Section 328 of the Thai Criminal Code. After studied and analyzed on the related law of Cyberbullying in terms of definition, interpretation, and penalty, the researcher believes the recommendation to adding a new provision will fix the loophole of the Cyberbullying problem in society.

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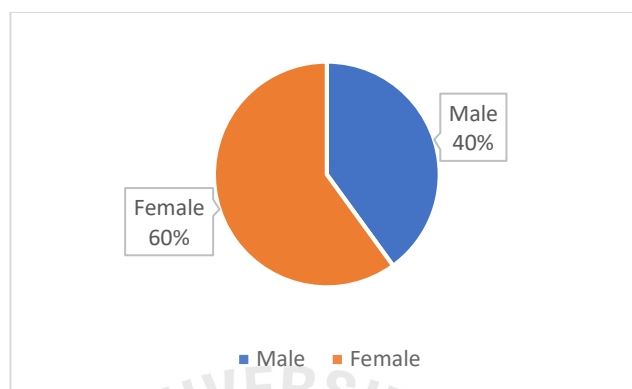
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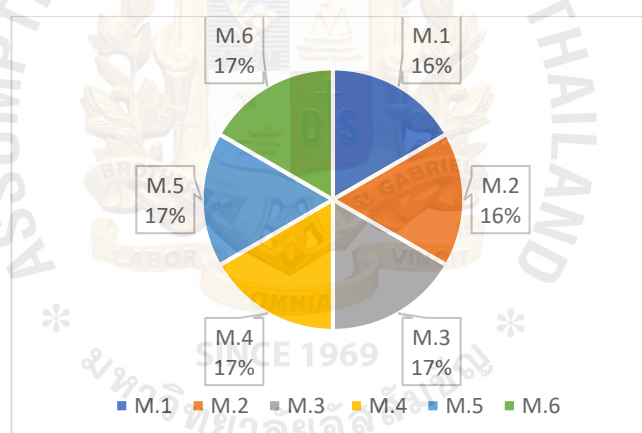


## Example of Legal Measures to Protect Child and Juvenile from Cyber Bullying Online Survey with 500 students

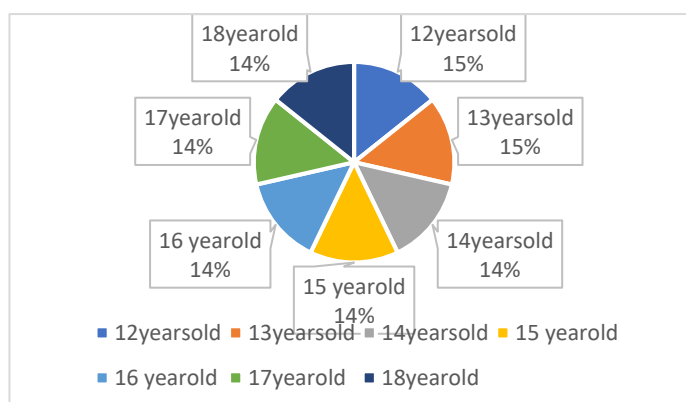
### 1. Gender



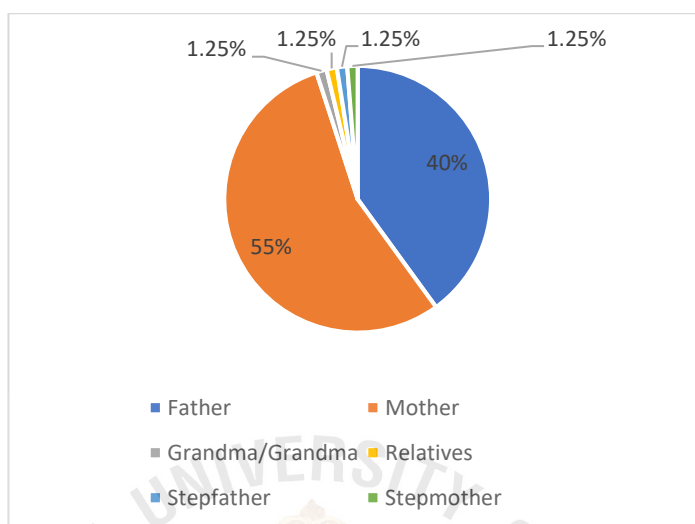
### 2. What is year are you in?



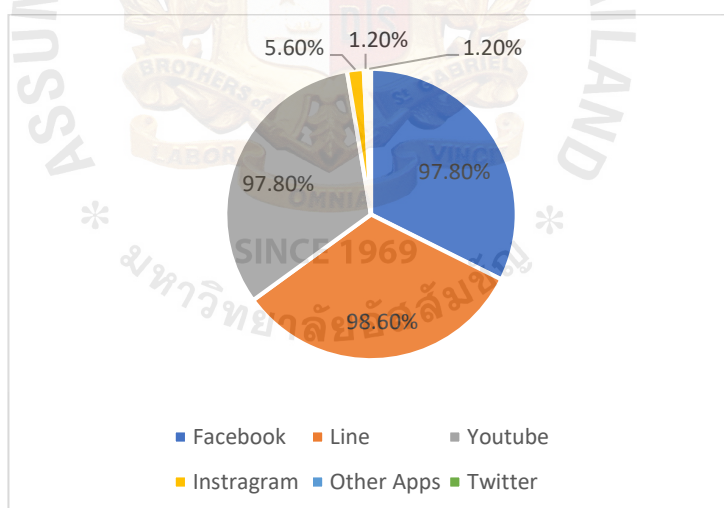
### 3. Age



4. Do your guardian is currently living with you? (you can answer more than 1 optional)

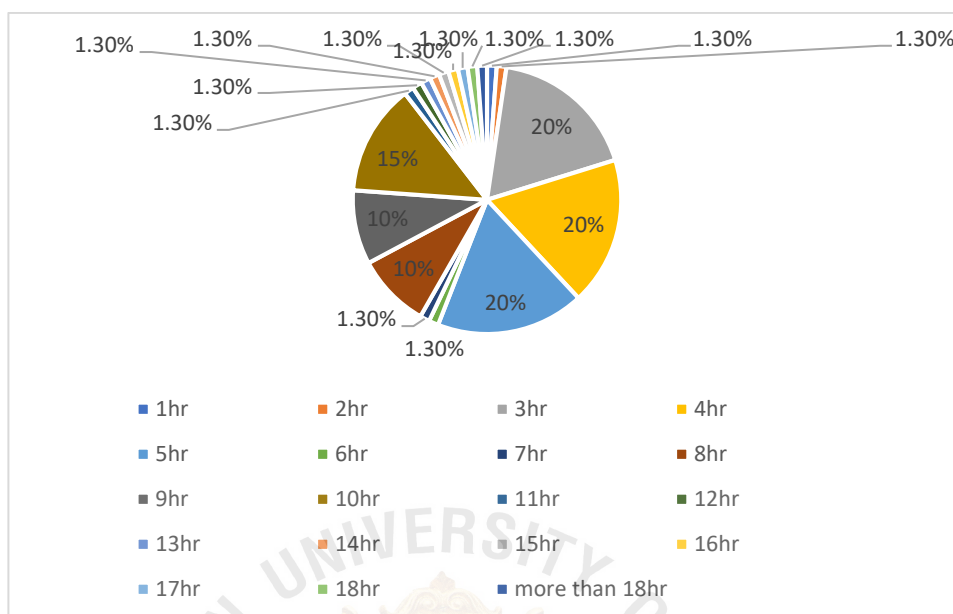


5. Which social media do you use the most? (Can answer more than 1 question)

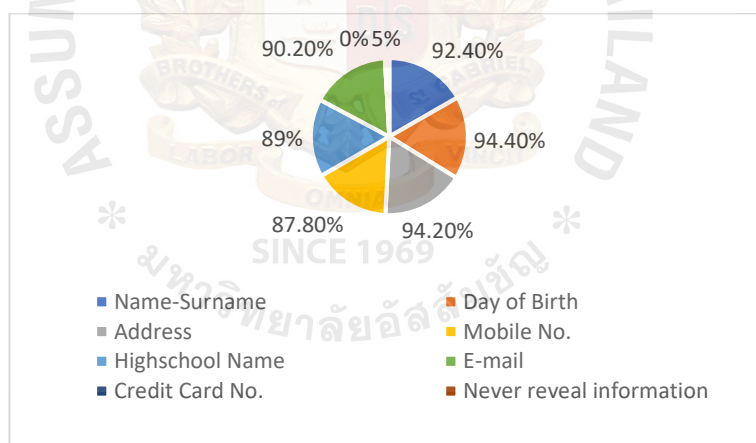




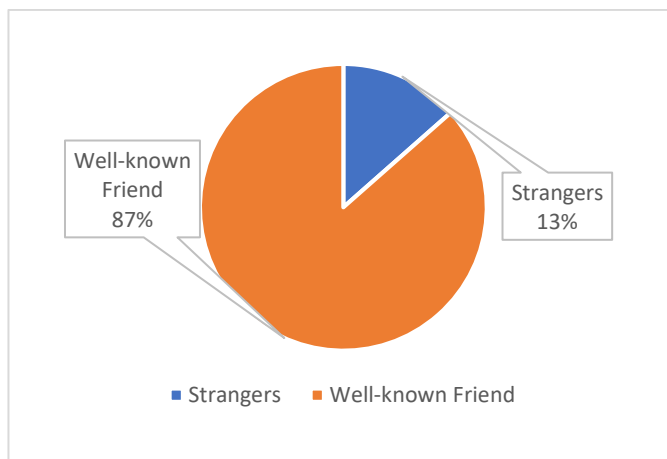
6. How many hours per day do you use social media?



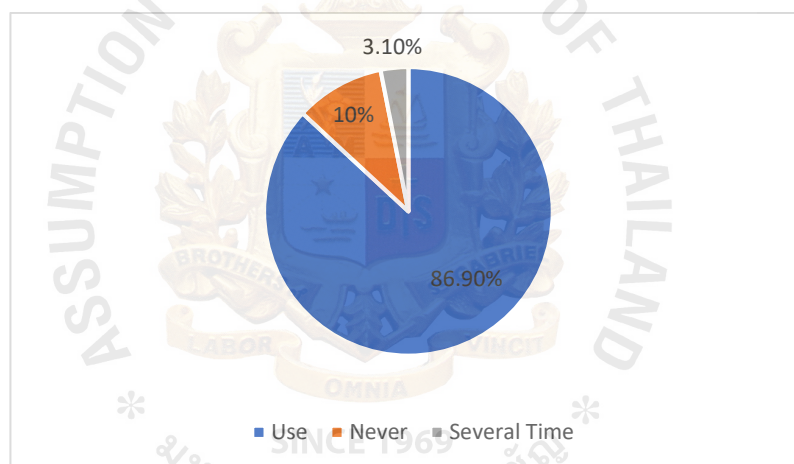
7. What is your personal information have you "shared" online? (can answer more than 1)



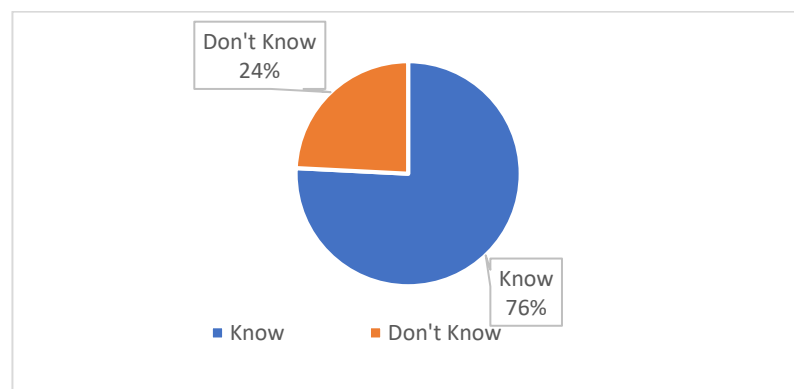
8. Are your friends on social media someone you have known in real life?



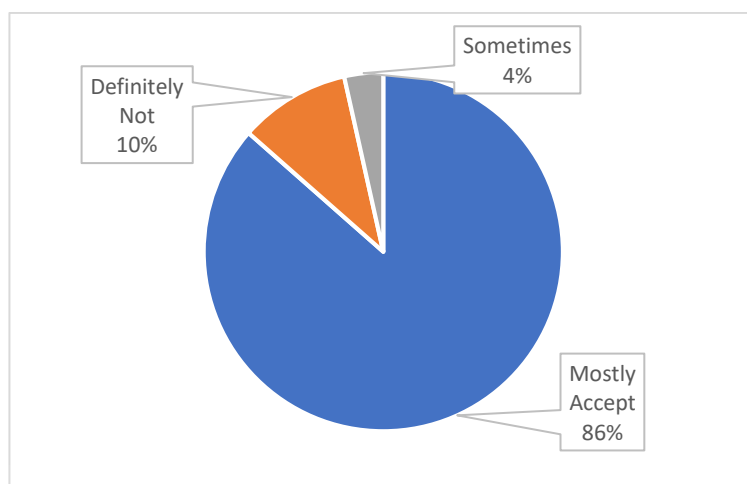
9. Do you use your real picture as your profile?



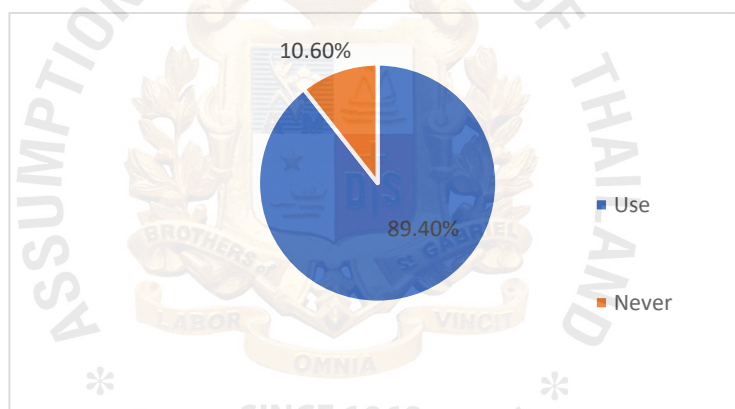
10. Do you know how to set privacy settings that allow anonymous to be able to view your information?



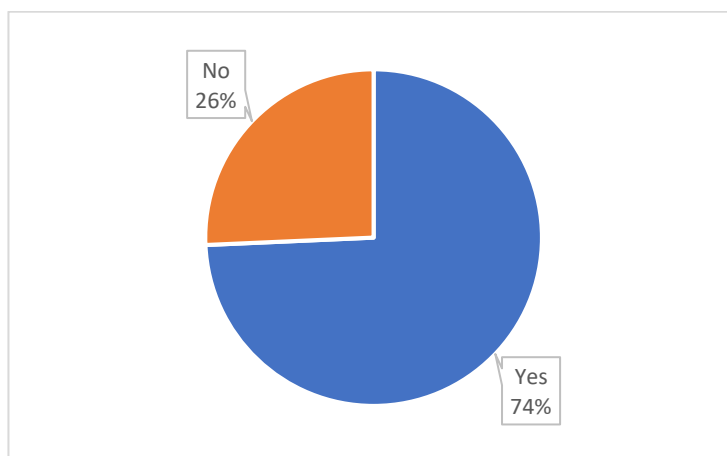
11. If a stranger sends a friend request, do you accept it?



12. Have you ever met a stranger that you chat on social media?

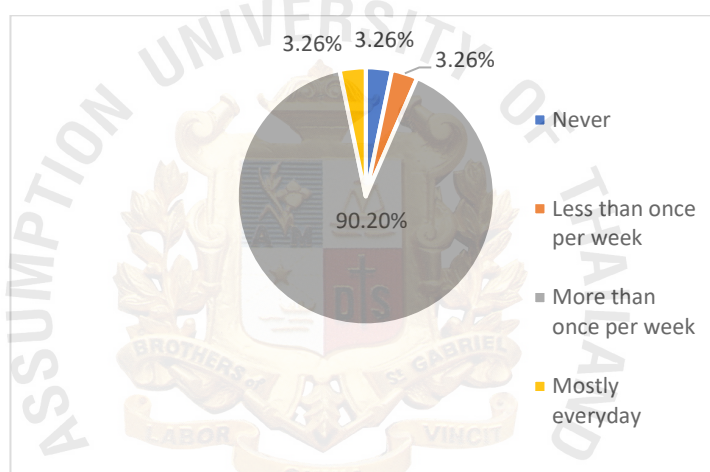


13. Have you ever commented on the social media?

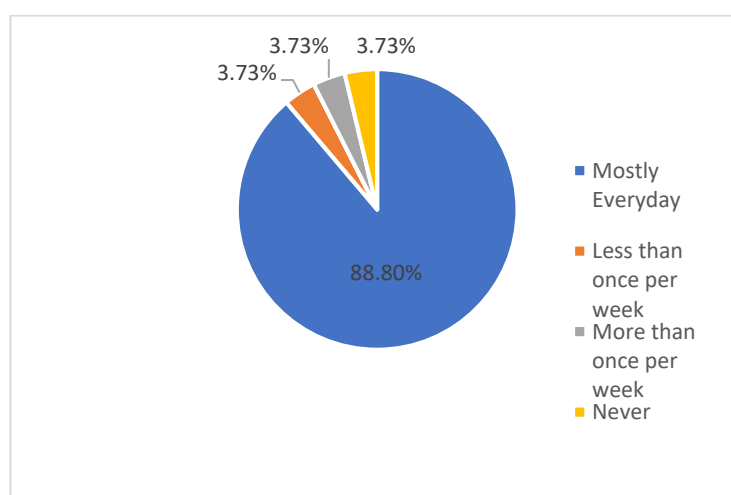


14. Bullying experience (Bullying is a repeated teasing in which the person who pretends to act and causing negative effects to those who are teased either physically or mentally in general, those who are teased tend to not be able to protect themselves from teasing each other. Examples of bullying includes teasing by name, nickname, intimidation, assault, humiliating, releasing rumors and does not allow them to join the group) over the past 6 months)

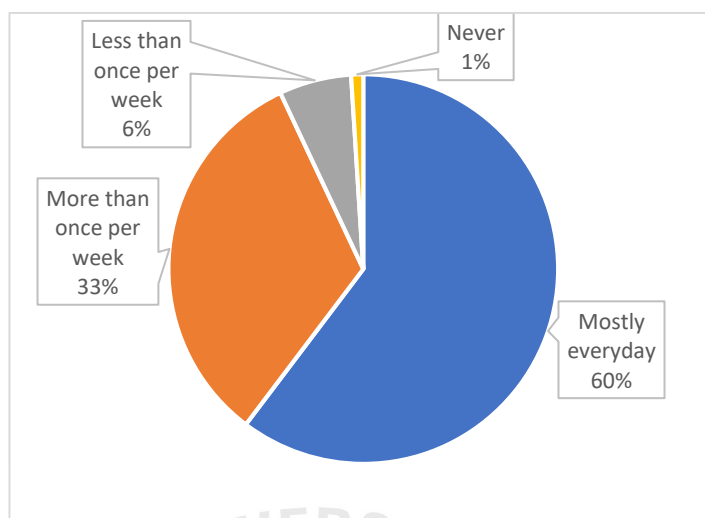
14.1 How often have you been bullied by people in your school? (examples. parody of names, nicknames, intimidation, physical assault, humiliating, releasing rumors and refusing to join the group)



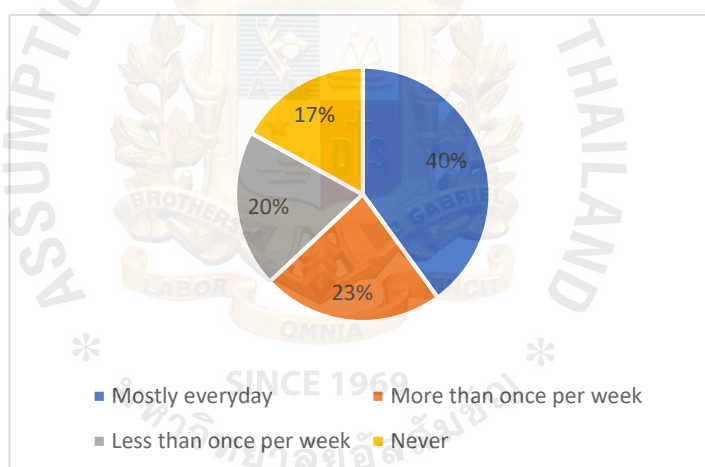
14.2. How often have you been bullied by people outside of school?



### 14.3 How often are you bullying other people in school?

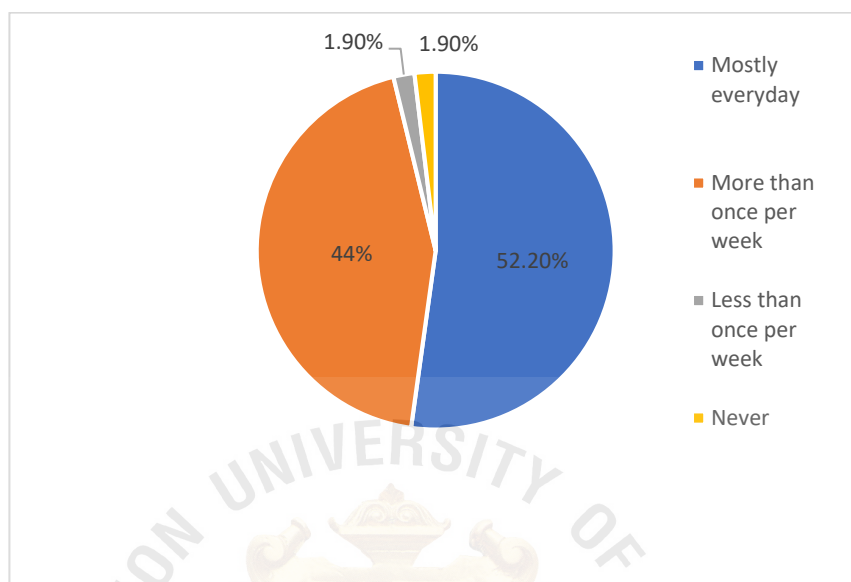


### 14.4 How often are you bullying other people outside school?

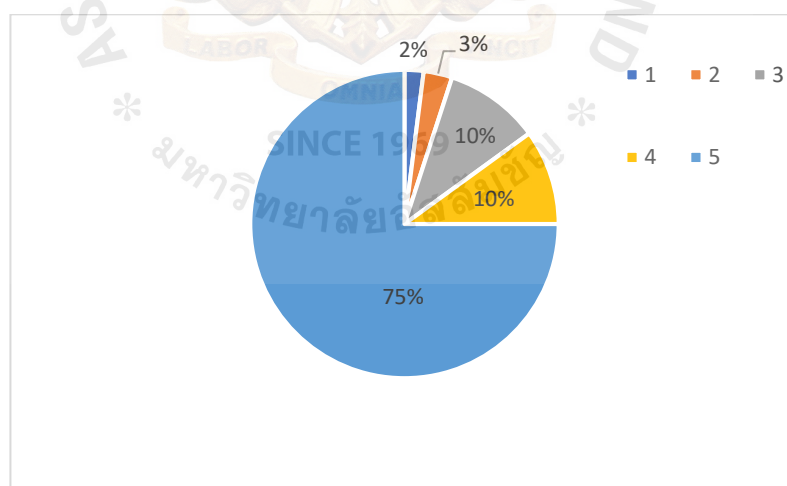


The Questionnaire about Cyberbullying (Cyberbullying is online bullying. Whether it's to post pictures or messages to tease, attack or intimidate others repeatedly. By deliberately causing the victim to be humiliated, hurt, or discredit)

15 How often have you been cyberbullied in the past 6 months (such as posting pictures/messages, teasing, attacking, or intimidating through social media)?

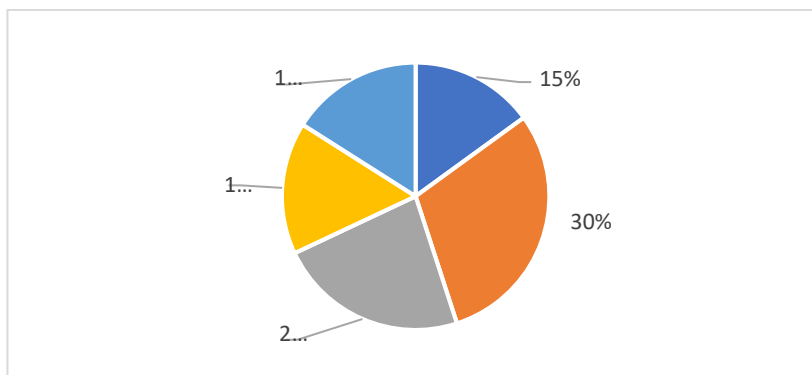


16.1 How do you feel about your school environment? (rate score 1 worst to 5 best )

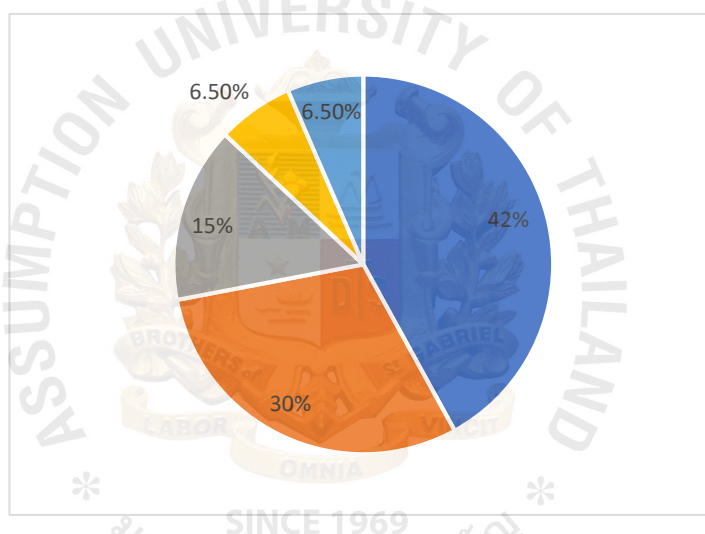




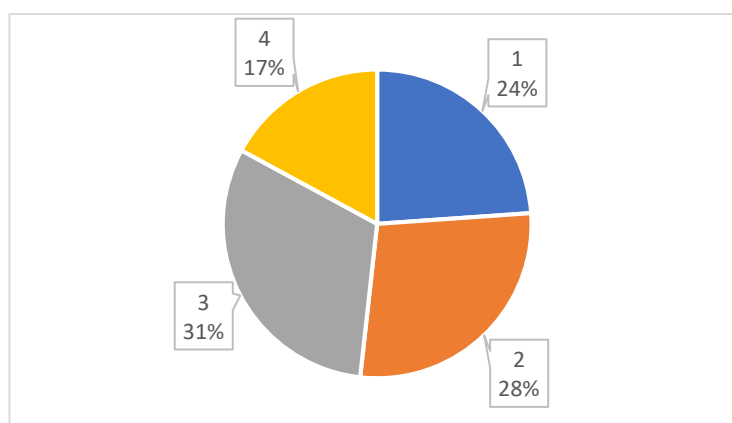
16.2 Do you feel joyful when you are at school?



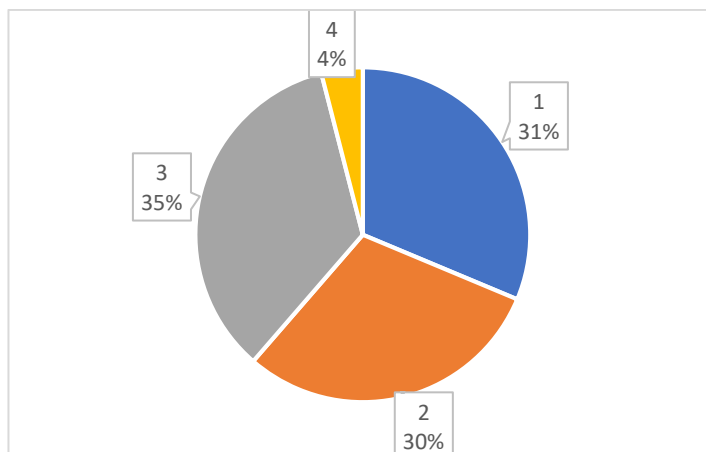
16.3 Do the teachers take care of you?



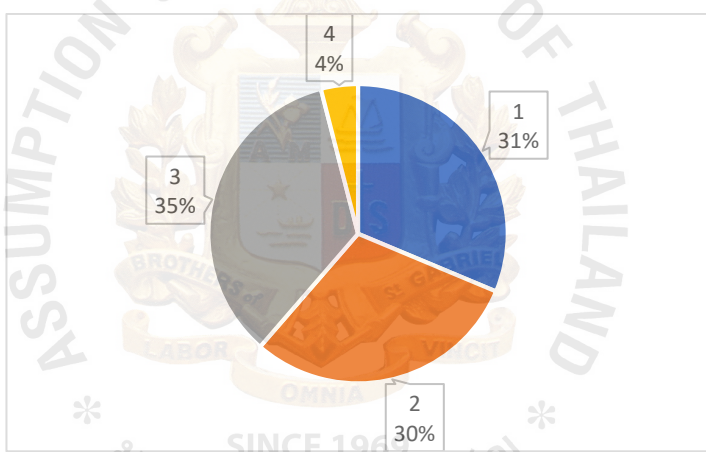
16.4 Have you got an academic support?



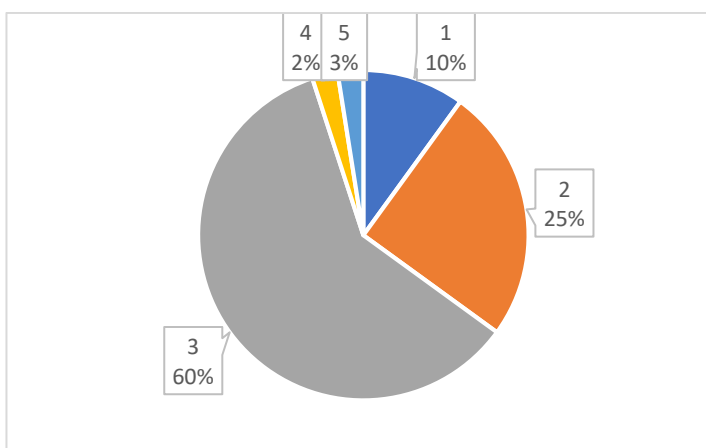
16.5 Do teachers or adults try to stop the bullying?



16.6 Do parents or guardians assist you when you need?

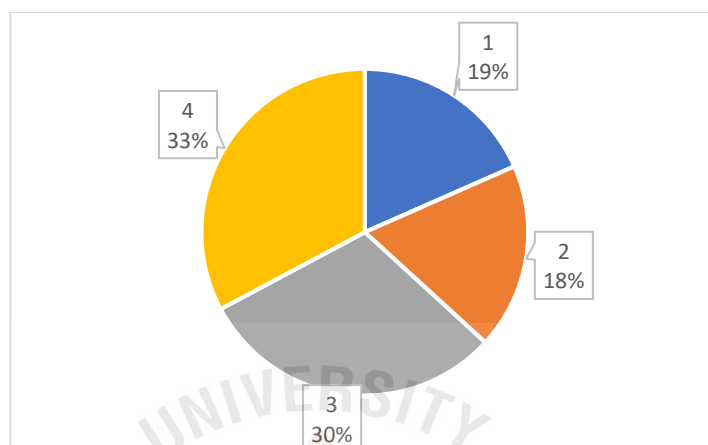


16.7 When have you been started using social media?

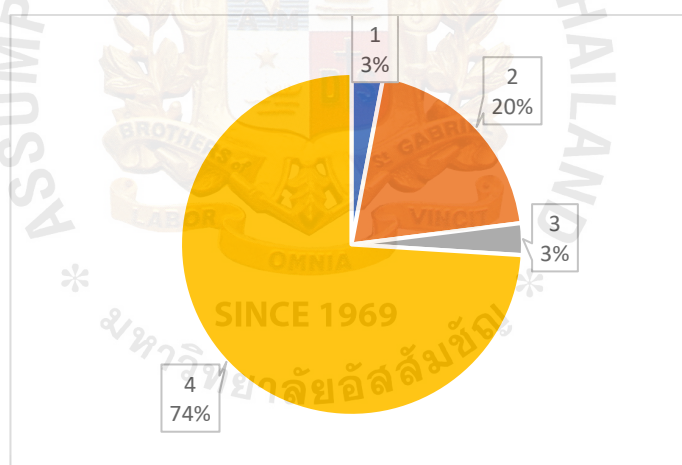


17. The Questionnaire for using online media. Since I have been started using social media

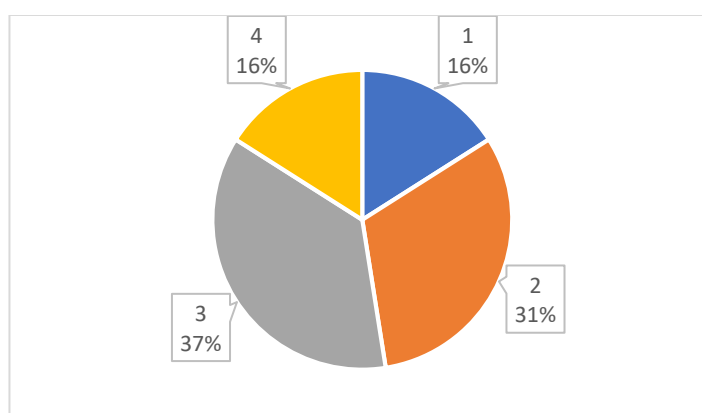
17.1 Do you use social media when you have a chance or free time?



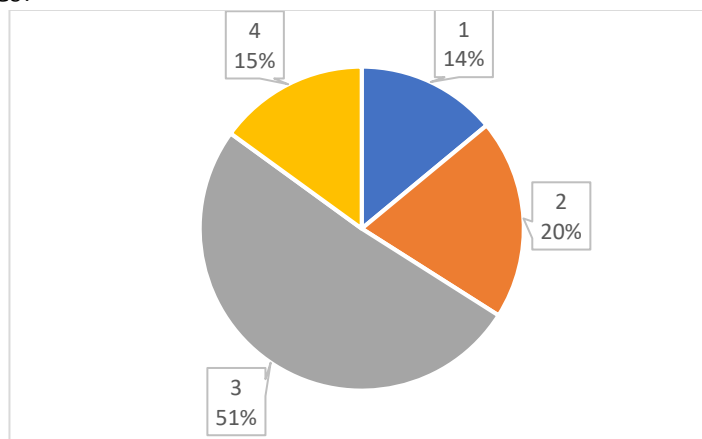
17.2 Do you use social media when you wake up?



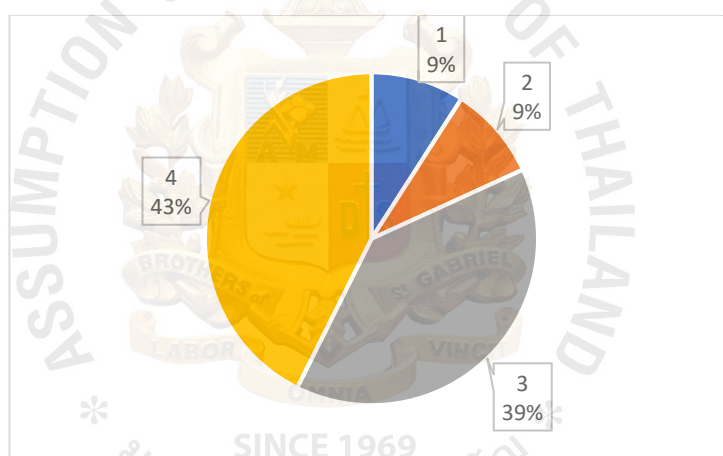
17.3 Do you think that your free time is consumed by social media?



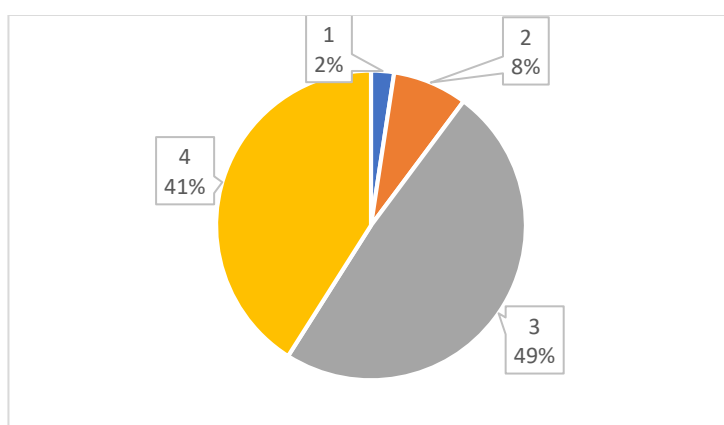
17.4 When you use social media, do you think that you have less interested in other activities?



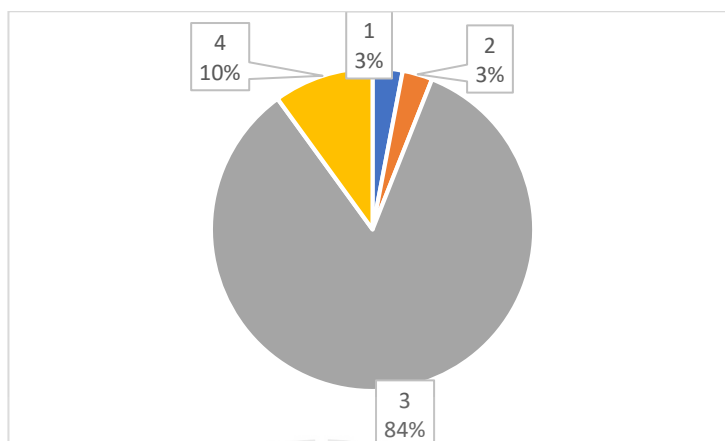
17.5 Do you intend to spend more time on social media than you expect?



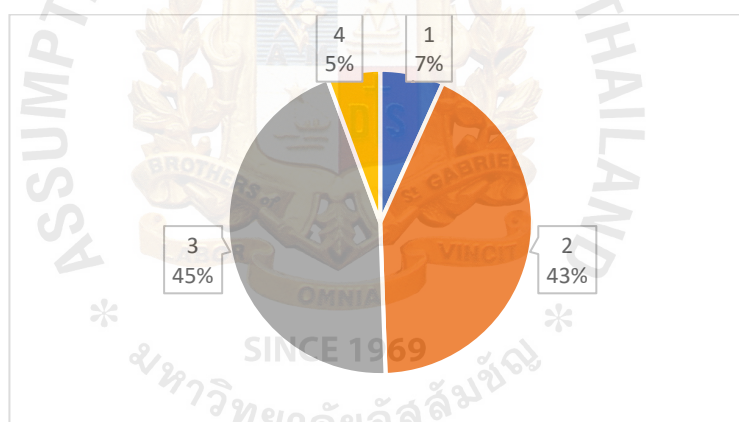
17.6 Do you increase time to spend on social media?



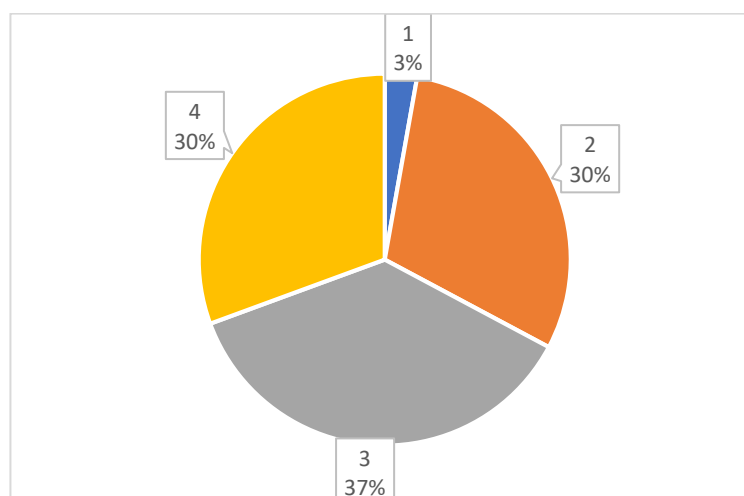
17.7 Do you keep checking when people are viewing, liking, replying, or commenting on posts/pictures that I posted?



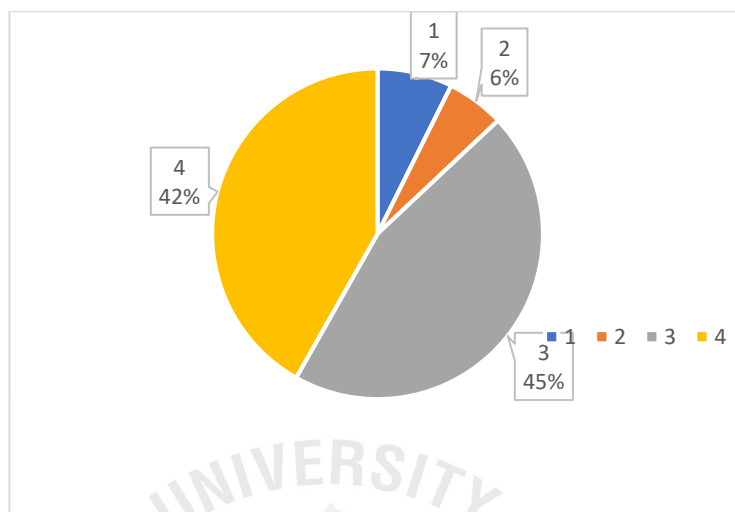
17.8 Do you speak to people on social media rather than those who are around you in real life?



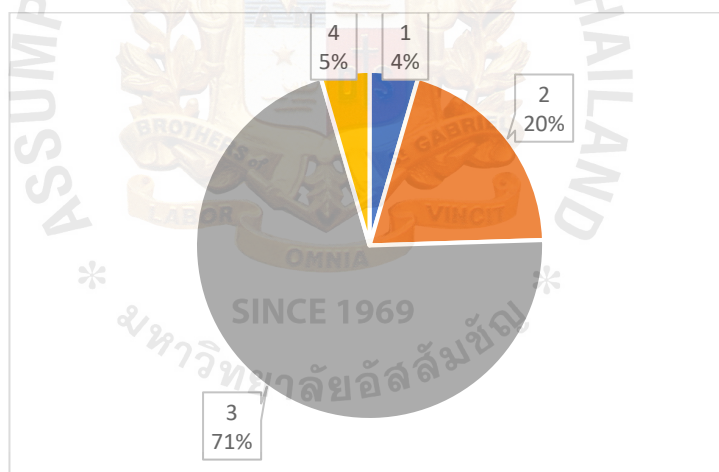
17.9 Do you think that using social media adversely affect my life (such as studying, working, health, relationships with others, etc.)?



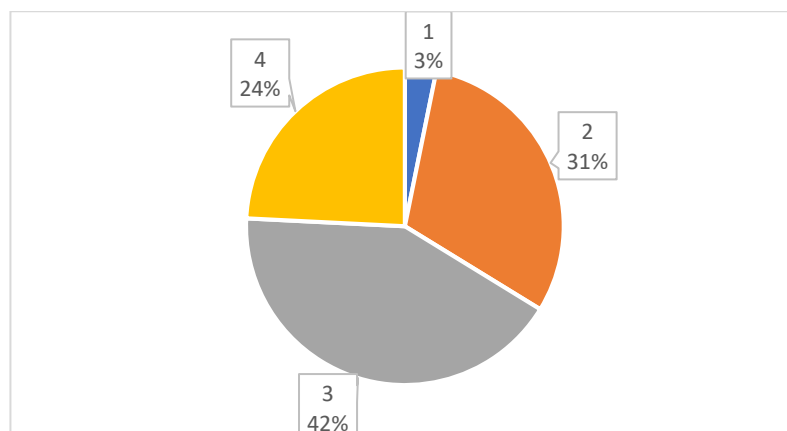
17.10 Do you use online media in inappropriate places? (such as walking on the road, driving while studying, working, meeting, doing daily activities, etc.)



17.11 If someone asks you to reduce the use of social media, do you agree or disagree?

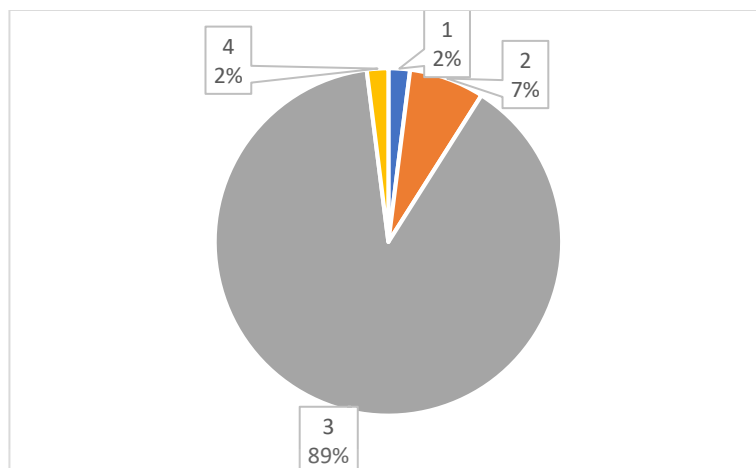


17.12 Do you feel nervous when you are unable to use online media?

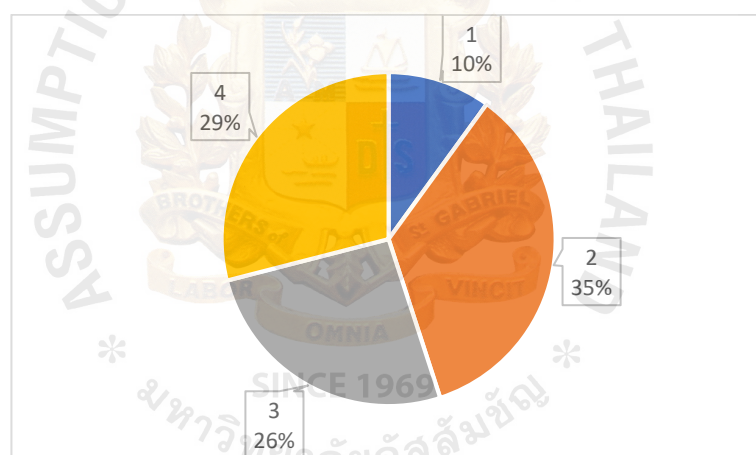




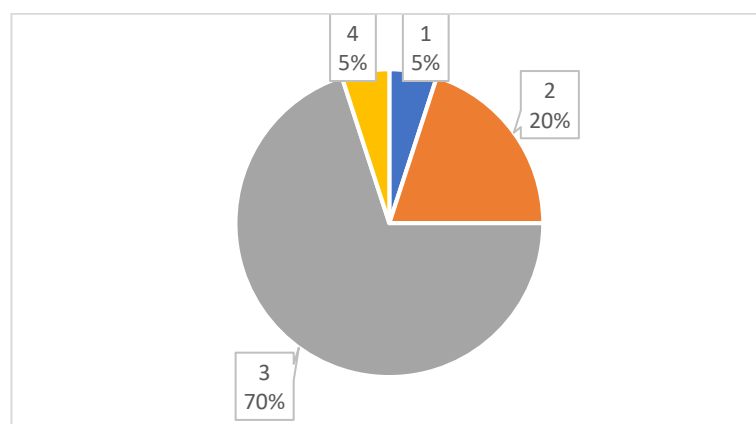
17.13 Do you use social media to cope with stress?



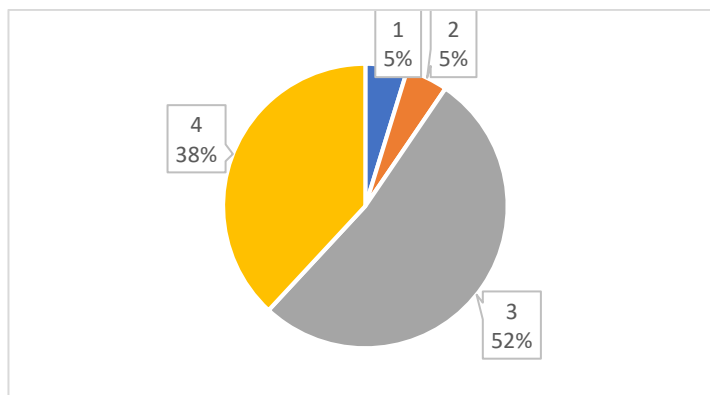
17.14 Do you feel that online media is a part of your life?



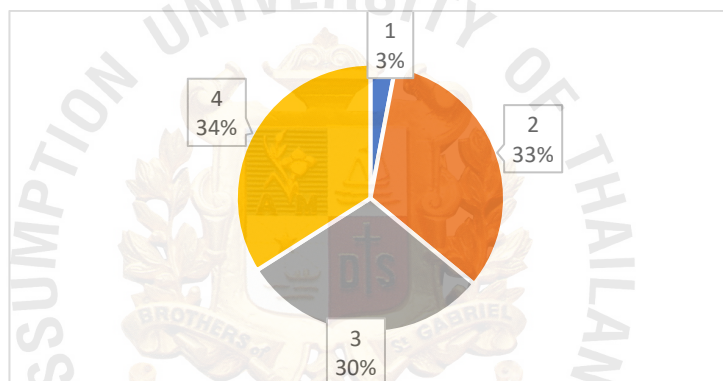
17.15 Do your friends regularly see you online?



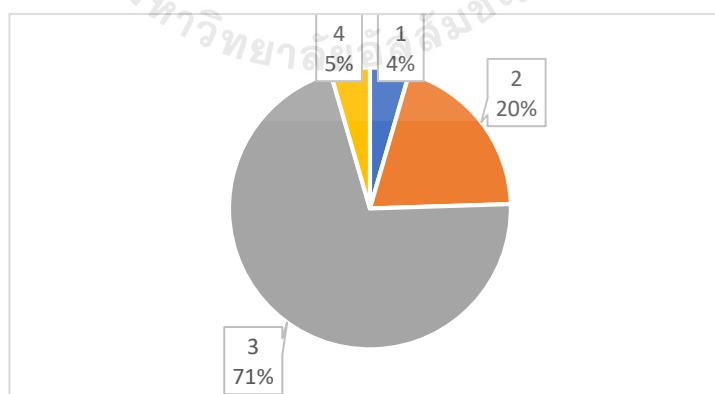
17.16 Do many people say that I am addicted to social media?



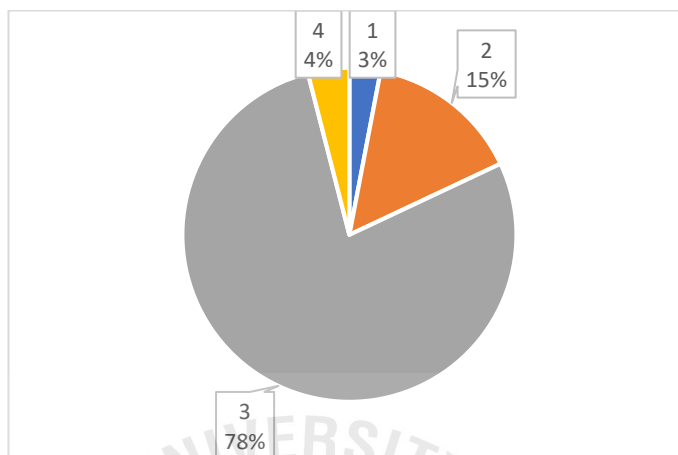
18. How often do you bully other people online?



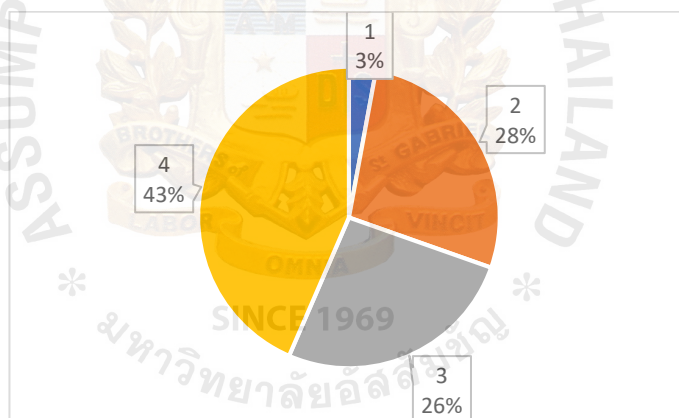
18.1 Have you ever ignored other people via online?



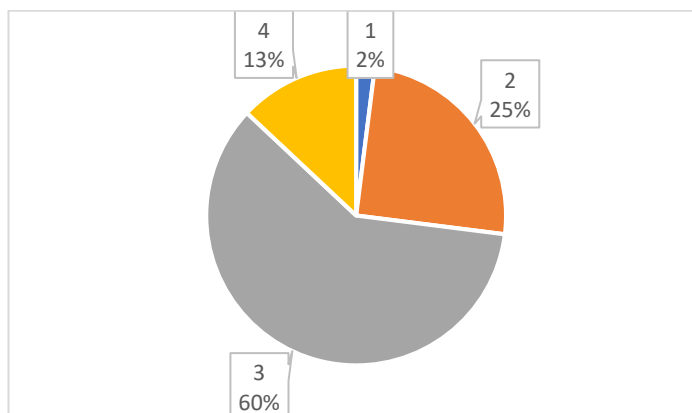
18.2 Have you ever spread rumors, including bringing stories/pictures of others Go to post/distort/add Until causing damage to others/shame?



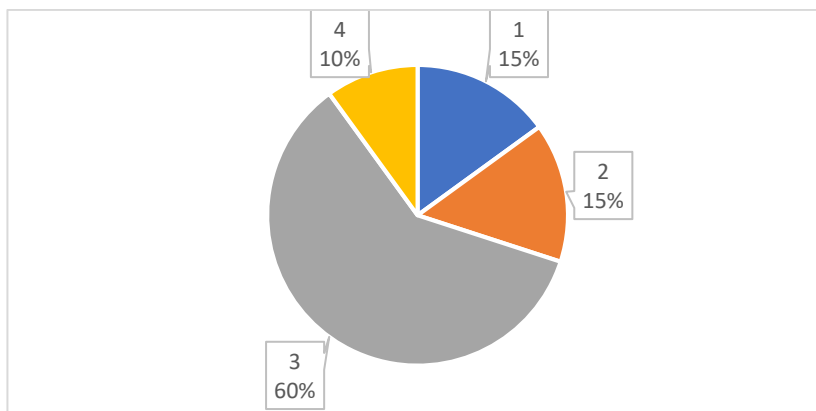
18.3 Have you ever mimicked the name of the nickname for others?



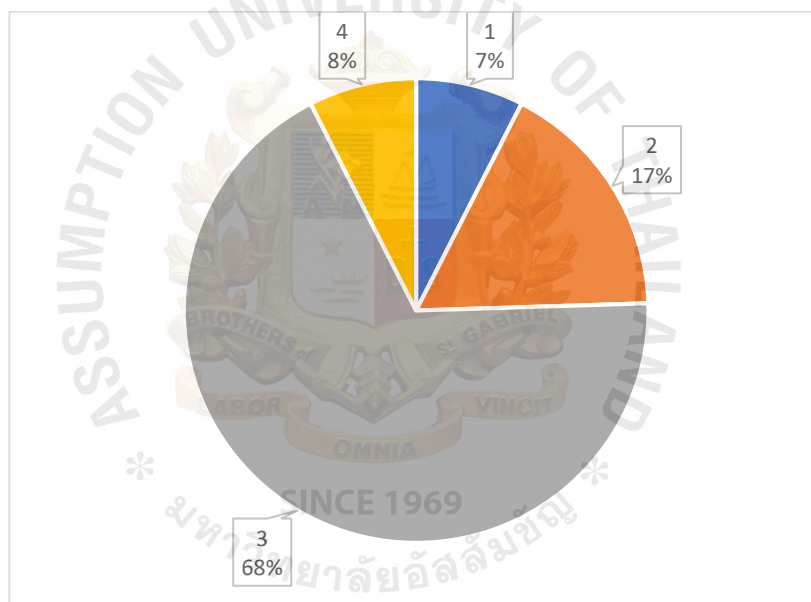
18.4 Have you ever disrespected or dishonored others?



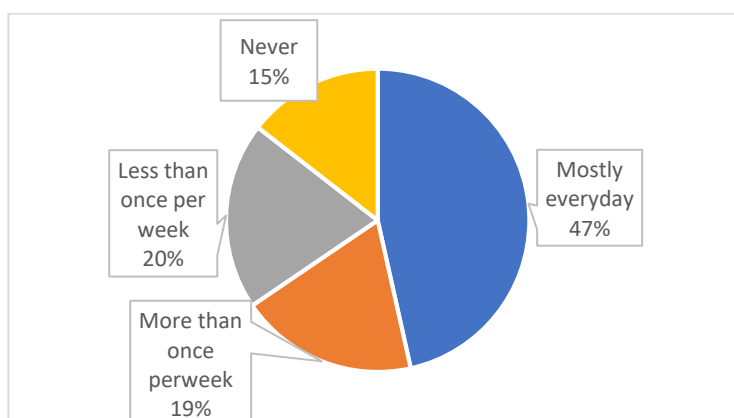
18.5 Have you ever intimidated others?



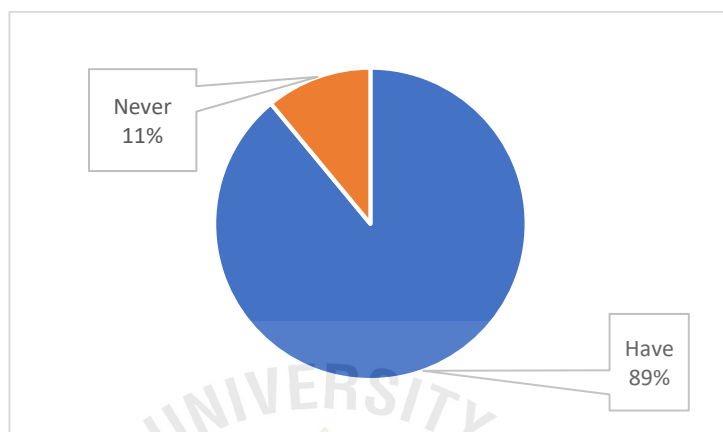
18.6 Have you ever terrified others?



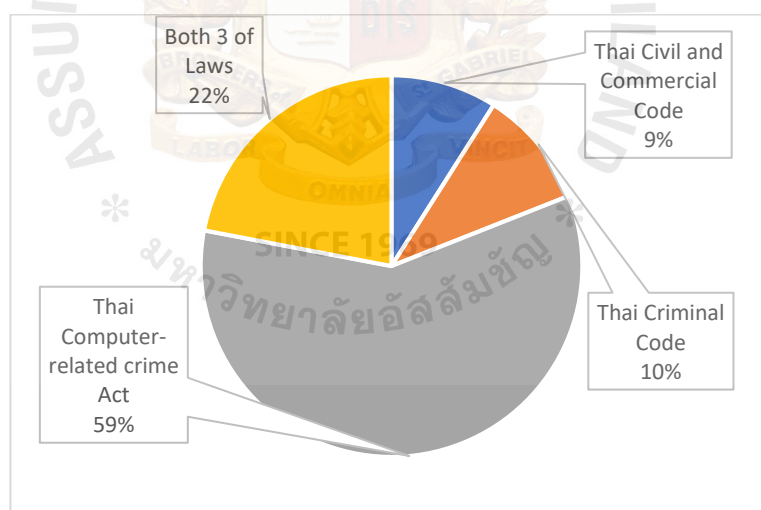
19. Have you ever shared or liked when you see the message of a friend who is being cyberbullied?



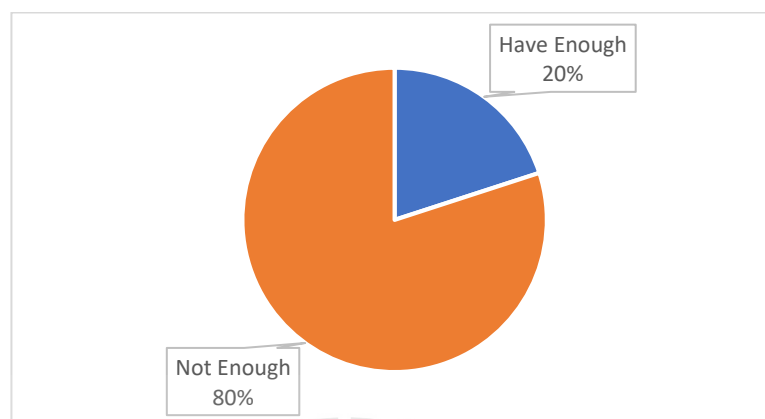
20. General questionnaire about bullying (at school, outside of school and on social media) Have you ever been bullied at school, outside the school and on social media?)



21. What Thai laws do you know about protecting children and young people in online bullying?



22. Do you think that the laws in Thailand is enough to protect children and youth?



23. Do you think Thailand should have specific laws to protect the children and youth from online bullying directly?

