

Basic Concept of Martial Law

1. Introduction

Following an incident in the provinces along the southern border of Thailand during January 5 until 6, 2004, and continuing up to now, the government has had to ask the Commander General to the Fourth Army Area Command to declare martial law in various district areas of the 3 southern provinces: Narathiwat, Pattani and Yala. On January 5, 2004, an interesting concern was raised regarding how martial law is relevant to common law, how is it important or rather necessary for the military. As well, if the martial law is officially stated, how do soldiers become empowered in terms of their authority. In this regard, the Department of the Judge Advocate General and the Department of the Adjutant General, on behalf of the authority of the Legal Division of the Supreme Command Headquarters, would like to take this opportunity to present the basic concept of martial law as a tool for further studies.

2. The Objective of the Martial Law

Through the previous incidents in Thailand, martial law was usually declared upon a coup d'état. So, the democrat frown upon the idea as it belongs to dictatorial regime and symbolizes a period in which the army dominated the country. In fact, the martial law often serves as a tool or a legal measure for supporting the military in maintaining national stability during crisis. Also, it is used only when the power of civil organizations is unable to deal with the problem. This objective can be found in Ministerial Regulations¹ stating the importance and necessity of the martial law:

“The reason that we call it martial law is because it is declared only in the time of war, riot or when it is necessary to maintain peace out of any perils”

In addition, the fact that the act of martial law exists even during peacetime is for planning the general protection of the whole, or some parts of the kingdom under the power of military force in case of emergency. Martial law therefore becomes the law of wartime. It belongs to a special legal system enforced only when a country is in crisis and needs to limit certain people's rights so that the kingdom's stability can be maintained.

3. Background

Martial law belongs to a legal system which has been for a long time originated and employed widely in both European countries and Thailand. According to historical evidence, Thailand officially stated martial law in the reign of King Rama V entitled, The Martial Law of the Rattanakosin Era 126. Subsequently, during the period of King Rama VI, such law was abolished and replaced by the Act of Martial Law of B.E. 2457², which has been in use until now. The Act of Martial Law undergoes five additional correction³ in order to catch up with the situation in the country which is continually influx. The reason that we shorten its name to the martial law is because the Act itself

¹ The Ministerial Regulations dated September 21, B.E. 2457

² It was promulgated in the Government Gazette Vol. 31 dated September 13, B.E. 2457

³ The five times of additional correction was done in conformity with:

1. The Royal Enactment of B.E. 2485 for correction of the Martial Law of B.E. 2457;
2. The Act of Martial Law (Vol. 3) of B.E. 2483;
3. The Act on Endorsement of the Royal Enactment of B.E. 2488 for correction of the Martial Law of B.E. 2483;
4. The Act of Martial Law (Vol. 5) of B.E. 2502; and
5. The Proclamation of the Coup party (Vol. 303) dated December 13, B.E. 2515

uses the title of the Martial Law of B.E. 2457. So, most of us refer to it in short as the martial law.

To date, in compliance with the Royal Command⁴ dated November 13, B.E. 2541, martial law remains effective in the district area of 20 provinces along the border. Since the southern crisis broke out, the government has ordered that the Commander General to the Fourth Army Area declare the martial law in certain areas of the conflict⁵: Narathiwat, in particular the districts of Ba Joh, Reu Soh, Tak Bai, Su Wai Pa Di, Yi Ngor and Su Wai Dok Lok, Pattani, in particular the district of Ka Poh and Yala, in particular the district of Ra Man. This is addition to the Royal Command dated November 13, B.E. 2541.

4. The Martial Law Enforcement and Cancellation

Martial law is different from other law due to the fact that, even though it is as effective as law under the title of the Act of Martial Law of B.E. 2457, the enforcement of various measures stated in the Act depends on the condition that the authority must officially announce martial law. Such announcement, can be made on the basis of either the area or the whole kingdom, relies on the authority's discretion.

4.1 The Martial Law Enforcement

The authority legalized to declare the martial law is as follows:

1. His Majesty the King as mentioned in the article 2 of the Act of Martial Law. It is the royal power which even the constitution recognizes in the article 222).⁶ The enforcement will be announced in the form of the Royal Command which will come into effect in the entire kingdom or in certain areas. The objective for such enforcement, as mentioned in the law, aims at "maintaining peacefulness during any critical situations caused outside or inside the kingdom." Moreover, the enforcement may employ either all, some or a part of the articles in the martial law.
2. The military commanders as mentioned in the article 4. In this case, the condition for martial law declaration is dependent upon two factors:
 - The military commanders declaring martial law must have the army force under their supervision of no less than one battalion; and
 - They must exercise their command in a fort or any military bases.

Those entitled to employ the martial law in accordance with the article 4 can exercise it only in the area they are empowered to do so. Once martial law is declared, they should inform the government as soon as possible⁷.

⁴ The Royal Command entitled, 'The Cancellation of the Martial Law in Certain Areas of Thailand' dated November 13, B.E. 2541 (Published in the Special Chapter 113 of the Government Gazette Vol. 115 dated January 5, B.E. 2541)

⁵ The Announcement of the Fourth Army Area Command entitled, 'The Use of the Martial Law in Certain Areas of the Conflict' dated January 5, B.E. 2547

⁶ The Article 222 of the Constitution mentions, "The King shall maintain His power to enforce or cancel the martial law in accordance with its methods already stated. In case it is necessary to declare the law in some areas, the military authority is able to do so in conformity with its regulations already stated."

⁷ **Note** The fact that the leader of the coup officially states the martial law upon the coup follows the legal theory of John Austin, the British legalist. The theory says that, when the coup takes place or the governmental authority is seized, the one who controls the power has the sovereignty in the state. So, they can exercise the martial law.

4.2 The Martial Law Cancellation

In conformity with the article 5, the Martial Law can be called off only upon the announcement of the Royal Command.

5. The Result of the Martial Law Enforcement

Upon the martial law enforcement, several results concerning legal matters will arise as follows:

1. Military authorities will have more power than the civilian servants. This condition follows the provision stated in the Article 6 of the Act of the Martial Law which renders the power of the military authorities over the civilian servants on the three bases namely the war strategy, the turmoil suppression or the peacekeeping. Under such provisions, civil servants must comply with the requirements made by military authorities;
2. With regard to the court jurisdiction, in accordance with the Article 7 in the Act of the Martial Law, the area in which the martial law is enforced may generally maintain the jurisdiction power for the civilian court (The Court of Justice and the Administrative Tribunal at this moment). The exception is made for the authority responsible for certain criminal cases already mentioned in the index of the Act of the Martial Law. However, any criminal cases specially concerning the national security, although they do not exist in that index, the Supreme Commander may order that such cases be under the trial of the military court. Also, it should be noted that, according to the Act of the Statute of the Military Court of B.E. 2498, the military court set up in the area of martial law enforcement is the one of the unusual time which can affect the trial of the criminal case. In other words, there will be only one and supreme legal level during the trial. Therefore, no appeals can be made and the authority who declares martial law can order the civilian court to function as a the military one; and
3. The military authority has the right to search, prohibit, seize, reside, destroy or change a place, as well as enlist or expel people there in conformity with the regulations in Articles 8 to 35. As appeared in the rule of the commander-in-chief, it can be concluded that all military authorities are not empowered to do so as such right is only reserved for the one who declares the martial law. However, when the declaration of the martial law is made, the military officers and other authorities will be appointed for such action.

“Searching”

The military authority has the right on searching in accordance with the following conditions:

- A. The searching is made for things to be enlisted, prohibited, seized, resided or possessed unlawfully. It can be carried out with people, vehicle, residences or buildings and places inanywhere and at anytime;
- B. The searching is made for information, letters, telegrams, packages or anything sent within the area where the martial law is officially stated; and
- C. The searching is made for books, publications, newspapers, advertisements, novels or poems.

“Enlisting”

The military authority has the right on enlisting in accordance with the following conditions:

- A. The enlisting is made for civilians in terms of military forces to be used in protecting the kingdom or in supporting any kinds of military affairs; and
- B. The enlisting is made for vehicle, animals, food, weapons and various equipment of anybody or any companies which the military authority finds useful for the army at that time.

“Prohibiting”

The military authority has the right on prohibiting in accordance with the following conditions:

- A. Prohibiting is made against people’s gathering;
- B. Prohibiting is made against issuing, selling or distributing books, publications, newspapers, pictures, novels or poems;
- C. Prohibiting is made against advertisements, entertainment or radio and television broadcasts;
- D. Prohibiting is made against the use of public routes by land, by water, by air including by train or tram;
- E. Prohibiting is made against any possessions or uses of communication devices or weapons, parts of the weapon and chemicals or things that may cause dangers to people, animals, plants or property. This includes things that may be used in chemical manufacturing or contain the quality for that kind;
- F. Prohibiting is made against leaving the residence in the time specified;
- G. Prohibiting is made against leaving, entering or staying in any areas that the military authority finds necessary for the battle, suppression or peacekeeping. Once the prohibiting is made, those living in the area must leave within the time specified; and
- H. Prohibiting is made against anyone who conducts or owns any businesses mentioned by the Defence Minister as the activities that ought to be controlled in the time of the martial law enforcement.

“Seizing” In conformity with the Article 12, if the military authority sees that it is necessary to temporarily seize the items stated in the Articles 9 and 11 so that the kingdom’s enemy can not benefit from or the army can enjoy them.

“Residing” In conformity with the Article 13, the military authority has the right to stay or base in anywhere they see it necessary for the sake of the army.

“Destroying” or changing places in accordance with the Article 14 is prescribed as follows:

In the war or the battle, in case the army is becoming the underdog, the military authority has the right to burn down houses or things that they see advantageous to the opposite side after a retreat is ordered. Also, things which hinder the battle will suffer destruction.

For fighting with the enemy or for protection of the army, the authority has the right to establish a base or alter the land, village and town upon the authority’s approval.

“Expelling” In conformity with the Article 15, the military authority has the right to expel anybody who settles in nowhere or takes the temporary stay. This can be done when the authority sees that it is necessary to do so or has any doubts on it.

“Detaining” According to the announcement of the coup party vol. 303 dated 13 December B.E. 2515, the section 15 bis. enables the military authority to detain someone when he/she causes some actions that may be potentially harmful to the kingdom or violates any provisions on the martial law as well as the order of the army. Such detaining, which does not last over 7 days, is made for interrogation or any actions necessary for the army purposes.

6. The Provision on the Military Authority Protection from any Compensations or Fines

Generally, if the military authority causes damage to any groups or individuals, they must be responsible for this through compensation under the Civil and Commercial Code. Yet, the act of martial law renders protection to any authorities who perform their duties following the Articles 8 to 15. Even though such duties may cause damages to any people or companies, the authorities will not suffer from any compensations or fines since their action is done for the sake of national, religious and royal securities.

7. The Provision on the Empowerment to the Minister

In conformity with the Article 17 of the act of martial law, the minister is empowered to issue ministerial regulations. As well, the Supreme Commander can issue additional regulations to follow the objectives under the martial law.⁸

8. Conclusion

Martial law is an important legal measure to support military rights and responsibilities so that national security can be maintained. This is why the law renders the army several privileges which may be detrimental to people’s rights as stated in the Constitution. As a result, martial law enforcement should belong to the base of righteousness, prudence, and act as a mere necessity for the sake of national peace and security.

This article provides only a basic concept utilization of martial law which seems sensitive and complicated in its use while difficult to understand in time limitation. Hence, it would be good if those interested and any military authority who need to use the law conduct further studies about it.

Source: translation from Supreme command Headquarters website.

⁸ As stated in the Article 17, the “minister who commands the army” signifies the Defence Minister and the words, “minister’s regulations” mean the present ministerial regulations. The “chief commander”, in accordance with the act of martial law (Vol. 5) of B.E. 2502, means the Supreme Commander