

Conflict of Interest: An Ethical Issue in Public and Private Management ¹

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ผลประโยชน์ทับซ้อนหรือความขัดแย้งกันระหว่างผลประโยชน์ส่วนตนและผลประโยชน์ส่วนรวม (*conflict of interest*) เป็นประเด็นที่ได้รับความสนใจจากผู้มีส่วนเกี่ยวข้องทุกฝ่ายทั้งภาครัฐและภาคเอกชน ผลประโยชน์ทับซ้อนเป็นปัญหาทางจริยธรรมและนำไปสู่การทุจริตคอร์รัปชันที่รุนแรงในสังคมไทย และถือว่าเป็นภัยคุกคามหรือเป็นอุปสรรคต่อการพัฒนาประเทศ ผู้กำหนดนโยบายและข้าราชการมีการใช้อำนาจ เพื่อให้ได้มาซึ่งผลประโยชน์ส่วนตนส่งผลกระทบต่อประโยชน์สาธารณะ ผลประโยชน์ทับซ้อนยังทำลายศักยภาพการพัฒนาประเทศในระยะยาว บทความนี้มีจุดมุ่งหมาย เพื่อสำรวจความหมายแนวคิดและลักษณะกรณีผลประโยชน์ทับซ้อน โดยนำเสนอประเภทและองค์ประกอบของผลประโยชน์ทับซ้อนในบริบทของการจัดการของประเทศไทย ในบทความผู้เขียนได้เสนอมาตรการนโยบาย โดยให้ความสำคัญในเรื่องการปรับเปลี่ยนระบบวัฒนธรรมและค่านิยมตลอดจนการมีผู้นำการเปลี่ยนแปลงที่เป็นผู้นำทางจริยธรรมที่เป็นแบบอย่างที่ดีเป็นปัจจัยหลักในความสำเร็จในการเสริมสร้างจิตสำนึกของคนในสังคม เพื่อนำไปสู่การป้องกันผลประโยชน์ทับซ้อนในสังคมไทย

นิยามคำหลัก(Keywords): ผลประโยชน์ทับซ้อน (*conflict of interest*), จริยศาสตร์การจัดการ(*managerial ethics*), ประโยชน์สาธารณะ(*public interest*).

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Abstract

Conflict of interest has become an interesting issue among stakeholders from public and private sectors. Conflict of interest is an ethical problem that has potential risks in generating severe corruption. The general public perceive it as threats and barriers to national development. In a situation which policy makers and government officials exercise state powers for their private gains it affect public interests. Conflict of interest thus demolishes organizational potentials and obliterates opportunities for long-term national development. This paper has its aims to investigate the meanings and typologies of conflict of interest and to illustrate major components underlying conflict of interest in Thailand's management perspectives. In the paper, policy measures are proposed addressing changes in values and cultural systems. Change leaders as moral leaders are vital to the success in enhancing public consciousness. This could activate the general public to actively participate and engage in social movements to prevent the conflict-of-interest problem in Thai society.

Keywords: Conflict of Interest; Managerial Ethics; Public Interest.

Introduction

Conflict of interest is a complex issue that reflects the structural problems of any civilized society. It relates to several facets including the socio-cultural, political, and administrative. If government officials lack the ethical foundation to protect values and cultural systems, then they lack the consciousness to protect the public interest. Abuse of power by interfering in development policies, projects and economic activities is common. The abuse of political and administrative power for self interest, whether by an individual, group or party has damaged public and private sector organizations, the general public and society as a whole. It also destroys future opportunities for sustaining long-term socio-economic development.

Thus, it is high time to raise public awareness among the agencies concerned, both local and international, and to seek joint efforts to prevent and protect against the negative effects arising from conflict of interest. It is indeed an urgent task of policy makers, government leaders, advocates, and all partners to rethink

and renew our consciousness with new values and a new cultural framework. Enhancing the governance system of political and administrative organizations and promoting ethical standards among key actors to ensure transparency and accountability for the sake of public interest are top priority. Public forums with this agenda, at the national, regional and global level, are necessary for a better understanding on conflict of interest. Policy measures on values and cultural reform, and specific laws should be seriously addressed through close collaboration among the public, private and civil society sectors.

“Conflict of Interest” Defined

Michael McDonald defines the term “conflict of interest” as “a situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties.” (<http://www.ethics.ubc.ca/people/mcdonald/conflict.htm>)

According to McDonald, conflict of interest has three key elements: (1) a private or personal interest, often a financial interest; (2) official duty, or the duty one has because of one’s office or official capacity; and (3) interference with objective professional judgment. McDonald emphasizes that conflict of interest is an ethical issue. Whenever the official lacks ethical standards there is potential risk of conflict of interest.

Conflict-of-interest typologies are the work of Canadian political scientist Ken Kernaghan and John Langford in their book, *The Responsible Public Servant* they list seven categories:

- ∞ **Self-dealing:** One instance is using an official position to secure a contact for one’s own consulting company. Another is using a government position to get a summer job for one’s daughter.
- ∞ **Accepting benefits:** Bribery is one example; substantial (non-token) gifts are another, as in the case of a purchasing agent for a department accepting a case of liquor from a major supplier.
- ∞ **Influence peddling:** The professional solicits benefits in exchange for using his or her influence to unfairly advance the interest of a particular party.

- **Using the employer's property for private advantage:** This could be as blatant as stealing office supplies for home use. Or it might be as a bit more subtle, say, using software licensed to the employer for one's private.
- **Using confidential information.** Learning, through work for a private client, that the latter is planning to buy land in one's region, one quickly buys land in the region, perhaps in the name of one's spouse.
- **Outside employment or moonlighting.** An example would be setting up a business on the side that is in direct competition with one's employer. Another case would be taking on so many outside clients that one doesn't have the time or energy to devote to one's regular employer. Or, in combination with influence peddling, a professional employed in the public service might sell private consulting services to an individual, assuring the latter of benefits from government: "if you use my company, you will surely pass the environmental review."
- **Post-employment.** A person resigns from public or private employment and goes into business in the same field. For example, a former public servant sets up a practice lobbying the department in which he was employed.

Five main factors can be considered as contributing to conflict of interest: the individual factor, which comprises of personal values, beliefs, attitudes and behavior; the economic factor, which involves official's income and indebtedness; the social factor, such as societal values, moral and ethical framework, position in society, patronage system and nepotism, and role models among top leaders and supervisors; the legal factor, comprising rules and procedures (opportunities to take advantage of conflicts of interest would flourish in an environment with outdated laws with legal loopholes or the absence of the rule of law and an auditing system); and the environmental factor, which includes the organizational culture, and expectations and traditional practices among government officials.

Ethics, Morality and Conflict of Interest

Bandfield (1967), in *The Moral Basis of a Backward Society*, after studying cultural conditions and moral standards, concluded that an individual may not necessarily succumb to temptation if the household or institution to which he or she belongs upholds the values of public-spiritedness or enlightened self-interest. Bandfield also pointed out that amoral society members tend to neglect public interest and are always driven by self-interest.

In *Moral Harzards of an Executive*, Norris (1989) addressed the ethics and morality of executives, emphasizing that integrity and loyalty are prerequisites for organizational achievement. A key issue is whether the executive decides for the sake of the general public or the inner group. The principles of moral democracy dictate that executives must uphold public values in their decisions and actions. In practice, however, the principle of “the greatest good for the greatest number” does not always work to the satisfaction of everyone or even the majority. Executives are, moreover, often faced with ethical issues and conflicting circumstances. But they must at least be aware of their responsibility to acts for the common good.

Conflict of interest is one type of corruption. Defined as the abuse of public office for private gain, corruption generates problems of social equity (White, 1993).

Following Heidenheimer (1978), Thai political scientist Somporn Saengchai (1985) classified corruption into three main types:

- **White corruption.** The general public sees this type of corruption and allows it to happen because it has no serious effect on society.
Grey corruption. The general public is still unclear about its processes and impact of this type of corruption. Academics think it is a serious issue but the general public seems to be reluctant to think so.
- **Black corruption.** Society deems this to be grave misconduct that must be punished according to the law.

Conflict of interest lies in the gray area of corruption (Anechioco and Jacobs, 1996: 45-62). It relates to ethical standards and social values. Each society judges human actions with different value system. Some people may not perceive conflict of interest as misconduct, but civilized society cannot bear violations of moral and ethical behavior.

Conflict of Interest: Thailand’s Experience

Understanding conflict of interest

Academics and experts perceive conflict of interest as a conflict between private and public interest. It is equivalent to policy corruption or overlap between private and public benefits. It is serious if it destroys the people’s welfare and

national benefits. Some view conflict of interest as Western value; however, they accept it as a standard practice among international communities.

Conflict of interest can be considered in the narrow or the broad sense. Taken in the narrow sense, the problem is seen to be susceptible to mitigation through new, stricter laws or new institutions to monitor and deal with it. In a broader sense, conflict of interest is seen as policy corruption where decision making, particularly by industry or business entities, always involves conflict between personal and group interests. The policy corruption often surfaces in development programs and projects, especially procurement in megaprojects.

It is agreed that conflict of interest leads to corruption, and that the greater the interference from the interest group, the more severe case is. Most cases are directly or indirectly linked with political power, both formal and informal. In Thai society, the abuse of power is connected with legal procedures and informal relationships. Conflict of interest thus involves kinships.

Academics and other experts view conflict of interest at two levels: the policy level, involving the state power of policymakers; and operational level, where government officials seek private benefits from official duties. Conflict of interest depends on the degree of political development and political accountability. Thai politics is not progressive enough to address the public interest in the true sense. Some agencies may use power not for the sake of the people but to expand and protect their own interests. Some politicians buy votes to gain powerful positions and use those positions to advance their interests.

Conflict of interest at the operational level depends on opportunity and position, and opportunities are rife in procurement, where, despite advances in systems, interest-seeking behavior often prevails. The conflict arises when the various roles adopted by the same person are thinly separated and official duties are affected. For instance, a highway construction regulator might work after hours as a consultant to one of the construction companies supervised.

In summary, conflict of interest arises because of various factors:

- Centralized state power and money politics, leading to actions to maintain the status quo;
- Rules and regulations inadequate for coping with conflicts of interest;

- Not enough policy measures to protect the public interest—hence, the potential for human rights violations;
- Political intervention in policy formulation and implementation; and
- Weak ethical standards of society.

Thai society does not fully pay attention on the problem. The general public perceives conflict of interest as not much related with their national values. Some people think it is common for government officials to cheat without any social blame attached. That is why conflict of interest persists. It is unfortunate that those involved in misconduct related to conflict of interest deny any wrongdoing. Instead, they say that it is the duty of the public to prove abuse of power. This is because, under Thai social norms, people generally pay attention to formal laws, not to conflict-of-interest principles and ethical standards.

Public awareness on conflict of interest is quite low since the cultural and values systems are not strong. The commitment of policymakers and government officials to the public interest, which should be a matter of social awareness and core belief, is illusory. Conflict of interest is one of the most complex issues in society, and there is no easy access to information on conflict-of-interest cases. Studies are relatively rare. Most of the available data come from mass media. The general public have no clear understanding of the pattern and forms of conflict of interest. People do not clearly perceive such cases as corruption, or else they think of conflict- of- interest violations as legalized corruption.

It is agreed that conflict of interest is a critical problem in Thai society. It arises when there are close ties with state power. Through patronage, an association with power through informal relationships can protect patron-client relationships and shared benefits among cronies, cliques, groups, and parties. The point is the fuzzy line between public and private interest. Thus, under the patronage system, some politicians and government officials misuse their official powers to seek private benefits from society.

Government officials among whom there are potential risks of conflict of interest can be categorized into these five occupational groups:

1. Officials of provincial, municipal, or district administration.
2. Officials who rely on discretion in auditing (like accountants) and tax collection (such as revenue, customs, and excise tax officers);
3. Independent professionals such as physicians, pharmacists, engineers, and architects.

4. Academics and professionals such as teachers, instructors, researchers, analysts, and consultants, and
5. Officials who work in justice affairs, including the police, correction officers, attorneys, and judges.

Common types of conflict of interest among government officials are:

- Self-dealing;
- Acceptance of benefits such as substantial gifts or valuable assets in exchange for advancement in official posts and, conversely, use of money or valuable gifts to buy a higher position or promotion;
- Influence peddling;
- Use of public property such as public car for private business;
- Use of confidential information about development policies and projects to advance private interests;
- Post-retirement employment of high-ranking officials;
- Abuse of power in favor of relatives and clients in bidding contracts in government agencies; and
- Using money to buy advanced positions or extra promotional scheme.

Current Efforts in Managing Conflict of Interest in Thai Society

Various efforts are being made in Thailand to deal with corruption and conflict of interest.

First, Thailand's new constitution³ clearly prohibits conflict-of-interest violations. Specific provisions require government officials to be politically impartial (Section 70, Chapter IV) and prohibit members of the House of Representatives from placing themselves in situations where conflicts of interest could arise.

Section 110 (Chapter VI) clearly states that a member of the House of Representatives shall not:

- Hold any position or have any duty in any state agency or state enterprise, or hold the position of member of a local assembly, local administrator, or local government official or other political official other than minister;
- Receive any concession from the State, a state agency or state enterprise, or become a party to a contract of the nature of an economic monopoly with the State, a state agency, or state enterprise, or be-

³ 1997 Constitution of the Kingdom of Thailand

- come a partner or shareholder in a partnership or company receiving such concession, or become a party to a contract of that nature; or
- Receive any special money or benefit from any state agency or state enterprise apart from that given by a state agency or state enterprise to other persons in the ordinary course of business.

Section 111 states: “A member of the House of Representatives shall not, through the status or position of member of the House of Representatives, interfere or intervene in the recruitment, appointment, reshuffle, transfer, promotion and not being a political official, an official or employee of a State agency, State enterprise or local government organization, or cause such persons to be removed from office”. By virtue of section 128, this provision also applies to senators.

Second, public sector reform has pushed public agencies to act as catalysts for change through capacity building with strategies for structural, legal, and values and cultural reform, among others.

Third, anti-corruption measures have been promoted through workshops and seminars, both at the national and organizational level, to improve understanding of corruption problems among stakeholders.

Fourth, civic groups in partnership with voluntary associations, non-governmental organizations (NGOs), and civil society organizations (CSOs), are educating the general public and taking the lead in improving governance, both political and administrative. In addition, independent public organizations and mass media groups actively monitor the transparency and accountability of policymakers and government officials.

Fifth, at the initiative of the Foundation of a Clean and Transparent Thailand (FaCT), an awareness-raising program of good governance has been launched. The program is aimed at raising consciousness of accountability and conflict of interest among Thai people from all walks of life, including politicians, government officials, businessmen, and the public at large. To achieve this, program leaders are making efforts to raise ethical and moral standards, and campaigning for public participation into protecting the public interest and refraining from corruption of all types. The program is expected to inspire cooperation among anti-corruption movements in Thai society.

Conclusion and Recommendations

In conclusion, conflict of interest is a form of corruption since it is a way to use an official authority for personal gain. Conflict of interest violates the country's laws and code of public ethical conduct. Where personal advantages involved, conflict of interest leads to manipulation of authority to influence decisions for private interest. This unethical practice has negative effects on public services since it compromises independent decision making, neutrality and moral standards. It hurts the interests of the agency, the organization, the institute and society. The loss may be in the form of financial assets, quality of services, and future opportunities. Conflict of interest also destroys equity and other values and norms of a given society.

Conflict of interest is a key ethical issue in public and private management and has significant association with corruption. It relates to conflicts between authorities, roles, and values conflicts in decision making. Conflict of interest can occur at two levels: policy and operational. At the policy level, policymakers intervene in decisions for their own benefit, direct or indirect. At the operational level, officials use official capacities to advance their personal interests.

Several factors determine opportunities for conflict of interest, including, among others, private interest, weak ethical standards, discretion in use of power, and the lack of clear guidelines for official practices. Inefficient law enforcement and the lack of effective measures to protect the common benefits of the society is also crucial factors. Besides, conflict of interest is correlated with the Thai political structure, where the patronage system allows the businessmen to be involved in politics and to siphon benefits from society.

Measures to improve the situation include strengthening of ethical standards of behavior among officials at the policy and operational level. Raising public awareness through socialization among new officials in both public and private organization is vital. The international community must make joint efforts to raise professional and ethical standard among policymakers and officials.

The following specific measures are proposed: encouraging organizational leaders of all types act as catalysts for change or change leaders in enhancing professional ethics and integrity management in public and private organizations; putting the conflict-of-interest issue on the national agenda and earnestly pushing implementation efforts together with people's organizations; and developing guidelines for managing conflict of interest in the public service, both political and governmental organizations.

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