



Legality, Legitimacy, and Authoritarian Survival: The Case Study of Thai Politics from the 2014 Military Coup

Apipol SAE-TUNG*

Department of Environmental Science, Copperbelt University, Kitwe, Zambia

*Corresponding Author's E-mail: chilambebrian@gmail.com

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Abstract

This study explores the use of law and legal mechanisms to secure weak authoritarian power and argues that the lack of political legitimacy leads to the use of such legal mechanisms. The increased use of laws to solve political issues and control political elements occurs when a regime with low political legitimacy seeks to secure and increase its political control legitimately. This study explores Thai politics after the military coup in 2014 as the case study. It uses content analysis on the Thai constitutions and other laws together with descriptive statistics to test the hypothesis. The result shows that the lack of political legitimacy in terms of power accession of the military government leads to lower popularity and government stability, which leads the weakened regime to use law and legal mechanisms to tighten political control rather than other forms of repression that will negatively affect the regime's already lowering legitimacy. This study evaluates and concludes that the military successfully controls Thai politics by establishing the national strategy under the auspice of the 2017 constitution, which was promulgated under the military government in a bid to control political elements to safeguard the monarchy-military alliance in Thai politics.

Keywords: Legality and legitimacy, Authoritarian survival, Military coup, Thailand, Constitution

INTRODUCTION

Why do authoritarian regimes abide by the law when they can break it? This phenomenon can be explained by examining the legitimacy factor in the regime (Baker et al., 2016). The article argues that a weak authoritarian regime with low political legitimacy will rely on legal mechanisms for the regime's survival (Beetham, 2003). This study built on the previous literature that analyzed the use of law and legal mechanisms in authoritarian regimes (Blichner et al., 2008). Ginsburg and Moustafa proposed a concept of 'rule by law' explaining the phenomenon in which the authoritarian regime maintains its existence by using law, through courts, to control political elements (Chachavalpongpun et al., 2022). Levitsky and way proposed "authoritarian constitutionalism" as the

manipulation of formal legal institutions to bolster regime stability, which authoritarian regimes can often endure by maintaining a facade of legality and constitutionalism (Chambers et al., 2016). This study will work on the essence of using law and legal mechanisms and hypothesizes that the legitimacy factor leads authoritarian regimes to rely on and abide by the law (Coicaud et al., 2002).

This article analyzes the legitimacy factor and its relation to the use of law and legal mechanisms in Thai politics from the military coup in 2014 as a case study (Cotterrell et al., 1995). The study proposes that the military secures and tries to institutionalize authoritarian power through the use and manipulation of law and legal mechanisms instead of outright repression. The Thai case shows the importance of

legitimacy on at least two levels: The actor and the process (Dressel et al., 2012). The actors in this study refer to the military and the monarchy. The process in this study refers to the creation of Thailand's 2017 Constitution and Thailand's National Strategy (Ferejohn et al., 2002). This article will contribute to the discussion of legitimacy in authoritarian regimes and offer an additional perspective to the study of Thailand's 2014 military coup (Gobel et al., 2010).

This article is divided into six sections. This first section introduces the theme of the discussion, followed by the legitimacy factor and authoritarian regime framework in section two (Hirschl et al., 2004). After the theoretical discussion, the following sections applied the framework to the case study of Thailand after the 2014 military coup with empirical contexts of the legitimacy and laws and legal mechanisms in patching the legitimacy gap in sections three to five (Landua et al., 2019). The last section summarizes and concludes the discussion (Maerz et al., 2020).

LITERATURE REVIEW

Framework on legitimacy and authoritarian regime survival

This article analyzes the causes and conditions that lead authoritarian regimes to rely on legality as the source of their survival and hypothesizes that a weak authoritarian regime with low political legitimacy relies on law and legal mechanisms to establish or secure authoritarian powers in politics (Magnussen et al., 2013). Establishing or securing power in politics means surviving in the political arena of their own rule or being able to control or influence politics after a power transition (McCargo et al., 2005).

The authoritarian regime needs to secure and justify its right to rule for its survival and to compensate for the lack of legitimacy in accessing power (Merieau et al., 2016). Scholars generally agree with the definition of legitimacy as the right to govern and present the idea of the power relation between the governor and the governed in a particular society. It may include justifying factors such as the consent or the recognition of the governor's right to govern, the moral authority to balance off the *de facto* power, or the legality factor to justify a regime's power (Nathan et al., 2020). Legitimacy in authoritarian regimes has been treated as the opposite of their democratic counterparts. Beetham proposed that the legitimacy of a political regime consists of three factors: the source of authority, the capacity of the government, and a mechanism for regular consent expression. The military coup government can only manage the capacity factor, as they are not the representative of the people, nor do they offer a channel for consent expression. An authoritarian government, such as a military coup, may not have the same level of political legitimacy as a popular-elected government (Pathmanand et al., 2008). The authoritarian regime faces a fundamental weakness in securing its legitimacy in

accessing power and offering channels for consent expression and usually emphasizes on enhancing government performance to compensate for the lack of legitimate access to power (Phongpaichit et al., 2008).

An authoritarian regime with low political legitimacy needs to secure its political power in a way that has the least negative effect on the regime's already lowering legitimacy (Prasirtsuk et al., 2015). The low legitimacy, or the legitimacy gaps, could result from illegitimate access to political power, low economic performances, or low public support from socio-political factors. While authoritarian regimes could rely on various means to secure their power, such as the use of force or political repression, regimes with low legitimacy rely on legal measures to fill the legitimacy gap, which is the weakening factor of the regime. Authoritarian regimes seek political legitimacy for their survival as they cannot only rely on repression to stay in power. The authoritarian regime will seek to fulfill political power and legitimacy according to its performance and political situations that affect its survival.

Law and legal mechanisms have been discussed as important tools for an authoritarian regime's survival, emphasizing the role of the courts as the ultimate power in the legal system. In addition to Rule by Law and Authoritarian Constitutionalism, notable frameworks are the judicialization of politics and judicial review. Scholars define judicialization of politics as the increase in the judiciary's role in addressing political issues or when the decision-making rights are transferred from the executive and legislative to the judiciary. The concept of abusive judicial review by Landau and Dixon argues that courts have played an important role in strengthening authoritarian rule, in contrast to the general character of preserving democratic order. This concept focuses on the role of the courts in intervening in politics under the illiberal regime and where 'judges intentionally take aim at the democratic minimum core'.

The authoritarian regime uses the constitution to serve as the main tool to initiate legal control and the legitimizing factor for the regime's actions, as the constitution is widely acknowledged to have the highest hierarchy in the legal system. While there is no guarantee that an authoritarian government will strictly follow what was written in the constitution, that is, those in power may at any time break their promises with those who do not have the power, a written constitution in an authoritarian regime may serve to increase political legitimacy of a regime as it projects a sense of security to the governed that the government will, to a minimum, conduct political matters according to the rule it has written. In a weak authoritarian regime, a government may strictly follow the written constitution as it attempts to increase its political legitimacy, which directly relates to the regime's survival.

Hence, the legitimacy factor affects the authoritarian regime's survival strategy, in which the weak authoritarian with low political legitimacy secures its political power using law such as the constitution as the tool. The reliance on legality as the source of legitimacy will help legitimize the

regime's operation in securing its power. The following sections demonstrate how the legitimacy factor affects the politics of authoritarian power and the outcome of such effort.

DISCUSSION

The 2014 military coup

This article looks at the goals of the 2014 military coup as the military's attempt to secure political power for itself and the monarchy. To Thai scholars, the military-monarchy partnership is nothing new: the two actors accommodate each other in maintaining political existence through the pattern of military coup cycles. However, the 2014 military coup has a distinct characteristic from the previous military coups, in that it tries to set up a mechanism to establish its existence in civilian matters vis-à-vis politics through systematic legal mechanisms for a long period of time. This is reflected in the process of creating two laws: The 2017 Constitution and Thailand's National Strategy, where the latter is mandated in the former and the former is almost impossible to amend legally.

The 2014 military coup was observed to have two major reasons, with both relating to the monarchy's political security. Thailand's two most recent military coups, in 2006 and 2014, can be argued to be different from the patterns of previous military coups as the traditional military coups can either be viewed as a coup for the military's benefits or the coup caused by power struggles between factions of the military. It was observed that the 2006 and 2014 coups are different from the previous coups in that they were not originated from the military's political ambition but the effort to eliminate Thaksin's domination in Thai politics. Thaksin was popular among the poor for his progressive development policies improved people's quality of life faster than King Rama IX's gradual development path. Thaksin's overstepping into the base of the mass that is the source of legitimacy in keeping the monarchy's relevance in modern politics may have instilled fear into the conservatives and the monarchy of this political domination, which directly affected the monarchy's survival. Pathmanand argued that the coup in 2006 was caused by the royalist military, who perceived Thaksin as a threat to the monarchy and needed to be eliminated from politics. The military then has to secure its political power after the power seizure to achieve the goal of the coups.

The military's role in the 2006 and 2014 coups focused on the goal of securing the monarchy's power, which was reflected in the duration and intensity of the military's political control. The military coup in 2006 stayed in power until 2007, when it transited its power to a newly appointed government, which finished the process of drafting and promulgating the new constitution in 2008. However, the coup was unsuccessful in eliminating Thaksin's presence from politics, as the new constitution could not prevent Thaksin's successive political parties from winning general elections. The series of Thaksin camp's success in general elections owes very much to his populism policies that have

significantly gained support from the grassroots, which is the strong popular base of Thaksin's parties. The military coup in 2014 learned from the failure of the fast transition and stayed in power longer, with the length of five years until 2019, when the general election took place.

One significant role of the military coup in 2014 was to prepare for the foreseeable reign transition. Since King Rama IX is the core of the Thai political order, his presence or absence from politics will affect political stability, which in turn also affect the survival of the monarchy in the changing time as the existence of the monarchy institution relies heavily on the moral authority of King Rama IX. The reign transition was an important event as the establishment that relied on the people's beliefs was transitioning from the popular and most revered monarch to the less popular one, which might be prone to more political challenges when the monarchy was under high public criticism for political intervention since the military coup in 2006. After the passing of King Bhumibol, the military regime once stated that returning the country to democracy could only begin after the royal cremation ceremony and coronation.

As this article looks at the goals of the 2014 military coup as the military's attempt to secure political power for itself and the monarchy, the next section will offer empirics and analysis on the monarchy's lowering legitimacy. The lowering legitimacy, or the legitimacy gap, will affect the monarchy's survival in the Thai political landscape, which has led the military to establish its power in politics, and in turn, gain control or influence the politics for the benefit of securing the monarchy's power.

The legitimacy gap: The monarchy and Thailand's political order

Thailand's political order during the reign of King Rama IX relied on the monarchy's survival that progressively built political legitimacy or moral authority from political hegemony established through political interventions and developmental roles. However, the transition into a new reign with lower legitimacy could open to political challenges which may affect the political structure and interfere with the political order and status quo of the monarchy and the political elites revolving around the monarchy. The military and the monarchy need to find a new source of legitimacy for their power by using a series of laws to secure their political power legally and legitimately. These laws act as the legitimation factor in re-establishing the weakening monarchy at the center of Thailand's political structure to avoid the change in political structure.

Although Thailand is a democratic regime with the King as the head of state, or the 'constitution monarchy,' in which the monarchy is assumed to be beyond politics, the monarchy has always played an active role in Thai politics, which helped establish political legitimacy for the monarchy. Tejapira proposed the term 'Bhumibol Consensus' to describe Thailand's political development and the monarchy factor in Thai politics from the October 14, 1973 uprising. 'Bhumibol Consensus' is a monarchy-centric socio-political structure where various political

actors compromised their stakes and power boundaries, with King Rama IX as the final arbiter when conflicts emerged. The King's intervention in political crises as the mediator between political factions, especially in 1973 and 1992, had established a strong political legitimacy foundation for King Rama IX. The two major events were frequently taken as the symbol of the royal political hegemony by officials and several media outlets to portray King Rama IX as the guardian of Thailand's political order. The monarchy's involvements in Thai politics were tolerable to many as King Rama IX possessed the charismatic image of the righteous king seasoned with extensive political experience.

The monarchy's extensive development programs also contributed to the increase of political legitimacy and the position of the monarch in Thai politics. Thailand initiated its first development programs in the 1960s with the support of the United States as a part of the containment strategy, which helped allocate development projects to the remote areas prone to communist threats in Thailand. The monarchy was also a part of the containment plan as it was used as the symbol of unity which brought better living conditions to the rural areas. The development role was crucial to the monarchy's survival during the cold war in that the establishment was portrayed as indispensable to the nation with the development king contributed to royal initiatives to help improve the people's quality of life. The monarchy's development role, that of the king and other members of the royal family, was continued as it is crucial in keeping the monarchy relevant in modern politics, where the monarchy may have less importance in the functioning democracy.

The new reign, however, is observed to possess lower legitimacy to accommodate the monarch's political legitimacy. Since the monarchy was kept relevant in Thai politics based significantly on the developmental roles it plays at the grassroots, the lack of continuity in this role may put the establishment at risk of losing popularity and its legitimacy to stay in power. Hence, to fast-track the level of legitimacy, the public image of the current reign is portrayed based very much on the legacy of the previous one, such as the similar first royal address to that of his father that promised to continue the legacy of his father, the agricultural development programs, or the royal addresses given in relation the legacy of King Rama IX. While this would project the new reign as the bearer of what is good from the previous reign to the present one in the bid to harvest the same moral authority that his father gained, it is also good evidence and reflection that the current reign does not have the same level of tangible achievement needed to obtain adequate legitimacy. This may be harmful to the monarchy's survival as it risks losing political power and popular support as the source of political power and legitimacy to other political groups, a replay of why popular politicians needed to be eliminated with a military coup in 2006.

Hence, it is sensible to suggest that the new reign needed a new source of legitimacy to survive and firmly re-establish the monarchy at the core of Thai politics to protect the

status quo and political order. The 2017 constitution and the national strategy initiated by the 2014 military coup serve as the first step in using the law to preserve and enhance the monarch's power.

Patching the legitimacy gap: Law as the tool and its outcome

An authoritarian regime with low political legitimacy will rely on law and legal mechanisms to secure its power instead of using other means, such as violence or repression, which will further weaken the regime. In this case study, the reliance on law and legality to secure the monarchy's power and as the source of political legitimacy rather than the regular use of direct military power is because it is less likely to have a similar political condition to justify the military coup as did in 2006 and 2014, and public perception of the military showed significant decline since the 2014 military coup (Table 1). The declining public perception toward the military shows that it cannot be an effective agent, like in the past, to intervene in politics and secure authoritarian power in the near future. Hence, it needs to secure its position in politics through the use of law, for it to be able to influence political decisions legally and legitimately to secure political power.

The following descriptive analysis demonstrates how the creation of Thailand's 2017 Constitution and the National Strategy reflects the military's attempt to secure political power and political legitimacy for the military and the monarchy.

The 2017 constitution

The military takes constitutions as the source of its legal legitimacy, as a constitution was recognized as the most prestigious law, and any action carried out under the constitution was deemed lawful. Its effort to use them as tools to secure its power has taken place since the beginning of the power seizure. Besides the royal proclamation that appointed General Prayuth Chan-O-Cha, the head of the military coup, as the prime minister, the military government based its legitimacy on the 2014 Interim Constitution that it arbitrarily enforced. The military regime used this legal power to expand its political control to secure its political power and suppress its political opponents and protestors.

After establishing its power in the interim constitution, the military further strengthened its political control by drafting a new constitution in which it had total control throughout the process. The military government initiated the national reform scheme consisting of five actors; The National Councils for Peace and Order (NCPO), The National Legislative Assembly, the government, the National Reform Council, and the Constitution Drafting Committee. These actors were under direct military government's control and contributed to the execution of the constitution and laws to accommodate the military's influence in post-coup politics. The NCPO and the government, both chaired by Prayuth, appointed the National Reform Council members to prepare the National Reform Plans, which later will be developed as the National Strategy. The National Reform

Council members then select the Constitutional Drafting Committee members to prepare the new constitution. The new constitution passed through a tightly-controlled referendum as required by section 5 of the 2014 interim constitution, legitimizing it as the constitution that the people have accepted. The new constitution was promulgated as Thailand's latest constitution in April 2017, serving as the outcome of the military's attempt to control politics through legal measures.

The 2017 constitution is important to the military regime as it serves to secure the military's political power, which will allow them to secure the monarchy's political power. It accommodates the military regime to return to power after the general election as it allows the NCPO-appointed senators of 250 to vote for the prime minister in addition to the 500 elected members of the house of representatives, which left the military-backed political parties to compete for only 125 seats in the election to form a government with the majority of the vote from both houses combined. The constitution also opens a channel for the parliament to vote for an 'appropriate person' to become the prime minister without being a member of the house of representatives. Since this constitution was the source of political power to the military regime, it was designed to be almost impossible to amend while the military or the NCPO-appointed senators remained in politics. The motion to amend the constitution must get approval from the majority of the parliament, with one-third approval from the senators as stated in Section 256 clause 3 of the constitution. Hence, any law stemming from this constitution can be interpreted to be set in stone.

The 2017 constitution also serves the military coup's goal of securing and enhancing the monarchy's political power and legitimacy by uplifting and enhancing the monarchy's status, as will show later in the national strategy. Moreover, similar to the previous Thai constitutions, the 2017 Constitution also gives the monarch full authority in managing a wide range of affairs, such as the appointment or removal of persons from the position of the military, royal offices, or the privy council. The current monarch had exercised the power given in the constitution on many occasions by issuing law, referencing the power stated in the 2017 constitution. For example, the monarchy-related government agencies were restructured to become the royal office under the King's direct control based on the power stated in section 15 of the constitution, or the restructuring and taking units of the armed forces under the King's direct control based on the power in section 172.

The monarch's power was also imprinted in this constitution. After the constitution passed the referendum, the King, through the royal office, requested that some contents relating to the King's power be amended. The military government had to amend the 2014 interim constitution to accommodate the King's request that if the King did not approve the constitution after the referendum, the government must take the draft back and amend it before resubmission for the King's approval. The change in the content of the King's power in the constitution after the referendum can be interpreted as the political message that

the King's power does not need public approval and is also considered legal since it was doable under the auspice of the 2014 interim constitution.

Thailand's national strategy

One of the laws that would accommodate the military regime to secure its political power and achieve its goals when staging the coup is the national strategy. Thailand's national strategy is the first national development law, as its existence is mandated in section 65 of the 2017 constitution. It was first drafted by the NCPO-appointed National Reform Council, whose duties were to examine the draft of the new constitution and create the national reform plans. The National Reform Council was dissolved when its main function in approving the constitution draft was done in 2015, but the national reform plans were carried on by a new military-appointed committee called the national reform steering assembly. The reform plans later became Thailand's national strategy promulgated under the 2017 constitution. Given the priority and significance of the national reform plans, it can be argued that the military had planned to use the national strategy to grasp political control in post-coup politics since the coup started and legitimized it with the 2017 constitution that is claimed to be approved by the public.

The national strategy was formulated under many laws, which helped secure its legal status in various ways. It was initiated and executed under three main laws; the 2017 constitution, the national strategies preparation act 2017, and the National Strategy itself. The national strategy has its legal status from the preparation act, which was promulgated as a part of the mandate to create the national strategy in the 2017 Constitution, which stated in section 5 that the National Strategy must be promulgated as the royal command. The requirement to have the national strategy be promulgated as the royal command can seem to have a political symbol rather than practical reason, as it has the same hierarchy as promulgating it as an act. Furthermore, the preparation act also stated in section 25 that any government agency that failed to comply with the national strategy would be considered intentionally committing an offense and may be subject to suspension from, temporary, or permanently discharged from public office. The compliance of government agencies' acts will be examined by the national strategy committee, whose members consist of the prime minister, the speakers of the House of Representatives and the Senates, representatives from economic-related sectors, and the commander in chiefs of the armed forces and the police. The security personnel make up seven out of 17 committees. The high number of security personnel and the National Strategy's legal status and possible punishment would help the military to maintain its existence and control in post-coup politics, leaving its marks and opening the channel to legally influence the politics even if they did not win the general election in 2019.

The national strategy is the first law to systematically enforce the government administration to safeguard and uplift the monarchy, which gives the monarchy a sense of

security as it is the law that all future governments must adhere to regardless of their political ideology. Chachavalpongpun observation on fear-based royal governance through the announcement in the Royal Gazette confirms that the current monarch prefers official actions through what seems a legal and legitimate process. There exist several laws and legal statements that helped keep the monarch's place in politics. For example, the Thai constitutions since 1974 'tasked' the Thais to preserve the Thai's divine trinity: The key national institutions of nation, religion, and monarchy. Similar to its predecessors, the 2017 Constitution states that the monarch is in the most revered position, and no one shall offend the monarch. The lèse-majesté law in Thailand's penal code section 112 states that whoever defames, insults, or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years. Although it has been stated that the Thais must preserve the divine trinity, there has never been a law that lays out strategic plans to preserve and uphold the monarchy, with punishment for non-compliance. It first appeared in the national strategy. While the lese-majeste law helped protect the monarchy from insults or shunned public criticism, it partly protects the monarch's reputation but does not equate to setting up a new process under the national strategy and enforcing government agencies and their policies to secure the monarchy.

What reflects the national strategy's importance for safeguarding and uplifting the monarchy appears in the normative and descriptive contents. In normative terms, the national strategy is imprinted with the monarchical ideology of Sufficiency Economy Philosophy (SEP), one of the widely praised development initiatives introduced by King Rama IX, in which section 7 of the Preparation Act required that it be designed under this initiative. Future government policies and activities will also be subject to this ideology, as deviating from the philosophy might be considered non-compliance with the national strategy. In descriptive terms, the strategy will campaign to enhance the Thais' loyalty to key national institutions and patriotism through various activities, such as promoting King Rama IX's SEP and royal initiatives. King Rama IX's teaching of "understand, reach out, and develop" was applied as the strategy to resolve the conflict in Thailand's deep south provinces. It also aims to expand the monarchical ideology beyond the nation by introducing SEP and royal initiatives to ASEAN member countries to promote regional security. Hence, the monarchical ideology was enforced by law to be used as the framework to construct the national strategy and future laws and policies, which serve to safeguard and strengthen the monarchy in ideological and practical terms.

The 2017 constitution, the national strategy, and the renewal of monarchy–military–thaksin partnership

Although many scholars perceived popular government as a threat to the monarchy since the military coup in 2006, the success of the Thaksin camp's political party in Thailand's 2023 general election reflects the strong establishment of the monarchy. The monarchy's legitimacy has shifted from

reliance on moral legitimacy to legality as the source of legitimacy in establishing and securing its power. The military and security personnel serve in the structure of the national strategy committee, ensuring the conformity of the government's activities and programs after the military government exits from power.

The monarchy factor is still important in forming a democratically elected government. The government was formed not only from the people's vote to Thaksin's Phue Thai party, but also its partnership with the political parties who were partners to the military-backed governments from 2019-2023, together with securing the vote from the senators who were appointed by the military coup. The senator is the vital mechanism in forming the government. The more popular-elected Move Forward Party (MFP) did not gain enough votes from the elected members of parliament and the senators on the grounds that the MFP insisted on amending the lèse-majesté law and they would offer votes if the MFP dropped the motion (Bangkok post 2023). The Phue Thai Party, on the other hand, vowed to pledge allegiance to the monarchy and eventually gain the necessary votes from the parliament. This reflects the effectiveness of the senator mechanism set in the 2017 constitution and that the conformity of future governments to the National Strategy's goals on the monarchy must be secured.

CONCLUSION

This study examines the legitimacy factor as a contribution to explaining authoritarian regimes and their survival strategies. It argues that an authoritarian regime with low political legitimacy will rely on the use of legality and legal mechanisms as tools to establish and secure its power. Without legitimacy in accessing power, the authoritarian regime makes up for its legitimacy by relying on legality and laws it created to favor its administration. With low political legitimacy, the authoritarian regime cannot rely only on force but on legality to survive legitimately.

The Thai case shows the significance of the legitimacy factor in establishing authoritarian power using law and legality as a tool. The military coup government has established strong control in drafting a new constitution as well as the subsequent laws that guarantee the monarchy and its existence in politics well after it exits from power. The significant proof shown in Thailand's 2023 general election was that the once challenger to the monarchy's legitimacy ground, who was a factor in almost two decades of Thailand's political chaos, was allowed back into politics. This reflects that the stronghold of the monarchy's legitimacy in Thai politics has shifted from the developmental role in the previous reign to the reliance on legality for political legitimacy in the current reign.

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