

Legal Measures Regarding Informal Loans: A Case Study of Four Districts in Udon Thani Province

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Abstract

The current economic slowdown in Thailand has led to a decrease in private consumption, investment, and income. High unemployment rates exacerbate the situation, leaving many individuals with inadequate income. Even before the COVID-19 outbreak, Thailand experienced an economic slowdown due to trade conflicts, contributing to higher living costs. Consequently, individuals find it challenging to meet expenses, leading to borrowing both within and outside the formal financial system. Informal loans (loan sharks) have become a recourse for low-income individuals who are unable to access formal credit channels.

Informal lenders often charge interest rates that exceed legal limits and employ aggressive debt collection tactics, including threats, coercion, and violence. This widespread issue of informal lending contributes significantly to social and criminal problems globally. Previous attempts to address this issue have had limited success, often focusing on short-term fixes rather than sustainable solutions. Therefore, there is a critical need to explore legal measures that provide clear guidelines for government intervention, aiming to effectively mitigate the problem of informal lending.

Keywords: informal loan (loan shark), loans, debt collector

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มาตรการทางกฎหมายเกี่ยวกับเงินกู้นอกระบบ กรณีศึกษาพื้นที่ 4 อำเภอในจังหวัดอุดรธานี

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บทคัดย่อ

สืบเนื่องจากสถานการณ์เศรษฐกิจของประเทศไทยในปัจจุบัน ที่มีการชะลอตัวลง อาจทำให้การบริโภคและการลงทุนภาคเอกชน และรายได้ในระบบเศรษฐกิจปรับตัวลดลง เกิดปัญหาการว่างงานในอัตราที่สูงขึ้น ทำให้ประชาชนจำนวนมากขาดรายได้ รวมทั้งก่อนหน้าการเกิดสถานการณ์การแพร่ระบาดของโรคโควิด 19 ในประเทศไทย มีการชะลอตัวทางเศรษฐกิจจากสงครามการค้า ซึ่งทำให้มีปัญหาค่าครองชีพที่สูงขึ้น ส่งผลทำให้ประชาชนมีรายได้น้อยลงไม่เพียงพอต่อรายจ่าย เป็นเหตุให้เกิดการกู้ยืมเงินทั้งในและนอกระบบ โดยลูกหนี้ในระบบส่วนใหญ่เป็นผู้ที่มีรายได้น้อยไม่สามารถกู้ยืมเงินในระบบได้ จึงต้องใช้บริการการกู้ยืมเงินจากนอกระบบซึ่งเป็นการกู้ยืมเงินกันเองระหว่างประชาชน

โดยผู้ให้กู้ยืมส่วนใหญ่มีการกำหนดอัตราดอกเบี้ยที่สูงเกินกว่ากฎหมายกำหนด และมีวิธีการทวงหนี้ที่ใช้การข่มขู่บังคับ หรือใช้ความรุนแรง ปัญหาเจ้าหนี้นอกระบบเป็นปัญหาที่เกิดขึ้นในหลายๆ ประเทศทั่วโลกกลายเป็นปัญหาทางสังคมและปัญหาอาชญากรรมตามมา อย่างไรก็ตาม การแก้ไขปัญหาที่ผ่านมาสามารถแก้ปัญหาได้ในระดับหนึ่งแต่ยังไม่ครอบคลุมการแก้ไขปัญหาเจ้าหนี้นอกระบบทั้งหมด ซึ่งอาจมีการเปลี่ยนแปลงไปตามการเปลี่ยนแปลงของรัฐบาล และส่วนใหญ่เน้นการแก้ไขปัญหาในระยะสั้น ทำให้ในอนาคตอาจเกิดปัญหาเพิ่มขึ้นอีกได้ จึงมีความจำเป็นต้องศึกษาเพื่อหามาตรการทางกฎหมายเพื่อให้มีแนวทางการดำเนินงานที่ชัดเจนเพื่อให้ภาครัฐสามารถดำเนินการแก้ไขปัญหาเจ้าหนี้นอกระบบได้อย่างยั่งยืนต่อไป

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Introduction

Thailand's current economic situation has slowed down, leading to reduced consumption and private business investments. This downturn has also caused lower incomes due to increased unemployment in the first two quarters of 2020, attributed to government measures to control COVID-19 spread (Office of the National Economic and Social Development Council reported this in 2020). The income loss has particularly affected residents in four districts of Udon Thai Province: Mueang, Kumpawapi, Kudjab, and Nong Han. Economic factors such as trade wars and rising living costs have exacerbated financial hardships in these districts, where many struggle to cover expenses. A growing trend among the younger generation towards saving rather than spending has resulted in increased borrowing and subsequent debt issues. Household debt in Thailand averaged 340,053 baht per household in 2019, with 59.20% being within the formal financial system and 40.80% outside of the formal system ("Household debt 2019", 2023). Informal lending, known as shark loans, involves peer-to-peer lending with interest rates often surpassing legal limits, accompanied by reports of debt collectors resorting to threats and violence against low-income borrowers who lack access to formal banking due to insufficient qualifications, collateral or guarantors, (Bureau of Academic Services, Secretariat of the House of Representatives, 2015).

The above information highlights a study conducted on factors influencing shark loans in four populous districts of Udon Thani Province, revealing a significant debt burden. Survey findings from these areas can inform efforts to mitigate shark loans, potentially serving as a model for addressing informal borrowing issues nationwide and improving livelihoods.

Shark loans pose a prevalent issue worldwide, with its severity varying based on social and economic conditions. Developing countries often face more pronounced challenges compared to developed nations, primarily due to poverty-related economic disparities and limited financial system access among low-income populations, which drives demand for informal lending solution.

According to the National Statistical Office's 2021 survey, 91.6% of households relied solely on bank loans, 4.9% had informal debt, and 3.5% had both formal and informal debts. Bank loans averaged 202,075 baht, significantly higher than shark loans, which averaged 3,604 baht, indicating a substantial

disparity in borrowing scales. The survey also revealed that most debts from formal lending were for consumption purposes, accounting for 37.9% in 2021, up from 36.9% in 2019, followed by housing purchases/leases (36.3%), agricultural purposes (15.8%) and business ventures (8.1%). In contrast, educational borrowing remained minimal at only 1.5%. The researchers found that most of the informal debt in 2021 was for household consumption which accounted for 47.3 %, a decrease of 11.5% from 2019, when it was 58.8%. This was followed by debt for business ventures, debt for land/housing purchases and/or leases and for agriculture constituted 21.3 %, 14.0%, and 12.4%, respectively. Education debt accounted for only 1.3%.

The prevalence of high interest rates, exploitation, and violent debt collection associated with informal lending has contributed to social unrest and legal issues. Past efforts of the Ministry of Finance to regulate informal lending included Section 5 of Revolutionary Council Announcement No. 58, requiring juristic persons to operate under supervision when lending outside the formal system. Despite these measures, challenges persist particularly in areas like four districts in Udon Thani Province, where ongoing surveys gather insights from stakeholders, including creditors and debtors, both in bank loans and shark loans.

However, these past measures only partially addressed the issue, as policy consistency often wavers with changing governments, focusing predominantly on short-term solutions. To comprehensively resolve informal lending issues, clear legal frameworks and operational guidelines are essential to ensure sustained government intervention.

Review of relevant literature and theory

1. Concepts and theories about understanding of shark loans

1.1 Meaning of Liabilities

Liabilities are the amounts of money that a person or business owes to outside parties or claims that outside creditors have against the business that is legally binding on the business as of a particular date because of past transactions or events and that will result in the business having to pay back in the future to settle the obligations

1.2 Types of Liabilities are divided into two categories.

1) Liabilities in the formal system: These refer to legal debts with valid contracts and interest rates calculated according to specified laws. It can be divided into three groups depending on the creditor types.

2) Shark loans: These are illegal debts in which creditors exploit debtors by offering contracts that misrepresent the actual terms of the loan or charge interest rates higher than those permitted by law.

1.3 Causes of the Emergence of Shark Loans

Shark loans have been emerging in Thailand for various reasons, which can be categorized as follows:

1) Caused by economic problems

Some debtors have fallen into poverty due to failed investments, particularly in occupations like farming, exacerbated by factors such as floods, droughts, and low commodity prices. These economic hardships leave individuals without enough income to cover basic living expenses, prompting them to turn to shark loans because they lack the qualifications required for bank loans.

2) Originated from the debtors

(1) Characteristics of debtors: Some individuals have spending habits that exceed their income. As their debt accumulates, they may purchase items like cars or expensive houses, living beyond their means. This behavior, often referred to as "revolving liabilities", involves borrowing additional money to pay off existing debts, leading to a cycle of increasing debts.

(2) Lack of qualifications for bank loans: Financial institutions require extensive documentation for credit analysis, including ID copies, house registration, marriage certificates, six months of bank statements, taxpayer ID, and proof of tax payments. Additionally, documents about the borrower's company, such as business licenses, registration certificates, business plans, and asset confirmations, are necessary. Insufficient collateral or the inability to meet these requirements contributes to borrowers resorting to shark loans.

(3) Technological Influence: Changing global perceptions and consumer behavior, driven by technological advancements, have led to increased consumer demand and the consumption of convenience products, influencing borrowing behaviors.

(4) Systemic Issues: Financial institutions often require substantial guarantees, such as 5 million baht, which many borrowers cannot provide. This requirement, coupled with stringent risk management practices, limits access to formal loans. Borrowers may use personal assets as collateral, but this practice poses risks to both lenders and borrowers.

(5) Financial Literacy Deficiencies: Many individuals lack adequate knowledge of financial systems and planning, contributing to their reliance on debt to manage financial challenges.

1.4 Types of Loans

In general, borrowing money can be divided into two main types:

1) Borrowing from systematic funding sources: These include borrowing from sources of funds in the system, both domestic and foreign, to be used for investment in the business. The only important domestic borrowing sources mentioned here are financial institutions, which are those that mobilize funds from savers and distribute those savings to individuals who need capital to use for investment in various business operations.

2) Borrowing from shark loan financial sources: These loans are acquired without regulations or official monitoring. Terms are based solely on mutual agreement between borrowers and lenders, typically resulting in higher interest rates than those offered by financial institutions. Collateral is not required.

2. Thailand's households' information about bank loans and shark loans

Based on the results of a survey of households throughout the country, formal debt comprised most of the consumption purposes, increasing from 36.9% in 2019 to 37.9% in 2021. Additionally, 36.3% of the debt was attributed to buying or leasing houses. Agriculture accounted for 15.8%, while business accounted for 8.1%. Education debt was only 1.5%.

In 2021, informal debt was primarily for household consumption, at 47.3%. This percentage represented a decrease over time, dropping by 11.5% from 58.8% in 2019. Following this were debts for business use and the purchase or leasing of houses and land, which was 21.3% for agriculture, 14.0% for housing, and 12.4% for industry. Education debt comprised only 1.3% of the total debt.

2.1 Obstacles to Solving the Current Shark Loans Problem

1) Lack of Information on Creditor Shark Loans: Each creditor operates within their own region, often with limited information and rigid practices. As a result, administrative officials and the police cannot effectively address the issue.

2) Debtor's Consent: Debt financing outside the formal system often arises because borrowers prefer to stay in debt due to the ease of borrowing. Creditors can impose their own rules, conditions, and requirements without needing a security deposit, unlike formal loans. Once a borrower takes on such a debt, the involved parties often disengage, making it difficult to prevent or suppress these informal loan systems.

3) Inadequate Enforcement Measures in Current Laws: Existing laws lack sufficient enforcement measures. The Royal Financial Institution's Loan Payment Act, B.E. 1980, includes announcements from the Ministry of Finance and the Bank of Thailand, but only two current laws address shark loans:

(1) Prohibition of Excessive Interest Rates: As stated in Section 654 of the Civil and Commercial Code, interest rates are capped at 15% per year, even if the contract stipulates a higher rate.

(2) Royal Decree on Interest Rates, B.E. 2017: This study found that enforcement of this law is ineffective. For example, when someone signs a loan contract, and the lender disregards it, Section 654 imposes a 15% annual interest rate. Additionally, lawmakers have introduced new legislation to prevent frivolous lawsuits from clogging the courts.

2.2 Legal Measures to Control Lending Practices in Thailand

At present, the economic and social conditions in Thailand have improved, leading to an increase in business contracts. These contracts often highlight the unequal negotiating power between parties. One

party, lacking an understanding of the facts and legalities, may be forced to accept various unfavorable contract terms. This includes circumventing laws governing legal transactions. The prevalence of shark loans results in injustice and distress for the disadvantaged contracting party, putting them at a significant disadvantage. Therefore, a study of this issue is necessary.

The Civil and Commercial Code includes provisions for expressing intentions, which come into play before entering a contract. These provisions are crucial when considering entering a contract, as factors such as interest rates and contract nature contribute to the enforcement of laws. The Prohibition Act governs legal transactions and imposes criminal penalties for shark loans, particularly for charging interest rates exceeding the 2017 legal limit. Legal measures for supervision and ongoing management of loans outside the formal Thai system are essential to address this issue effectively.

3. Concepts and theories in creating contracts

3.1 Principles of Autonomy of Will

Principles of Autonomy of Will emerged in the 18th century amidst profound changes in economy, society, and economic thought. Political influences shaped the thinking of jurists, economists, and political scientists during this period. The 18th century marked a celebration of human capability, contrasting with medieval Christian beliefs that had previously discouraged belief in human intellect. This era, often referred to as the "Dark Age", was dominated by Christian teachings that emphasized obedience and discouraged questioning (Chuathai, 1993).

3.2 Freedom of Contract

The principle of freedom of contract originates from 18th-century liberal economic thought. As economic ideas evolved, so did the laws governing them. Liberalism gained prominence, advocating for minimal state interference in private contracting. The concept of "Freedom of Contract" emphasizes that agreements should be based on mutual consent, where parties freely agree to essential terms without coercion. Individuals are free to enter into contracts under conditions they deem appropriate (Chachai, 1998).

3.3 Sanctity of Contract

The principles of sanctity of contract uphold the freedom of private parties to contract without undue interference from the state. This principle ensures that contracts are binding when entered into voluntarily and based on a mutual understanding of essential terms. Individuals retain the right to choose whom they contract with and under what terms, without external pressure. Therefore, state organizations including the courts will not intervene. The courts will only get involved to enforce compliance with a request from the other party when the other party does not comply with the contract.

3.4 Welfare State

During the 18th century, the concept of "Laissez-faire" emerged, advocating for minimal state intervention in private business affairs. The state's role was primarily to maintain order, protect citizens, administer justice, and collect taxes necessary for public expenditure (Chuathai, 2009, p. 106).

3.5 Basic concepts and theories of social protection

As liberalism declined, laws promoting social welfare emerged to address inequalities and unfair contracts. These laws aim to establish standards of behavior within society that benefit the community, rather than serving individual interests. Social protection laws regulate personal rights and prevent conflicts of interest, ensuring societal norms are upheld (Charoenphan, 1977).

3.6 The history of the law regarding unfair contract terms

Changes in economic and social conditions have influenced the evolution of contract law, particularly in addressing unfair contract terms. As societies shifted towards capitalist economies, contracts became more complex and detailed, often favoring the party who drafted the contract (Thepwutsathaporn, 2002)

3.7 Principles of public order or good morals of the people

Section 150 of the Civil and Commercial Code prohibits activities that are against public order or morals, rendering such contracts void.

3.8 Principles of honesty

Section 5 of the Civil and Commercial Code mandates that every person must act in good faith when exercising their rights and obligations, including the repayment of debts.

4. Laws related to transactions in Thailand

4.1 Civil and Commercial Code

1) Loaning

Loaning is defined as a specific contract under the Civil and Commercial Code since there are provisions specifically applying to it. The law divides loaning into two types: loan for use and loan for consumption.

2) Loaning money

Loaning money is considered under the category of a loan for consumption. The borrower must return the specified amount when the loan is due, not necessarily the same amount received from the lender. The loan is complete once the borrowed currency is delivered (Civil and Commercial Code, Section 650, second paragraph).

3) Sale with right of redemption

This is a type of trading contract with a special agreement allowing the seller to redeem the property. The Civil and Commercial Code, Section 491, deals with sale and redemption stating: "It's a contract where the buyer becomes the owner, with an agreement that the seller may redeem the property".

4) Hire–purchase

Hire–purchase is considered a type of contract where the hirer can use the property as if rented, while ownership remains with the lessor. The renter promises to transfer ownership upon completing the agreed payments. This method is popular as it allows low–income consumers to own high–priced assets by renting.

5) Pawning

Pawning involves using movable property as collateral for debt payment. According to the Civil and Commercial Code, Section 747, a pledge is a contract where the pledgor delivers a movable item to the pawnbroker as security for debt.

6) Bank rate

Loaning money under this type may require compensation in the form of interest, calculated based on the principal amount of the borrowed money, (Supreme Court Verdict 1050/1512). If lenders charge interest, the loan contract should include a statement specifying this, with both parties agreeing. Without a clear arrangement, interest cannot be charged. The maximum interest rate for loans has been defined since the Rattanakosin Era which was specified in the Loans Section, Chapter 9 of

the law that an interest rate of 1 Tamlueng per month is charged for every 1 Feuang of the principal amount. This means the principal amount of 4 Baht would be charged for an interest of 12 Satang per month or 36% per year. Later during the reigns of Kings Rama IV to Rama V, interest rates were gradually reduced until the maximum rate was set at not exceeding 15% per year based on ancient lending traditions of charging 1 Baht interest per month for every 1 Chang of the principal amount. 1 Chang was equal to 20 Tamlueng or 80 Baht. Therefore, the principal amount of 80 Baht is charged 1 Baht interest per month equaling a monthly interest rate of 1.25% or 15% per year.

Therefore, according to the civil and commercial code, if the creditor and debtor agree on an interest rate higher than 15% per year, the rate will be considered reduced to 15% per year as specified in Section 654.

4.2 Prohibiting the Charging of Excessive Interest Rates Act, B.E. 2560 (2017)

Section 654 of the Civil and Commercial Code sets the interest rate ceiling for borrowing money at 15% annually. Violating this incurs a civil penalty, reducing the loan's interest rate to this ceiling. This law, effective from 1 April 1931, was enacted to maintain the intended purpose of borrowing, allowing creditors to receive interest as compensation while preventing debtor ruin due to high interest rates. On January 14, 2017, King Rama X issued a royal command to amend the law, prohibiting interest charges above a certain rate, but no new Acts have been published yet.

4.3 Interest on Loans of Financial Institutions Act, B.E. 2523 (1980)

According to the Civil and Commercial Code, borrowing must be in writing, with litigants using written evidence. The law caps interest rates at 15% per year for general loans. However, financial institutions can charge higher rates due to the Interest on Loans of Financial Institutions Act B.E.2523, 1980. This Act allows flexibility in setting interest rates to benefit monetary policy and address economic issues.

5. Solving the informal debt problem as a national agenda

The government has announced "Solving the informal debt problem" as a national agenda to restore livelihoods, dignity, and stability for the Thai people. On November 28, 2023, Prime Minister and Minister of Finance, Mr. Settha Thavisin held a conference at Santimaitri Building in the Government House. Many authorized parties and personnel attended the conference including Deputy Prime Minister,

Mr. Anutin Charnvirakul, Deputy Minister of Finance, Mr. Krisada Chinawicharana, Police General Thanu Chuwong. Various agencies including the Attorney General's Office, Royal Thai Police, Department of Special Investigation, Ministry of Finance, Office of the Consumer Protection Board, Bank of Thailand, Krung Thai Bank, Government Savings Bank, and Bank for Agriculture and Agricultural Cooperatives, also highlighted efforts to tackle informal debt. The collaboration aims to achieve tangible results in addressing this critical issue, (“Solving the problem of shark loans is a national agenda.”, 2023).

Objectives

1. To study how to make legal claims on Shark loans more efficient
2. To study the laws necessary to demand control over credit-granting authorities
3. To study the laws and decisions that regulate credit providers in Thailand, including shark loans
4. To suggest guidelines for solving debt problems and supporting the informal sector

Hypothesis

The government has implemented policies to address short-term external debt problems. However, these solutions are seen as temporary measures without continuity. The current laws cannot adequately address the issue of shark loans. There should be specific laws to solve the problem and supervise informal creditors.

Term definitions

1. Credit or loan means lending money or buying bills as creditors. This includes discounting bills or taking over bills as creditors, fulfilling obligations under letters of credit, and other commitments.
2. Shark loan creditors are individuals who lend money without government rules or supervision, often violating the law by charging higher interest rates than permitted.
3. Legal measures refer to the creation of laws and rules, using authority to supervise operations and exercise control.
4. Supervision involves ensuring that people follow the law, work properly, and behave appropriately.

Scope of the study

This study will analyze the lending patterns of non-commercial bank creditors to understand shark loan issues. Non-bank business operators will be studied regarding laws on credit granting and interest rates determination. The study includes Thailand's current lending supervision model and interest rate calculation, as well as foreign lending laws and guidelines. Research data will be collected from academic articles, related agencies, and surveys in four districts: Mueang, Kumphawapi, Kut Chap, and Nong Han in Udon Thani Province. Recommendations for legal measures and supervision of informal creditors will be prepared.

Methodology

This research is applied research using qualitative and quantitative research methods. The research was conducted as follows:

1. Collection of information

Current laws on lending in Thailand, such as:

1.1 Violation of the Prohibiting the Charging of Excessive Interest Rates Act, B.E. 2475 (1932).

1.2 The interest calculation of financial institutions according to the Interest on Loans of Financial Institutions Act, B.E. 2523 (1980), Section 4, empowers the Minister of Finance, with the recommendation of the Bank of Thailand, to specify the interest rate that financial institutions can charge borrowers over 15% per year.

1.3 The current laws governing personal loan provision, such as lending by financial institutions under the Financial Institution Business Act B.E. 2551 (2008), Sections 39 and 41, authorize the Bank of Thailand to issue regulations overseeing financial institutions' lending. The Bank of Thailand has therefore issued notifications prescribing criteria, methods, and conditions for undertaking personal loan business under supervision for financial institutions. These allow commercial banks and finance companies licensed to operate consumer finance businesses to engage in supervised personal loan business following the Bank of Thailand's prescribed criteria.

1.4 Ministry of Finance Notification regarding businesses requiring permission under Section 5 of the Announcement of the Revolutionary Council No. 58 on the supervised personal loans dated 9 June 2005, provides oversight criteria such as:

– Allowing non-bank businesses to undertake supervised personal loan business, requiring companies limited or public limited companies with registered capital of at least 50 million baht and written permission from the Minister of Finance.

– Supervising personal loans covers lending money, purchasing, discounting, transferring or discounting bills or other negotiable instruments to individuals, for general purposes, not for spending on the lender's business, without collateral, including hire purchase and leasing loans. In this regard, personal loans do not include hire purchase and leasing of cars and motorcycles, student loans, loans for working abroad, medical treatment loans, employee welfare loans, and other loans prescribed by the Bank of Thailand, and do not include loans by financial institutions.

– Supervising personal loan businesses under supervision, both financial institutions and non-banks, must conduct business according to Bank of Thailand regulations equally, such as limits on lending amounts, interest rates, penalties, fees, and other expenses, reporting requirements, advertising, informing customers of account details, etc.

2. Information used

1) Survey data on a statistical basis and court verdicts.

2) Information on personal loan business operators in Thailand and abroad, including regulatory structures and relevant laws. Such information is from various sources on lending in the Thai system, including commercial banks, specialized financial institutions, business operators, credit financial companies, and pawnshops.

3) Information on foreign legal measures regarding personal loan supervision, which will study the guidelines of the United States, England, India, Bangladesh, Singapore, Hong Kong, and the Philippines. The foreign laws will be from the 19th century starting from 1920 onwards.

3. Data sources

1) From the survey, the researcher designed a questionnaire to obtain information on the basic information of the target group for informal borrowing, informal lenders, debt amount, motivation for borrowing, and so on. The researcher procured an outsourced service to conduct it. The data on informal creditors and debtors were obtained from 2 sources as follows:

– Questionnaires were conducted through field surveys of informal creditors and debtors in Bangkok covering Pathumwan, Bang Rak, Bangkok Noi, Bangkok, Huamark, Lad Prao, Phayathai Districts, and nearby provinces including Ang Thong (Mueang Ang Thong District, Pa Mok District) and Suphan Buri (Sam Chuk District).

– Data from the Public Debt Relief Center

The questionnaire (for informal debtors) used the database of the Ministry of Finance's 1689 informal debt hotline call center by calling to interview informal debtors randomly selected from the categorized report, which is the database of informal debtors nationwide who have previously contacted the call center.

2) From meetings or seminars

3) Library and website of the Bank of Thailand, other government agencies and financial institutions

4) National Library and university libraries

4. Data analysis

1) Descriptive analysis using data obtained from the survey, meetings, seminars, and data compilation from other sources

2) Basic statistical analysis using data obtained from the survey

3) Comparative analysis of data on the supervision of lending systems both domestically and abroad

5. Policy conclusion

Appropriate legal measures were proposed to regulate informal creditors.

Research Results

Due to the COVID-19 pandemic situation over the past few years, it has impacted the Thai economy with ripple effects across many sectors. This has led to declines in private consumption and investment, as well as incomes in the economic system. Unemployment has risen, leaving many people without income. When expenses rise but income stays the same or decreases, it drives people to seek other sources of loans to cover their spending. Borrowing and debt levels have increased. Legally, when borrowing occurs, it creates lending agreements between creditors and debtors. Debtors who work as government officials/state enterprise employees or company employees and have payroll evidence can apply for loans or credit cards from banks or non-bank financial institutions. However, over 76% of debtors have other independent occupations such as owning small businesses, merchants, farmers, daily wage workers, or general laborers. As they lack documents showing income, they cannot borrow from banks. Hence, they have to resort to borrowing from informal moneylenders, accepting very high interest rates of 5–20% per month. Over 92% of debtors borrow from informal sources 1–2 times per month. The amount borrowed ranges from 1,000 – 50,000 baht per month. Over 76% of debtors gave the reason for borrowing from informal sources as it is fast, easy, convenient, and does not require collateral. This causes debtors in urgent need of cash to willingly take on informal debt. However, debtors also face repayment risks for informal loans. They may not be able to acquire money in time or sufficient amounts to service the debt. Some creditors may use harsh collection tactics like intimidation, physical harm, property damage, and sending people to collect at homes/workplaces/shops. Some creditors may be more forgiving. If there were solutions for informal debt issues, over 84% of debtors want more formal borrowing channels and laws regulating lending by informal creditors, limiting interest rates to 1–5%.

Regarding legal amendments to regulate the incorporation of informal creditors, 25 informal creditors or 50% agree because they believe that formalization will provide them with more adequate guarantees. 13 informal creditors, or 26% disagree because they are concerned about scrutiny by government agencies leading to the seizure of all assets obtained from providing informal credit. Another 12 informal creditors or 24% did not express opinions on this matter.

Benefits

1. Understanding laws related to lending, interest rate limits, and oversight of lenders in Thailand, as well as models, methods, and interest calculations used in lending by informal creditors.
2. Understanding laws and regulatory approaches for lenders in foreign countries.
3. Legal measure recommendations to appropriately regulate lending businesses for public benefit and the overall economic system.
4. Government and related agencies have adequate information to prepare for improved borrower protection and clearly communicate this to the public.
5. Regulating informal lenders to operate formally incentivizes them to enter the tax system, expanding the tax base and allowing higher tax revenue collection.

Conclusions and Discussion

Conclusions

Studying information about informal debt and various government assistance projects over the past period reveals that informal indebtedness has long been an issue for the populace. Considering household debt statistics from the National Statistical Office for 2021, informal debt per household continues to rise. This debt is used for household consumption, business, mortgages/land purchases, agriculture, and other expenses respectively. The government has implemented various direct and indirect assistance projects to alleviate informal debt problems. These projects have provided some relief but statistics show many deeply indebted persons remain.

Discussion

Surveying 300 persons comprising 250 debtors and 50 creditors during June–July 2023 discovers persisting problems for informal debtors accessing formal credit channels, summarized below.

1. Difficult loan application processes involving extensive paperwork and complex procedures at financial institutions obstruct access, especially for persons without required documents. Lengthy processing periods also make formal loans less convenient compared to informal ones.

2. Strict formal lending criteria regarding guarantor income levels, job stability, and civil servant status exclude many debtors.

3. Government assistance may not match informal lending flexibility e.g. allowing daily/monthly repayments at daily/monthly interest rates.

4. Some debtors default on payments, get listed with credit bureaus, and become ineligible for further formal loans.

5. Inadequate publicity prevents information about certain government assistance programs from reaching target groups.

6. The conditions for granting loans from state banks in such projects specify the guarantee, which creates a significant burden for informal debtors participating in the project.

The debtor and creditor survey found the informal money market arose organically from basic human needs and situational environments e.g. children's school terms. Informal lending has rapidly grown because the formal financial system (commercial and state banks) fails to adequately meet most people's financial service needs. Other reasons include greater informal lending flexibility regarding repayment schedules, amounts, collateral, and so on.

Recommendations

Rather than eliminate informal creditors, the government should formally recognize and incorporate them as a vital financial mechanism. Laws should enable open participation. As evidenced in Indian Central Bank research, informal creditors can efficiently serve as bank representatives or agents to dispense credit, whether salaried or not. Their key advantage is strong "local familiarity". No government officer, financial institution staff, or other organization can penetrate communities as capably. However, considering foreign legal solutions for Thailand's informal debt issues requires adapting them to suit the local social landscape and informal credit characteristics. Successful and sustainable solutions need to holistically address multiple factors.

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