

# CHAPTER 1

## INTRODUCTION

The Convention on the Rights of the Child is international treaty for the rights of the children. Every member of United Nations has each consideration in response to Convention. As one of active member of United Nations, Thailand was also participate on making the ratification on the Convention.

### A. Background of the Problem

Thailand's origin is traditionally tied to the short-lived kingdom of *Sukhothai*. It was founded in 1238, after which the larger kingdom of *Ayutthaya* was established in the mid-14th century. The long tradition with a rich and diverse cultural heritage is one of the uniqueness of the country.<sup>1</sup> Thai culture was greatly influenced by Cambodia, Japan and India.

Thailand has the extraordinary status. Contact with various European powers began in the 16th century. Despite the continued pressure, Thailand is the only Southeast Asian countries which never have been taken over by a European power.<sup>2</sup> There are two main reasons for this. First, Thailand had a series of very able rulers in the 1800s. Secondly, it was able to utilize the rivalry and tension between the French and the British and thus remained as a

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<sup>1</sup> Christie Kenneth and Roy Denny, 2001, "*The Politics of Human Rights in East Asia*", Pluto Press, London, Sterling, Virginia, page 160.

<sup>2</sup> Bambang Cipto, April 2007, *Hubungan Internasional di Asia Tenggara, Teropong, Dinamika*,

buffer state between parts of Southeast Asia that were colonized by the two colonial powers.

Being the only state in Southeast Asian region which has never been colonized make Thailand has better maintenance to its independence. It makes the country also have the good administrations to manage and manipulate external powers to its benefit. For example, Thailand gives possibility to the foreign influence in the process of determining its institutions to some field, like its indigenous culture.<sup>3</sup> It is supported by Thai population of 56 million at that time which has made up particularly of Ethnic Thai. People practice the ethnic into several fields, the *Therevada* from Buddhism and include tribal minorities such as the *Hmong* in the north. Furthermore, the 10 percent of Chinese populations in Thailand, most of them have intermarried with *Thais*.

Thailand is known as one of the most interesting and dynamic societies in Southeast Asia. The country is also known as the most open economies in Asia since the rise of globalization. It is reasonable that the economic success in the country over last few decades take Thailand into the developing country. Since, the country's strong economy growth already began since long time ago, about in early 1960s.<sup>4</sup>

While, geographically, the position of Thailand near the neighboring country is taken to be consideration to the process of increasing the export and import activities in the country. The area is 514,000 km<sup>2</sup> make Thailand

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<sup>3</sup> Christie Kenneth, *Loc.Cit.*

<sup>4</sup> Osaki Keiko, 2003. *Journal of Population Research, Migrant Remittances in Thailand: Economic*

the world's 49th-largest country. It is comparable in size to France, and somewhat larger than the US state of California.<sup>5</sup> By early 1990s, Thailand has achieved an economic status following what people say 'The Four Dragons of Asia: Hongkong, Republic of Korea, Singapore and Thailand'. In the 1990s, the trend of movement changed to the newly industrialized countries in Asia.<sup>6</sup> The trend is including much movement of people to the countries.

However, the government of Thailand made progressive action towards its people, mainly the child rights. The concern is shown by the ratification of the United Nations Convention on the Rights of the Child on 27 March 1992.<sup>7</sup> The Convention on The Rights of the Child is established by United Nations on 20 November 1989.<sup>8</sup> It established based on the basic principles of United Nations, the particular decision from agreements and the proclamation of human rights which consider relevant.

The Convention discussed about the necessity towards legal protection and other protection of the children. It reviews the realities that children who feel brittle easily need particular guidance and protection. The protections such as the protection before and after they were born, the essential of the appreciation toward the cultural values from children

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<sup>5</sup> Christie Kenneth, *Loc. cit.*

<sup>6</sup> Asia Pacific Migration Research Network (APMRN), Issues paper from Thailand, *Migration Issues in the Asia Pacific*. Retrieved October 1, 2007, from <http://www.unesco.org/most/apmrnw14.html>.

<sup>7</sup> *Status of ratification of the Convention on the Rights of the Child*. Retrieved October 1, 2007, from <http://www.unhchr.ch/html/menu2/6/crc/treaties/status-crc.html>.

<sup>8</sup> *The Convention on the Rights of the Child*. Retrieved September 3, 2007, from

community and the essential role of the international cooperation include the member country in guarantee the children rights.

The Convention on the Rights of the Child consists of 54 articles. The Convention protects every child, regardless the nationality or immigration status. It is pointed out that states which already ratify the Convention have the obligations to adopt the principles outlined in the Convention towards each and every child within their jurisdiction.

The principles which were outlined in the Convention on the Rights of the Child such as the right to a nationality, physical integrity, the highest attainable standard of health, education, and the right to be free from discrimination, exploitation and abuse. Specifically, there are several provisions in the Convention which work relevant to the street children. It is including article 2 on the rights of non-discrimination, article 20 on the protection of child without family, article 32 on the protection of child labor, article 33 on protection of drugs abuse, article 34 on protection of sexual exploitation, and article 36 on protection of other exploitation.

Thailand then puts the Convention to the guideline of its national laws. Based on the reports from the Committee on the Rights of the Child in Thailand on Geneva, 9-27 January 2006, the follow up process of the Convention reservations is already producing the principle of non discrimination toward the children. The principle of non discrimination in the

The Child Protection Act of 2003 was established under the government of Prime Minister Chuan Leekpai. But the script of the act was delivered by the King on the 24<sup>th</sup> day of September 2003. The Act contains the provisions related to the restriction of the rights and liberties of children as the individuals. This act shall enter into force one hundred and eighty days from the date of its publication. The act then was enacted and entered into force to the country on 30 March 2004.<sup>9</sup>

This act is consisting of 88 articles. It is consist of nine chapters. The chapters concern to the Child Protection Committee, the Treatment of the Child, Social Welfare, Safety Protection, Child's Safety Protectors, Nursery, Remand Home, Welfare Centre, Safety Protection Centre, and Development and Rehabilitation Centre, Behavior Promotion of Pupils and Students, Child Protection Fund, Penalties and Transitional Provisions.

The act intends to provide the better care for children and enable them to develop appropriately, as well as to protect them from abuse, exploitation, prostitution and unfair discrimination. The act also requires senior civil servants, both the national and regional levels, as well as heads of local administration to protect the safety of children living in the areas under their jurisdiction, regardless of whether or not they have parents or guardians, and to have the authority and duty to supervise and inspect various types of child welfare centers.

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<sup>9</sup> *Report from the Committee on the Rights of the Child*, Thailand 29 December 2005. Retrieved

However, The Convention is already ratified by many countries. In September 1990, there were 166 member countries of the Convention.<sup>10</sup> More countries have ratified the Convention than any other human rights treaty in history, which is 192 countries had become State Parties to the Convention as of November 2005.<sup>11</sup>

And in the current time, there were 195 states have ratified the Convention.<sup>12</sup> All member countries of the United Nations, except the USA and Somalia, have ratified it, either partly or completely.<sup>13</sup>

The United States and Somalia have signed the Convention, but never completed their ratification processes. On February 16, 1995, Madeleine Albright, at the time the U.S. Ambassador to the United Nations, signed the Convention. Though generally supportive of the Convention, President Bill Clinton did not submit it to the Senate for its advice and consent.<sup>14</sup> To make clearly, the administration of President George W. Bush has explicitly stated its opposition to the treaty:

*"The Convention on the Rights of the Child may be a positive tool for promoting child welfare for those countries that have adopted it. But we believe the text goes too far when it asserts entitlements based on economic, social and cultural rights. ... The human rights-based approach ... poses significant problems as used in this text."<sup>15</sup>*

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<sup>10</sup> Status of ratification of the Convention on the Rights of the Child. Retrieved August 5, 2007, from <http://www.unicef.org>.

<sup>11</sup> Convention on the Rights of the Child, Retrieved on October 1, 2007, from [http://unicef.org/index\\_30229.html](http://unicef.org/index_30229.html).

<sup>12</sup> Free the Children. Retrieved August 5, 2007, from <http://free.the.children/en/808990.html>.

<sup>13</sup> Convention on the Right of the Child, Wikipedia, the free encyclopedia, Retrieved October 1,

In fact, the U.S. refuses to ratify the Convention for two numbers of reasons. There some opposition by some political and religious conservatives to the treaty and different attention between United State's law and Convention on the Rights of the Child. Different attention between U.S. law and the Convention is about the parental authority, the death penalty, issue of rights and issue of jurisdiction.

In the U.S views, it is believed that the Convention will undermine the parental authority. It will interfere with parents' ability to raise and discipline their children. It also makes the rights of children more important than the rights of parents.<sup>16</sup> In reality, the Convention repeatedly refers to the importance of the parent-child relationship, and requires governments to respect the rights and duties of parents.

The Convention also prohibits the use of the death penalty for offenses committed by persons under the age of 18. However, 25 U.S. states allow executions of juvenile offenders, and as of July 1, 2001, there were 85 juvenile offenders on death row in the United States. In the last five years, eight executions of juvenile offenders were carried out in the United States.<sup>17</sup>

The U.S. also has recognized civil and political rights of the child such as the rights to expression, assembly and due process. But they do not recognize the economic, social and cultural rights of the child such as the right to education, health care and an adequate standard of living. In reality, the Convention is includes both of the concern.

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<sup>16</sup> *Convention on the Rights of the Child*. Retrieved December 3, 2007, from

The U.S. argues that many of the issues addressed by the Convention lie primarily within the jurisdiction of the country's 50 states, rather than with the federal government.<sup>18</sup> For example, in the United States, individual states are responsible for education and for setting laws related to the administration of juvenile justice. Actually, federalism in the U.S. should not necessarily be an obstacle to ratifying the Convention. Since the other countries with the federal systems, including Brazil, Germany and Mexico have ratified the Convention.

Unlike United States, the reason of Somalia refuses the Convention on the Rights of the Child because of the impossibility to make ratification of the Convention. Actually Somalia has signed the Convention in May 9, 2002.<sup>19</sup> However, it does not currently have an internationally recognized by its government.<sup>20</sup> The government views that Somalia has been in conflict for the past 16 years. It makes many children in the country have grown up not knowing what it means to have the right to education, clean water or protection.<sup>21</sup>

To make clearly, the UNICEF Representative in Somalia, Christian Balslev Olesen said that: "Children in Somalia live in one the most challenging circumstances in the world, most recently surviving a year that has seen floods, drought and a deteriorating security situation."<sup>22</sup> The

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Somalia Statement*. Retrieved May 3, 2008, from <http://www.un.org/ga/children/somaliaE.htm>.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Protecting children's rights where they are not enshrined by treaty*, from



government think that the most important thing is not only comply with the obligations of the Convention, but provide a better life for children.

However, the Convention on the Rights of the Child is already being an international instrument about the human rights for children. Every United Nations member country, besides the United States and Somalia, has ratified the Convention on the Right of the Child. Absolutely there is consideration of each member country when was ratified the Convention or not, like United States and Somalia.

## **B. Purpose of Research**

This research aims to:

- a. Answer the research question that is why Thailand puts the Convention on the Rights of the Child into its national law.
- b. Proving the hypothesis of the research, which are internal problem in Thailand that is street children related to the poverty and public service, and the moral obligation of the United Nations member states.

## **C. Research Question**

The question of the research is formulated as follows:

Why did Thailand put the Convention on the Rights of the Child into its

## **D. Theoretical Framework**

### **a. Concept of children and street children**

To support the explanation of this research, the research adopts the concepts of children and street children. According to the Convention on the Rights of the Child on first article, a child means every human being below the age of eighteen years unless under the law applicable to the child, who majority is attained earlier. This denotes children as to whom all human rights conventions apply, taking into account the special circumstances regarding age, but emphasizing their humanity and rights, including respect for their person, privacy, and identity. The ILO Convention 182 on the Worst Forms of Child Labor also follows the Convention in giving the meaning: "A child includes anyone under the age of 18, with no exception".<sup>23</sup> In the Child Protection Act of 2003, child means a person below 18 years of age, but does not include those who have attained majority through marriage.

While, the Child Protection Act of 2003 defined street children as a child who has no parents or legal guardian, or whose parents or guardian either fails or cannot afford to take care of the child, causing such child to wander from place to place; or a child who develops a vagrants lifestyle likely to be harmful to his or her safety.

The range of meanings is bound up with cultural connotations of what the "place" of children should be. The Convention is clear that

children should be with their family, unless it is in their best interests to be elsewhere. Street children “out of place,” may be out of the family. Their family members may have separated themselves from the children, or caused the separation. The children may have been abandoned (as babies or older children), sold, been trafficked with or without their parents’ collusion, or been sent away to work.<sup>24</sup>

**b. Theory of political system: structure and function by Gabriel A. Almond**

The political system usually related to the policy making which binding the society. According to Almond, the political system should be analyzed by using the concept. The concepts are system, structure and the function. These concept in the political system are connected each other. Each political system has the institution or the structure, such as parliament, bureaucracy, court and political party. Those structures will practice the activities or certain function. The functions will lead the political system to formulate and practice the policy.

From the explanation above, the concepts of system, structure and function actually are part of the same process. Therefore, this research will be using the theory of political system that is structure and the function by

structure and the function, the process and the policy, and how the system works.

According to Almond, there are three functions of politic which is not involved directly in the process of public policy making and practice; political socialization, political recruitment and political communication. However, these functions also take a fundamental part in determining the working of political system.

In Almond's figure, the functions of politic that is political socialization, political recruitment and political communication are point out directly to the society as the domestic environment and interest group, political parties, legislative, executive, bureaucracy and also court justice.

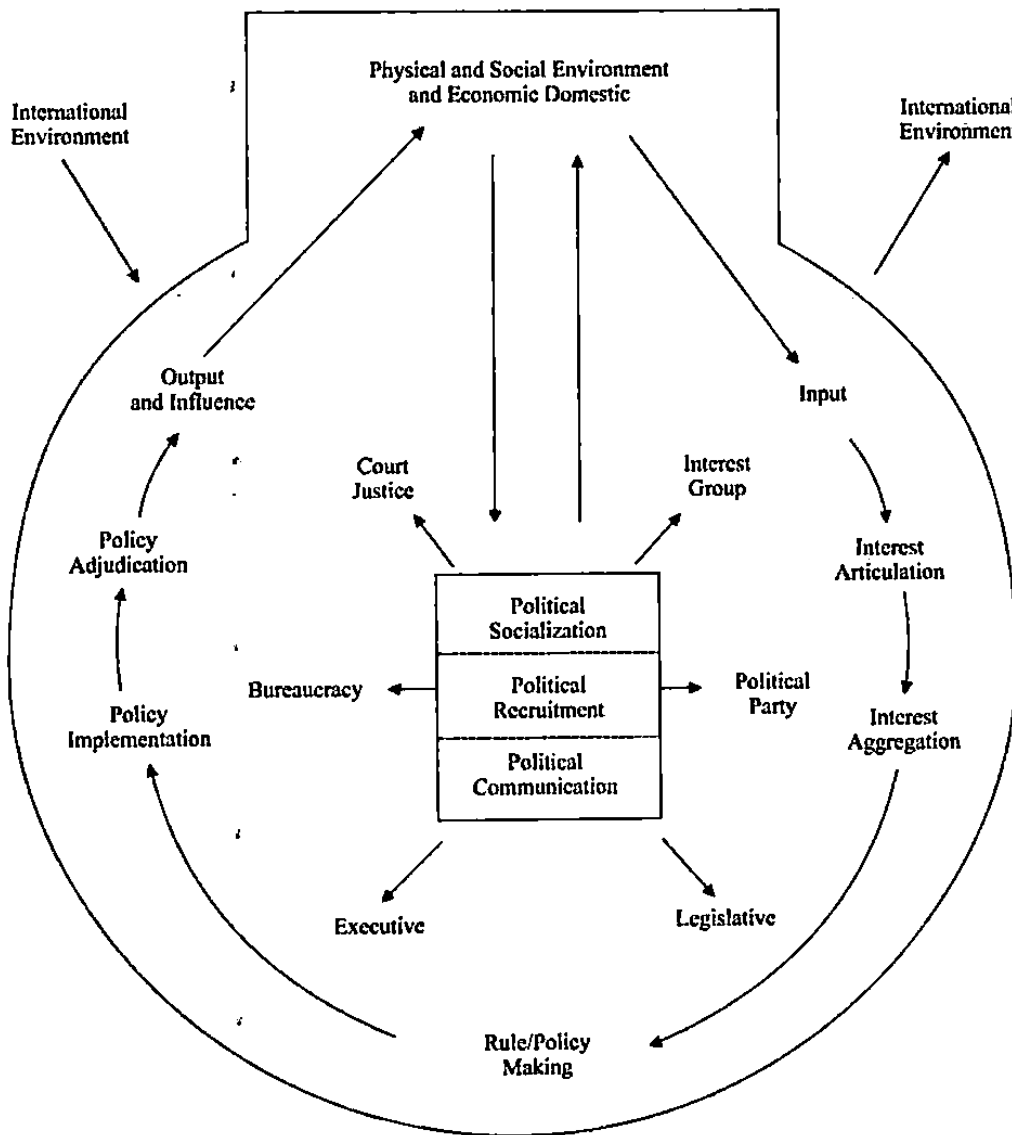
The interest group is group of people who share interest with a common purpose. The interest group receives the interest from the society then makes the formula of it. After that, the formulas of interest bring to the political institution or government to make the decision or policy. The political parties aims to take the public functional, political or governmental functional. These political parties then united in legislative

..... who is head of

Figure I

(The following is the figure of political system proposed by Gabriel A. Almond)

Political System: Structure and Function



In the border of the circle, there are functions of input which needed to make and practice the policy in each political system. Before the policy and the goals legitimated, the individuals and the group in the society should be determining what will be their interest, that is what will be they achieve from the politic. The interest and the demands should be united becomes the alternatives of policy. This process called the interest articulation which point out to the interest aggregation. After that, the alternatives of policy will be considerate and determined as a choice. This decision should be put into practice. If the decision opposite or deviate, so there must be an adjudication process.

The implementation of the policy called as the output of political system. This output will be influence the economic life, social structure and the culture of the domestic society. For example, the several sector such as tax, service and benefit and the regulation of behavior. The influences toward this society subsequently influence the next demands proposed to the political system. This will be increase or decrease the political loyalty in the society.

The theory of political system proposed by Almond illustrating that the decision of Thailand puts the Convention on the Rights of the Child into its national laws is firstly influence by the international environment. The international environment is the existence of the Convention on the Rights of the Child, the international instrument for the rights of

The domestic influences which come from physical, social and economic, will also take as the consideration. Despite the performance of economic prosperity, poverty is being a serious problem in Thailand. The 1997 economy crisis in Thailand was leading the poverty in some factors. Poverty is also a problem among children, who make up a considerable portion of those who are poor.<sup>25</sup>

Since the economic crisis, the streets of Bangkok have become home to more and more children. It was increased the street children in Thailand.<sup>26</sup> Of the estimated 7.9 million poor in 1998, 3.1 million were children. This represents about 40% of the poor population.<sup>27</sup> Before the crisis, the majorities (80%) of street children were from the poor families; in 1998, 10-15% of the children are come from the middle class families.<sup>28</sup>

In 1997, the total number of street children was about 14.000-16.000. Moreover, according to Somphong Chitradub, in 2006, the number of street children in Thailand is about 18.000, and will increase to 30.000 in the next 3 years. More than 50 percent of street children are from the northeastern part and foreign countries (such as Cambodia, Myanmar, and Laos).<sup>29</sup> The number of street children which increase year by year should

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<sup>25</sup> *Thailand Poverty*. Retrieved September 7, 2007 from [http://poverty.nesdb.go.th/Edocument/Eng\\_Paper/Pov\\_MDG.pdf](http://poverty.nesdb.go.th/Edocument/Eng_Paper/Pov_MDG.pdf).

<sup>26</sup> *Fact book on Global Sexual Exploitation*, Retrieved December 24, 2007, from <http://www.uri.edu/artsci/wms/hughes/thailand.htm>.

<sup>27</sup> *Thailand Poverty*, Loc.cit

<sup>28</sup> *Ibid.*

<sup>29</sup> Sucharitkul, March 2007, *Street Children as Marginal People: the Relationship between Life History and Social Networks on the Street*, Journal of the Graduate School of Letters, Hokkaido University. Retrieved December 3, 2007 from

take the attention in order to keep their rights. This attention is being the interest which particularly comes from the physical and social environment.

The interest group, political party, and also the legislative practice the function of input that is interest articulation an interest aggregation. The interest groups come from the Non-Governmental Organization (NGO) and civil society. There are several NGO in Thailand concern to the children and bring their interest to the government. The NGO's which involved to the right of the child particularly street children are The Volunteer for Children's Development Foundation (VGCD), Childlife, Human Development Foundation, Child's Dream, Child Watch Phuket, Foundation for Children and other. These NGO provides support to the street children, AIDS orphans and all children suffering from poverty, sponsors building schools, medical treatment and medicines supply, campaign for public awareness on children's rights and so on. These NGO contribute to the children rights, include the street children. The concern is combating the problem of poverty and access to the public services by the street children. They delivered this concern to the government of Thailand in order to make the policy that is support the implementation of the Convention on the Rights of the Child.

The political parties in Thailand at that time also take contribution in delivering the interest of children rights to the government, as the



or Rama IX.<sup>30</sup> In the executive board, the king of Thailand is a head of state and the commander-in-chief of the armed forces. Although the king has little direct power, he may exercise a significant influence on the political leaders. He also gives a moral influence on the society as a whole. The king also formally appoints the prime minister.

However, the chief executive official in the country is the prime minister. The prime minister heads the cabinet, which consists of no more than 35 members. The prime minister is elected from among the members of the House of Representatives. The Prime Minister is usually the leader of the dominant party of the following elections.

Nevertheless, the legislative power in Thailand is covered in a bicameral (two-chamber) National Assembly (Ratha Sapha). This National Assembly is the parliament in Thailand. It is consisting of a House of Representatives (Sapha Phuthaen Ratssadorn) and a Senate (Woothi Sapha).<sup>31</sup> The House of Representatives has 500 members. The 400 members of them are elected from single-member constituencies. The other remaining 100 are elected through a party-list system. These House members are elected to four-year terms. However, these terms can be cut short if the king decides to dissolve the legislature and call for new elections. The Senate has 200 members. They had elected from the districts which corresponding to the provinces in Thailand.

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<sup>30</sup> *Thailand*, on Microsoft © Encarta © 2008. © 1993-2007 Microsoft Corporation.

While, there are many parties in Thailand serve as the personal political machines of individuals or small groups. Some of them also represent defined ideologies. The major parties involved are Democrat Party and People's Power Party. The minor parties are Thai Nation Party, Great People's Party, Royalist People's Party, For the Motherland, Thais United National Development Party, and Neutral Democratic Party. These political parties which united as the legislative board are delivering the interest of children rights to the executive board in Thailand, the Prime Minister Thaksin Shinawatra and King Bhumibol Adulyadej. This interest will be decided by the Prime Minister under the bureaucracy in Thailand. The decision is put the Convention on the Rights of the Child become its national laws, that is the Child Protection Act of 2003. The Child Protection Act of 2003 then called as the output of political system.

## **E. Hypothesis**

Hypothesis is temporary answer of the research problem which the truths still need to be proof. Based on the framework of theories which has been explained above, it can be assumed that the consideration of Thailand puts the Convention on the Rights of the Child into its national laws are:

- a. The internal problem in Thailand that is street children related to the poverty and public service.

## **F. Scope of Research**

To make discussion more focus, the research will limit the time in order to prevent subject from being expanded. This research will focus the discussion particularly when the 1997 financial crisis happen in Thailand and in the time of establishing the Child Protection Act in 2003 in relation to overcoming the problems of street children focusing on the issues of human rights of children until today.

## **G. Method of Research**

This research works based on deductive logic. In the science, there are two important elements: logical integrity and empirical verification.

In deductive logic, the theoretical expectations were borne out by empirical reality.<sup>32</sup>

To describe the problems and verify the hypothesis based on the empirical reality, this research will use library research method. The data collected is secondary data. The research collect data and information from some references in forms of books, newspapers, journals, encyclopedia, magazines, internets and the other source dealing with the topic of this research.

## **H. System of Writing**

The outline of this research is described following:

CHAPTER I discusses about the background of problem, purpose of research, research question, theoretical framework, hypothesis, scope of research, method of research, and system of writing.

CHAPTER II discusses about the efforts of Thailand in support the children rights. The research will be analyzing the rights of the child as commonly, and will be focused on the street children rights. The support will be illustrated by the explanation of the Child Protection Act of 2003 as the Thailand national laws, and the involvement from the government institution and NGO'S towards the street children.

CHAPTER III explains about the Convention on the Rights of the Child. The further explanation will be point out to the children rights under the international scope, the approach of children rights under the Convention on the Rights of the Child, kind of ratification of the Convention, the elements related to the Convention, and the reason of United Nations ask member to ratify this Convention.

CHAPTER IV explains about the consideration of Thailand puts the Convention on the Rights of the Child into its national laws. This explanation will be viewed on two approaches, the internal problem and the external problem. The internal problems are street children related to poverty and

Nations member states. This explanation also will show the real condition of the street children in Thailand.

CHAPTER V is the closing part of this research that contains of conclusion.