

Chapter Three: Field Research on Alternative Dispute Resolution in Thailand

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1. Abstract

The objective of the field research reported in this Chapter is to survey the understanding, attitudes and expectations of judges and lawyers towards conciliation. In this study, the subjects of the analysis are judges and lawyers who are working and practicing in the North Bangkok Kwaeng Court, the Civil Court, the Labor Court and the Central Intellectual Property and International Trade Court. In total 142 subjects are involved in this field research.

As far as awareness of lawyers is concerned, the result shows that most lawyers, 95.4% of which knew of court-annexed conciliation from court's public relations. 83.3 % of lawyers in this sample group used to attend court-annexed conciliation. The reasons given are time and expenses saving. It also shows that cases with high amount in dispute tend to be more disposed to conciliation than cases with lower amount in dispute. More importantly, the decision to engage in conciliation is partly related to the knowledge and understanding of lawyers towards conciliation.

Concerning the attitudes of judges and lawyers, the result shows that both groups acknowledge conciliation and deem that it is as fair as proceedings in Court. They also think that such dispute resolution method is suitable for Thai society. However, both groups agree that conciliation is more complicated than the proceedings of the Court.

As far as the expectations from judges and lawyers are concerned, the study reveals that conciliation can be effective only in certain cases.

The survey suggests that there should be an establishment of tripartite quorum of conciliators. The quorum of conciliators, which consists of a judge, a professional or inter-professional registered with the court and a lawyer or University law professor, is appropriate. The court should impose an exact period of time for conciliation in order to prevent the problem of delay. Conciliation should conduct in the court or in the specific organization. Moreover, conciliators should be trained or pass courses on the conciliation techniques.

2. Rationale and Objectives of the Study

The court of justice is an organization that applies judicial power in the name of the king. Its function is to administer justice in order to maintain the public's rights and liberty according to the law. The affair of the Court of Justice is to manage the wheel of justice under correctness, fairness, and speediness including trust of the public. (The Rationale: Technical Affairs Division, 2000: 13) However, at present, the problem occurs from the number of cases pending in court each year. Judges are unable to adjudicate all cases in a year, so that some cases are in arrears and piled up each year. From judicial statistics, at the beginning of 2001, there were 216,578 cases pending in courts of first instance throughout the country. There were 840,939 new cases arising. Only 843,104 cases (79.72 %) were disposed of. There were, therefore, 214,413 cases pending in court for the next year. (The Office of Information

Technology, 2001: 5) Moreover, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) prescribes the proceedings of the court in Section 236 that *"to adjudicate a case in the court, there must be a full quorum of judges. A judge, who does not sit on the hearing in that case, is prohibited from participation in any judgment or ruling of such case, unless there is force majeure or other unavoidable necessity"*. Due to the aforesaid provision, after October 11, 2002, the operative date of the above provision, judges are required to sit as a quorum, which normally consists of two or three judges as against one judge sitting alone at present. However, the number of judges is not consistent with the amount of cases pending in court. This situation will lead to inadequate number of judges to sit and adjudicate cases and definitely will create more back log of cases. Parties will consequently spend more time and expenses when bringing a case to court. This is a main reason causing the party not receiving the proper court service. In the long term, public may be reluctant to enter the mechanism of dispute resolution by the Court of Justice. The Court, therefore, has been trying to find methods to reduce the number of pending cases and the number of the cases entering to the proceedings.

At the moment, the method most favored by the Court is conciliation. The Judicial Administration Commission issued the Regulation of Judicial Administration Commission Governing Conciliation B.E. 2544 of August 23, 2001 by virtue of the provisions of Section 17 (1) of Judicial Administration Act B.E. 2543. (The Office of Judicial Administration Commission, 2001: 1) It reads *"the quorum of judges in court shall be in charge of the conciliation in order to resolve the dispute. This is beneficial to the party and the proceedings of the court at the same time. Because of conciliation, the case can be settled rapidly and save both time and expenses. Moreover, this method satisfies all parties and maintains good relationship between them. Also conciliation is the main alternative that the Court shall apply to dispute resolution before the case enters the proceedings of the court."* (The Office of Judicial Administration Commission, 2001: 2) In fact, the conciliation has been applied in courts for some time. The result of such resolution reflects some reduction of cases pending in courts. For example, in 2000, in the Labor Court, there were 14,772 cases entered conciliation under Section 38 of the Establishment of Labor Court Act. 7,178 cases were settled. (The Central Labor Court, 2000: 1-2) The statistics of the Civil Court in the same year shows that 187 cases were conciliated. 49 cases were settled. Only 82 cases re-entered the proceedings of the court. (The Civil Court, copy document: 1)

The purpose of this field research is to explore whether conciliation is suitable, acceptable and necessary as a means of dispute settlement in Thai society. As a consequence, the Court of Justice could study and develop the standard and effective mechanism of ADR to facilitate efficient dispute resolution mechanism for the public.

Objectives of the Study

1. To explore knowledge and understanding of conciliation of the lawyers who practice in the courts.
2. To study attitudes toward conciliation of judges and lawyers in the courts.
3. To study the expectations toward conciliation of judges and lawyers in the courts.

3. Theoretical Background

On conciliation practice in the Court, the Judicial Administration Commission issued the regulation governing dispute conciliation B.E. 2544 (2001) as general guide lines for the courts.

The details of the regulation are summarized as follows:

"Case" means a civil case or any case that may resolve the dispute by an agreement of the parties.

"Person in Charge of Court's Affairs" means President of the Supreme Court, President of the Court of Appeals, President of the Regional Court of Appeals, and Chief Judge of Court of First Instance, including any person empowered to perform the same function.

"Conciliator" means a judge, an officer in the court, a person or persons appointed to be conciliator assisting the Court to conciliate the dispute according to this Regulation.

3.1 Conciliation of the Court

The court shall be empowered to initiate conciliation according to Civil Procedure Code. Any action under this regulation shall not affect the power of the court on conciliating the case by itself.

3.2 Conciliation of the Conciliator

1. Appointment and Dissolution of Conciliator

When a case enters into court proceedings, the person in charge of court affairs shall appoint a judge who is not active in the quorum, an officer in the court or any person or persons to be the conciliator in order to assist the court on conciliation. In this case, the appointee shall conciliate the dispute according to this regulation.

When the person in charge of court's affairs deems appropriate or be informed by the court, he/she may appoint any judge or judges to be the conciliator. In case the person in charge of court's affairs has assigned a judge or judges to be the conciliator of the court, the court may appoint one of those judges as the conciliator according to the procedure prescribed by the person in charge of court's affairs. Also the person in charge of court's affairs or the court may appoint a court officer or officers to be the conciliator. However, the judge or officer of the court who is appointed to be the conciliator does not entitle to receive a commission or expenses according to this Regulation.

In order to appoint any person or persons to be the conciliator, the person in charge of court's affairs or the court shall consider, as much as possible, the suitability of conciliator and the satisfaction of all parties. In case of appointing a person who is not registered as the conciliator of the court, the person in charge of court's affairs or the court may appoint such person only when all parties involving in the conciliation grant approval and accept the responsibility for the expenses of such person.

If the case is likely to be delayed from entering into conciliation, the court may order to proceed with the trial at the same time as conciliation.

After being appointed, the conciliator shall inform the parties of any personal interest or relationship between himself and any party, if any.

In the following cases, the conciliator shall be dismissed from the duty:

- (1) The conciliator is removed from the register.
- (2) The court orders the dismissal of the conciliator when there is following evidence:

- a) The conciliator does any act as the representative or on behalf of any party.
 - b) The conciliator has interest or relationship with any party, so that such relationship may affect the neutral role of conciliator.
- (3) The court orders to dismiss the conciliator because he/she omits or neglects his/her duties.

After the conciliator has been dismissed from the position, the court may order to terminate the conciliation or appoint a new conciliator.

2. Conciliation Process

After the court orders an appointment of the conciliator, the procedure of submission of document and filing or any other procedure between the court and the conciliator shall be in accordance with the court specification.

The party shall attend the conciliation meeting in person. He/she also may appoint a representative to attend the meeting. In case the party is a juristic entity, the party may appoint an authorized agent to attend the conciliation meeting. The appointment shall be made in writing and submitted to the conciliator.

Prior to conciliation, the conciliator shall request the parties to sign an agreement to enter into conciliation and accept to follow the conciliation regulations.

Prior to the conciliation, the conciliator may discuss with the parties in order to set up the agenda of conciliation.

For the benefit of conciliation, the conciliator may allow the parties to explain the facts or general information of the dispute including proposals to resolve the dispute. The conciliator may also offer to exchange aforesaid information between the parties.

In conciliation meeting, if the conciliator deems necessary for the benefit of conciliation, he/she may allow only the two parties or any party participate in the conciliation meeting.

The conciliation shall be proceeded in secrecy. The details of conciliation shall not be recorded, no matter in writing or electronics media or other information technology media unless the parties have an agreement to record the whole or partial process of conciliation. The parties shall pay for the expenses of the recording.

If the conciliator deems appropriate, he/she may arrange to draft the contract of settlement for the parties. In case there is any expense in the process of contract drafting, which shall be paid by the parties, the conciliator may draft the contract only when all parties grant approval and accept to pay for such expense.

The conciliator must proceed the conciliation within the time specified by the appointer. If the appointer deems appropriate or the conciliator requests, the appointer may expand the period of time for conciliation.

3. Termination of Conciliation

The conciliation is terminated in the following cases:

- (1) The parties can resolve the case by withdrawing the charge or the parties request the court to pass the judgment as specified in the conciliation agreement.
- (2) Any party withdraws from the conciliation.
- (3) The conciliator is unable to finish the conciliation within the specified period of time.
- (4) The conciliator considers that the dispute may not be resolved by conciliation.
- (5) The Court considers that the dispute may not be conciliated or the conciliation is no longer beneficial to the case.

When the conciliation is terminated, the conciliator shall inform the result of conciliation to the court so that the court will continue with the trial as soon as possible. In case where the parties agree to resolve only some parts of the dispute or to accept certain fact with approval of referring that fact to the proceedings of the court, the conciliator shall prepare the summary of the agreement and inform the matter to the court.

4. Secrecy of Conciliation

Unless otherwise agreed, the parties and relevant persons agree to keep the information acquired during the conciliation as secret. Also they agree not to apply any fact or the procedure of conciliation as the evidence in any procedure of the court proceedings, no matter in the same case or any other cases even in the process of the arbitration.

The information under the above paragraph includes the contact between the parties, any fact on the proceeding of conciliation, content or details of negotiation in the conciliation process, the fact that any party accepts or denies in the conciliation process, opinions or any proposals offered by the opposite party in the conciliation, and opinions or proposals offered by the conciliator.

5. Registration of Conciliator

The Secretary of Office of Court of Justice shall prepare the conciliator register.

Any person applying to register as a conciliator must be a person who has knowledge or experience on the conciliation. Also aforesaid person shall be qualified and not have the forbidden characteristics detailed as follows:

- (1) He/she shall have knowledge in certain fields such as science, economics, law, social sciences, etc.
- (2) He/she shall be in or over the age of 25.
- (3) He/she shall not be the official of the Court of Justice according to the law governing the official regulation.
- (4) He/she shall not have improper personal record.
- (5) He/she shall not be incompetent or quasi-incompetent person.
- (6) He/she has not been imprisoned by the final judgment, unless for negligent or petty offences.

The conciliator register is valid for two years

The conciliator must act as follows:

- (1) Prepare the conciliation.
- (2) Support the negotiation between the parties. He/she also shall advise the methods of dispute resolution.
- (3) Do not express any opinion that forecast the ruling of the dispute, unless allowed by the parties.
- (4) Do not oppress, force or influence the parties in any way that may affect the preference of the parties to resolve the dispute.

The conciliator must commit the duties according to the order, notification, rule, morality or other criteria issued under this Regulation, so that the conciliation shall be proceeded efficiently and attribute most benefit to the parties.

The conciliator shall not be liable for any action in the conciliation, unless such action or omission is caused by intent of recklessness.

6. Commission and Expenses

The conciliator who is appointed from the conciliator register has the right to receive commission and expenses according to criteria and procedure prescribed by the Secretary of the Court of Justice with the consent of Judicial Administration Commission.

In case of appointing any person out of the register, The parties shall be responsible for the expenses of the conciliation equally, unless otherwise agreed.

The conciliator may appoint a third person to carry on any function, the expenses of which shall be borne of the parties.

4. Data and Methods

In carryingg out this research, the researchers divide the data into two parts:

1. Documentary Study. It is the data obtained from relevant documents and researches, that is, academic documents, articles, journals, theses, and reports on relevant researches in both Thai and foreign languages.
2. Field Study. That is using questionnaire as a tool to collect the data from study group and then making statistical analysis.

4.1 Subjects and Sample Groups

In this study, the subjects are divided into 2 groups as follows:

1. Sample group from inquiry, that is, lawyers.
2. Sample group from interview, that is, judges.

To select the sample group, it applies systematic random sampling by specified the qualifications of the subjects as following:

1. Sample group from inquiry.
 - 1.1 Lawyers who are practicing in the courts.
 - 1.2 Lawyers who have or have no experience of conciliating cases in or out of the court.
2. Sample group from interview.
 - 2.1 Judges.
 - 2.2 Judges who have experience of conciliating the case in or out of the court.

In this study, the researchers specify the size of sample group by considering the number of cases which are adjudicated per month in the court. In the period of collecting the data is October 2001. They are as follows:

TABLE 1
The Number of Adjudicated Cases per Month in Each Court

Court	Number of adjudicated cases/month
1. The Civil Court	2,994
2. The Labor Court	1,255
3. The Central Intellectual Property and International Trade Court	1,183
4. The North Bangkok Kwaeng Court	1,198
Total	6,630

Source: The Office of Information Technology (2001); cases statistics.

The researchers apply the criteria to select the sample group comparing with YAMANE TABLE : *sample size for specified confidence limits and precision when sampling attributes in percent ± 10 .*

Therefore, the researchers specify the number of sample group in this study at 196 samplers.

1. 98 samplers from inquiry.
2. 98 samplers from interview.

However, when collecting the data from the samplers, some of them cannot be analyzed. As the result, the total of samplers in this study are 142 samplers.

1. 108 samplers from inquiry.
2. 34 samplers from interview.

4.2 Scope of the Study

In this study, the scope is as follows:

1. Scope of Content can be divided into 2 parts as following:
 - 1.1 Scope of Questionnaire. It is the study of personal data, information of the case which the party or lawyer involve in the courts, information and understanding of conciliation, and samplers' expectation of conciliation process.
 - 1.2 Scope of Interview. It is the study of personal data, information of the case which is conciliated, information and attitudes toward conciliation, and the expectation of conciliation.
2. Scope of Samplers. In this study, the samplers are judges, lawyers, and parties who work or practice in the Civil Court, the Labor Court, the Central Intellectual Property and International Trade Court and the North Bangkok Kwaeng Court.

4.3 Tools of the Study

The researchers use questionnaires and interviews as the tools of the study. They are built by virtue of relevant ideas and literatures and examined by the relevant professional. Both questionnaire and interview form consists of closed-ended question and opened-ended question.

- a. Questionnaire. It is divided in to 4 parts as follows:
 1. Personal Data. It consists of information on sex, age, marital status, highest education, occupation, average salary and relevance of the sampler to the case.
 2. General information of the case. It consists of information on type of case, type of party, amount of the case entering the court, time of case proceeding, including current procedure of the case, expenses of the proceedings and experience in litigation of the lawyers.
 3. Definition of conciliation. It consists of knowledge and understanding of conciliation including the experience of operating conciliation.
 4. Samplers' expectation of conciliation. It consists of the information of attitude toward the acceptance of conciliation, problems of application of conciliation, fairness of conciliation including attitude toward the application of conciliation as the alternative to the proceedings of the court.
- b. Interview Form. It is divided into 4 parts as follows:
 1. Personal Data. It consists of information on sex, age, marital status, highest education, occupation, average salary and relevance of the sampler to the case.
 2. General information of the case. It consists of type of case that the sample group successfully settled, together with how much time and expense they has spent in the conciliation.
 3. Information of conciliation. It consists of reasons why the sample group decides to enter to conciliation and the attitude toward conciliation.
 4. Expectation of conciliation. It consists of level of trustworthy to conciliation, samplers' attitude toward the application of conciliation to problem solving, level of fairness and attitude toward the application of conciliation as the alternative to the proceedings of the court.

4.4 Questionnaire and Interview Form Examination

1. Content Validity. The questionnaire is examined and amended by relevant professional or experienced person in such matter.
2. Amendment. Both questionnaire and interview form are amended for correctness and suitability.
3. Reliability. After establishment of the creation, the questionnaire are examined the reliability.

4.5 Methods of Data Collection

Upon collecting the data, the researcher group asks the samplers to fill in the questionnaire. Also in interview form, the researchers interview the samplers structurally. After the data is collected, the researcher then organized and analyzed all data.

4.6 Data Analysis

This study analyze the data with computer program, SPSS : *Statistics Package for Social Science*.

In this study, it applies descriptive statistics. It applies percentage, mean, and standard deviation to explain the data.

4.7 Presentation of Result of the Study

In this study, it presents the result of study in form of table with narration.

5. Result of Information Analysis

5.1 Presentation of Analyzing Result of Personal Data of the Lawyers.

TABLE 2
General Information of Social and Economic Background of the Lawyers.

<i>Personal Data</i>	<i>Number of Samplers</i>	<i>Percentage</i>
1. Sex		
Male	96	88.9
Female	12	11.1
Total	108	100.0
2. Age		
23-35 years	36	33.4
36-45 years	49	45.4
46-55 years	21	19.4
Over 55 years	1	0.9
Not specified	1	0.9
Total	108	100.0
3. Marital Status		
Single	45	41.7
Married	60	55.6
Divorced	1	0.9
Not specified	1	1.8
Total	108	100.0
4. Level of Education		
Lower than Bachelor Degree	3	2.8
Bachelor Degree	78	72.2
Barrister-at-Law (Thai Bar)	15	13.9
Master Degree	12	11.1
Total	108	100.0
5. Average Salary (Baht/Month)		
Lower than 25,000	36	33.4
25,001-50,000	52	48.1
50,000-75,000	3	2.8
75,001-100,000	4	3.7
More than 100,001	1	0.9
Not specified	12	11.1
Total	108	100.0

6. Case Relevance		
Plaintiff's counsel	63	58.4
Defendant's counsel	44	40.7
Not specified	1	0.9
Total	108	100.0
7. Type of Case		
1. Infringement	8	7.5
2. Selling	4	3.8
3. Loan	20	18.9
4. Embezzlement	2	1.9
5. Defraud	1	0.9
6. Breach of contract	8	7.5
7. Cheques	3	2.8
8. Eviction	10	9.4
9. Criminal case	3	2.8
10. Civil case	3	2.8
11. Hire purchase	1	0.9
12. Hire for work	2	1.9
13. Labor	24	22.6
14. International Transportation	2	1.9
15. Intellectual property	4	3.8
16. Letter of credit	7	6.6
17. Copyright, patent, trademark	3	2.8
18. Suretyship	1	0.9
19. Not specified	2	1.9
Total	108	100.0
8. Amount in Dispute (Baht)		
Lower than 100,000	14	13.0
100,001-1,000,000	16	14.8
1,000,001-5,000,000	14	13.0
5,000,001-15,000,000	14	13.0
More than 15,000,001	11	10.1
Case without amount in dispute	39	36.1
Total	108	100.0

According to the data in Table 2, it deems that the samplers have social and economic background as follows:

1. Sex The sample group is 108 lawyers. The ratio of male and female is approximately 8:1, that is, 88.9 percent is male and 11.1 percent is female.

2. Age Most of samplers are in the middle age, that is the age between 36-45 years (45.4 %). Next group is between 23-35 years (33.4 %). And the following group is the samplers aged between 46-55 years (19.4 %).

3. Marital Status Most of the samplers is married (55.6 %). Next group is single (42.5 %). The least group is divorced (0.9 %). In conclusion, more than a half of samplers are married.

4. Level of Education Most of the lawyers in sample group graduated Bachelor Degree (72.2 %). Next group is the group of the lawyers who obtained Barrister-at-Law (Thai Bar) (13.9 %). Besides, some graduated with Master Degree (11.1 %). In conclusion, most of the lawyers in the sample group (about 2 in 3) graduated with Bachelor Degree.

5. Average Salary The samplers who earn the average salary 25,000-50,000 Bath per month are the majority group (48.1 %). Next is the group that earns the salary lower than 25,000 Bath per month (33.4 %). The minority group is the samplers who earn the salary more than 100,001 Bath (0.9 %).

6. Case Relevance Most of the samplers are plaintiff's counsels (58.4 %). 40.7 percent is Defendant's counsels.

7. Type of Case The majority of lawyers in sample group go to the court in the matter of labor cases (22.6 %). Next is loan cases (20 %).

8. Amount in Dispute The amount in dispute of the cases is mostly ranged between 100,001-1,000,000 Bath (14.8 %). The cases with the amount in dispute of more than 15,000,001 are few in the sample.

5.2 Presentation of Analyzing Result of Personal Data of the Judges.

TABLE 3
General Information of Social and Economic Background of the Judges.

<i>Personal Data</i>	<i>Number of Samplers</i>	<i>Percentage</i>
1. Sex		
Male	27	79.4
Female	7	20.6
Total	34	100.0
2. Age		
26-35 years	8	23.4
36-45 years	19	56.1
46-55 years	4	11.8
Over 56 years	3	8.7
Total	34	100.0
3. Marital Status		
Single	8	23.5
Married	26	76.5
Total	34	100.0
4. Level of Education		
Barrister-at-Law (Thai Bar)	14	41.2
Master Degree	20	58.8
Total	34	100.0

5. Average Salary (Baht/Month)		
50,000-75,000	8	23.5
75,001-99,999	6	17.6
More than 100,000	19	56.0
Not specified	1	2.9
Total	34	100.0
6. Types of Case Successfully settled by conciliation		
Infringement	3	8.8
Selling	2	5.9
Loan	3	8.8
Cheques	1	2.9
Eviction	2	5.9
Civil	1	2.9
Labor	15	44.4
Copyright, patent, trademark	3	8.8
Not specified	4	11.6
Total	34	100.0
7. Time Spent for Conciliation		
Less than 6 months	23	67.6
6-12 months	1	2.9
More than 12 months	4	11.8
Not specified	6	17.7
Total	34	100.0

According to above table, it deems that the sample group has social and economic background detailed as follows:

1. Sex From 34 samplers, males are more than females at the ratio approximately 4:1, that is, 79.4 percent are male and 20.6 percent are female.
2. Age The 36-45 year-old judge is the majority group (56.1%). Next is the group of 26-35 year-old judges. The least group is over 56 year judges (8.7%). In conclusion, the judges in the sample group are in middle age.
3. Marital Status Most of samplers are married (76.5%). The rest 23.5 percent are single.
4. Level of Education Most of the samplers graduated Master Degree (58.8%). The rest 41.2 percent is the samplers who received Barrister-at-Law (Thai Bar).
5. Average Salary The majority group earns more than 100,000 Bath per month (56 percent). Next is the group that earns 50,000-75,000 Bath per month (23.5%).
6. Type of Case Most of cases successfully conciliated are labor cases (44.4%).
7. Time for Conciliation Most of judges in sample group spend less than 6 months for conciliation (67.6%).

6. Conclusion and Result of Research Analysis

The conclusion of the result of study are divided into 3 parts inclusive of its objectives as follows:

6.1 Knowledge and Understanding of the Lawyers about the Conciliation for Dispute Resolution

According to the result of study, almost of the lawyers in the sample group (95.4%) acquainted with the conciliation through the public relations of the Court. (see Table 4) Most of public relations of courts are by ways of distributing conciliation information through brochure, poster, published document, including the court's seminar in the central and provincial region. The conciliation for dispute resolution is partly the policy on case administration of the courts so that the case is proceeded rapidly and the court can reduce the number of cases pending. Recently, the Judicial Administration Commission issued the regulation governing conciliation for dispute resolution. It was published on August 23, 2001. The courts have applied this regulation, so the information of the conciliation reaches the lawyers more than before. Moreover, it was found that some lawyers acquainted with the conciliation from judges and the Court's officers. Only minority of lawyers received the information of conciliation from other lawyers or other documents. (see Table 4) According to the result of this study, it showed that the conciliation mostly arises in the courts whereby the specific objectives and aims are in order to maintain the most advantages in the proceeding. If judges pay more attention and support the conciliation, this may affect the entering to conciliation by the decision of the parties.

Upon the knowledge and understanding of the sample lawyer about the conciliation, it was found that the knowledge and understanding of the lawyer is relevant to the entering to the conciliation. It is because if the lawyer does not understand the conciliation, the sample group does not agree to enter the conciliation completely. In conclusion, the acceptance of the conciliation is relevant to good knowledge and understanding of lawyers. Moreover, it is found that both plaintiff's counsel and defendant's counsel have experience in conciliation. (see Appendix Table 3) The conciliation is operated due to the agreement of the parties. (see Table 6) When considering the result of conciliation, most of samplers thought that the conciliation spend shorter time than the proceedings in the Court, and they believed that they sufficiently gain fairness from the procedure of conciliation. (see Table 6) According to Thai culture, when the case enters into the proceedings of the Court, such case is not only the matter of right or wrong under the law, but also related to values and belief of judicial proceedings. In preference, when the case enters into the court, the parties firmly believed that the lawyer appointed by him/herself is the person who has ability of law, be able to solve his/her problems and at the end makes him/her win a case. Sometimes the decision of the case comes from advice of the lawyers, and the parties believed that this advice is the highest benefit for them in the case. Therefore, the conciliation may be an advice of lawyers and suggest the parties to enter into the conciliation process. This is the reason why the agreement to enter into conciliation is the relevant to the knowledge and understanding of lawyers on conciliation. Moreover, the result of knowledge and understanding of such matter may affect two parts of the party and conciliation system for dispute resolution. Positively, the lawyer will advise the party to decide to enter into the conciliation because it saves the time and expense upon mainly considering on the objectives and most advantages of the conciliation. In contrast, the lawyer may exploit the conciliation by using the proceeding to delay the case. He/she will advise the party to enter the conciliation by not considering the

settlement of it. He/she may request for more commission from the party. However, the decision to operate the conciliation because of the counsel's suggestion both positive and negative way is not clearly explain since it happens under personal thought of each lawyer. When the case enters the proceedings of the Court, the people expect that the one who is in charge of the adjudication must only be the judge. According to the research on the expectation of the conciliation for dispute resolution, it shows that the person whom the samplers mostly want to be in charge of the conciliator is the judge (43.5% see also Appendix Table 8) in order to confirm that the result of the conciliation is really fair.

From the above result of study, the decision to enter into the conciliation is partly due to the lawyer appointed by the party, who learns the conciliation acknowledgement of information distributed by the Court. According to the study, the case with high amount in dispute tends to enter into the conciliation more than the case with low amount in dispute. (see Table 5) The cases with high amount in dispute are the case of Central Intellectual Property and International Trade Court and Labor Court. (see Appendix Table 2) The cases entering into this court are the cases of medium and large business. The conciliation may provide the opportunity for the party to return to do their business as usual rapidly, which is the most important thing of this group. In contrary, the case with low amount in dispute rarely enters into the conciliation. It may be the result of nature of some Thai people who do not want anyone to disparage. Sometimes the case entering into the court is relevant to the disparagement. The party does not agree to conciliate the dispute, but they require the proceedings of the Court to point out who will win or lose. For the Central Labor Court, it is specified that before the case enters into the Court, it must be conciliated according to Establishment of Labor Court Act. The judge will ask the underlying need of the party, at the same time give information and knowledge, so that the party can reexamine and make up his/her mind. The result of distribution of knowledge and understandings about conciliation to the party with the general information of conciliation of the lawyer, which can be transferred to the party, influences to the decision to settle the dispute eventually.

TABLE 4
The Number of the Lawyers Acquainted with the Conciliation From Various Kinds of Sources.

<i>Information Source</i>	<i>Number of Samples</i>	<i>Percent</i>
Distributed documents	55	50.9
Judge	31	28.7
Court's officer	6	5.6
Lawyer	4	3.7
Others	7	6.5
Lawyer not acquainted with the conciliation	5	4.6
Total	108	100.0

TABLE 5
The Lawyers Proportion of Entering the Conciliation in Each Type of the Courts

<i>Amount in Dispute</i> <i>(Baht)</i>	<i>Entering into Conciliation</i>		<i>Number of Samplers</i> <i>(Percent)</i> <i>Total</i>
	<i>Yes</i>	<i>No</i>	
Lower than 100,000	16 (14.8)	6 (5.6)	22 (20.4)
100,001-1,00,000	19 (17.6)	5 (4.6)	24 (22.2)
1,000,001-5,000,000	17 (15.7)	5 (4.6)	24 (22.2)
5,000,000-15,000,000	20 (18.5)	2 (1.9)	22 (20.4)
More than 15,000,001	18 (16.7)	0 (0.0)	18 (16.7)
Total	90 (83.3)	18 (16.7)	108 (100.0)

TABLE 6
The Number of Reasons Why the Lawyers Decides to enter into Conciliation

<i>Reasons Why Decide to Enter into Conciliation</i>	<i>Number of Samplers</i>	<i>Percent</i>
Consent of the party	33	30.6
Save time	22	20.4
Belief in the fairness of the conciliation	9	8.3
Save the expense	6	5.6
Suggestion of the judge	4	3.7
Experience in former conciliation	4	3.7
Just try	2	1.8
Do not want to be involved in lawsuit	2	1.8
Tardiness of the proceedings of the Court	2	1.8
Not specified	6	5.6
Number of lawyers never enter the conciliation	18	16.7
Total	108	100.0

6.2 Attitudes of the Judges and Lawyers Towards the Conciliation for Dispute Resolution

According to the result of the research, both sample groups have the same level of positive attitude towards the acceptance of the conciliation. In detail, the judges have the acceptance in higher level (55.8 %). While the lawyers accept the conciliation in moderate level. (61.1% see also Appendix Table 4) Both groups have the same attitude that the conciliation can resolve the dispute of the parties, and the conciliation can solve the problem fairly. The level of acceptance and such attitude shows the level of success of conciliation in Thailand in some degree, and it is also the important sign leading to higher degree of acceptance. Moreover, it is found that the judges have the attitude that the proceedings of the court is as fair as the conciliation process. (41.2%) The majority of the lawyers (45.4 %) have the attitude that the conciliation is more fair than the proceedings of the court (see Table 7) because they satisfied with the result of the conciliation and thought that the conciliation is more suitable for Thai society than the proceedings of the court. However, the conciliation is more complicated than the proceedings of the Court. (see Table 8) The lawyers thought that if the case fail to be settled and then reentered into the proceedings of the Court, it increases his/her work in trial. In case of the Labor Court which the case concerns the dispute between employer and Labor Union. The procedure is more complicated since it has to satisfy the need of a group of people, not only one party on one side. The result of conciliation or the satisfaction of conciliation may vacillate over the need of the majority. However, the result of study clearly determines that the lawyers deem that the conciliation is more just, more satisfied with the result and more suitable for Thai society than the proceedings of the Court. The result of the conciliation brings about the satisfaction of both parties. At the end, the parties are able to associate, provide support or enter into the business with each other as they were before. Because the lawyer is the group that is more closed to the party than the judge, they learn the satisfaction and level of acceptance in practice from the party better than the judge who only imposes the guidelines and means in the proceeding. In the proceedings of the Court, the judge, finally, must deliver the judgment who will win or lose, so the parties are affected with the bad attitude towards each other and may lead to the other dispute again later.

The judges have the same level of attitude towards fairness of the conciliation and the proceedings of the Court. They are more satisfied with the result of the conciliation than the proceedings of the Court and thought that this method is suitable for Thai society. However, they agree with the lawyers that the procedures of conciliation are more complicated than the proceedings. (see Table 8) The judges deem that to conciliate the case, the conciliator should be the judge who has knowledge in that dispute matter. The judge who acts as the conciliator shall have special qualification. Especially, his/her personality shall be reliable on maturity. He/she shall have rhetoric in speaking and listening. Moreover, he/she shall perfectly know and understand the procedures and methods of conciliation. Most important thing, he/she shall have positive attitude toward conciliation and volunteer to act as the conciliator. If the judge who is in charge of conciliation lacks of those qualification as mentioned above, the conciliation may be not effective. The objectives of the conciliation may not be fulfilled and it may effect the party with bad attitudes towards the conciliation. The result of the research clearly shows that the conciliation is one methods of dispute resolving that is accepted from the lawyers and judges. Moreover, both groups deem that it is suitable for Thai society because Thai people are reconcilable and do not want to involve in lawsuit. It is because the litigation is complicated and waste time and money. Besides the litigation of some Thai is involved with the matter of dignity rather than the consideration on the right and wrong under

the law or the regulations. Therefore, both groups have the same attitude that the conciliation is suitable for Thai society.

TABLE 7
The Number of the Judges and Lawyers and Level of Fairness in Dispute Solving by the Conciliation Compared with the Proceedings of the Court.

<i>Level of fairness</i>	<i>Judge</i>		<i>Lawyer</i>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
More	10	29.4	49	45.4
Equal	14	41.2	36	33.3
Less	3	8.8	8	7.4
Not sure	7	20.6	15	13.9
Total	34	100.0	108	100.0

TABLE 8
The Attitude Toward the Conciliation and the Proceedings of the Courts of the Judges and Lawyers

<i>Attitudes</i>	<i>Judges</i>			<i>Lawyers</i>		
	<i>Conciliation</i>	<i>Proceedings of the Court</i>	<i>Not specified</i>	<i>Conciliation</i>	<i>Proceedings of the Court</i>	<i>Not specified</i>
Which method is fairer?	17 (50.0)	17 (50.0)	-	55 (50.9)	38 (35.2)	15 (13.9)
Which method is more reliable?	15 (44.1)	10 (29.4)	9 (26.5)	44 (40.7)	47 (43.5)	17 (15.7)
Which method is expected to solve the problem?	17 (50.0)	17 (50.0)	-	71 (65.7)	22 (20.4)	15 (13.9)
Which method is more complicated?	21 (61.8)	10 (29.4)	3 (8.8)	86 (79.6)	10 (9.3)	12 (11.1)
Which method saves more time?	31 (91.2)	3 (8.8)	-	96 (88.9)	5 (4.6)	7 (6.5)
Which method saves more expense?	28 (82.4)	6 (17.6)	-	92 (88.9)	5 (4.6)	7 (6.5)
Which method is more satisfied with the result?	26 (76.5)	8 (23.5)	-	69 (63.9)	25 (23.1)	14 (13.0)
Which method is more suitable for Thai society?	26 (76.5)	8 (23.5)	-	71 (65.7)	23 (21.3)	14 (13.0)

6.3 The Expectation of the Judges and Lawyers Toward the Conciliation for Dispute Resolution.

The study on the expectation of the sample group is the study about the attitudes of the sample group whether the conciliation can be the alternative of the proceedings of the Court. According to the study, the sample lawyer believed that the conciliation can be the alternative to the proceedings of the court. (see Table 9) The person who is suitable to be in charge of the conciliator is the judge. (see Appendix Table 8) In contrary, the sample group of judges deemed that the conciliation cannot be replaced the proceedings of the court, especially the judge of Civil Court and Central Labor Court. (see Table 10) The result of research shows two parts of attitudes. One is the expectation of the lawyer as the legal professional. They thought that the conciliation can be replaced the proceedings of the court. According to knowledge, understanding and experience in the conciliation, the samplers believed that the conciliation save more time and expenses. Such expectation is a result from the view of person who works as a lawyer. He/she can accelerate the case and increase the case he/she conducts where the result of the case are still based on of fairness and satisfaction of both parties as the proceedings of the court. However, the conciliation can be the negative way for impeding the case in order to request more commission or expand the time to conduct the case. The party shall pay more expenses for the lawyers, especially the cases of labor case in Central Labor Court. (see Table 10) The sample group expects that the conciliation can be replaced the proceedings of the court because at present, the law determines that all cases must enter into the conciliation before filing to the Court. Moreover, the labor case tends to be successfully conciliated as the nature of the problem and the need always involves with the request for increasing of wages and welfare of the employees, which is the duty of the employers under the labor law. The Labor Union only brings the law as a tool to accelerate the employers to provide such welfare more rapid and suitable. In preference, the dispute of labor case sometimes is not necessary to enter the procedures of the court. The employers and the employees can make an agreement through the Labor Union or other relevant government organizations such as Labor Department, Ministry of Labor and Social Welfare or the Government. As a result, the expectation of such lawyer group should not be a key factor in whether the conciliation can be replaced the proceedings of the court or not.

For the expectation of the sample group of judges as the professional in law in order to maintain the social peace, they thought that the conciliation could not be replaced the proceedings of the court. (see Table 10) Because the sample group deems that the conciliation is only the additional procedures for the proceedings of the court. Some disputes cannot be resolved by the conciliation. It is necessary to adjudicate the case and decide who will win or lose. For example, in some simple case, the plaintiff as the debtor is entitled to receive the debt repayment from the defendant in full amount by various means according to the order of the Court, if the case is proceeded in the Court. In contrast, if the defendant decided to initiate the conciliation in order to reduce the amount of debt repayment, the defendant may obtain more benefit than the plaintiff should receive from conciliation. Moreover, the conciliation could be the means to impede the case for the lawyers to request higher commission rate. In conclusion, according to the study the conciliation is the method that is suitable for certain disputes, especially the dispute that the party agrees to enter into conciliation. The conciliation cannot be replace the proceedings of the court in all cases. Although the parties agree to conciliate, the parties or the lawyers still want the judge to be the conciliator in the case. (see Appendix Table 8) The reason is to confirm the result of conciliation under the law and to make it look like the proceedings of the court.

TABLE 9
The Number of the Judges and Lawyers Who Give Opinion About the Possibility of the Replacement of the Proceedings of the Court with the Conciliation.

<i>Possibility of the replacement of the proceedings of the court with the conciliation</i>	<i>Judges</i>		<i>Lawyers</i>	
	<i>Number(s)</i>	<i>Percent</i>	<i>Number(s)</i>	<i>Percent</i>
Yes	13	38.2	81	75.0
No	15	44.1	19	17.6
Not sure	6	17.6	8	7.4
Total	34	100.0	108	100.0

TABLE 10
The Proportion of the Judges and Lawyers Who Give Opinions About the Application of the Conciliation to Replace the Proceedings of the Court

<i>Court</i>	<i>Application of Conciliation to Replace the Proceedings of the Court</i>					
	<i>Judges</i>			<i>Lawyers</i>		
	<i>Yes</i>	<i>No</i>	<i>Not sure</i>	<i>Yes</i>	<i>No</i>	<i>Not sure</i>
The North Bangkok Kwaeng Court	1 (2.9)	2 (5.9)	1 (2.9)	17 (15.7)	4 (3.7)	4 (3.7)
The Civil Court	1 (2.9)	2 (5.5)	1 (2.9)	19 (17.6)	5 (4.6)	2 (1.9)
The Central Labor Court	5 (14.7)	9 (26.5)	2 (5.9)	25 (23.1)	2 (1.9)	1 (0.9)
The Central Intellectual Property and International Trade Court	3 (8.8)	5 (14.7)	2 (5.9)	20 (18.5)	8 (7.4)	1 (0.9)
Total	10 (29.5)	18 (52.9)	6 (17.6)	81 (75.0)	19 (17.6)	8 (7.4)

6.4 Suggestions from the Study

1. System and the Methods of Conciliation

The study clearly explained that the conciliation for dispute resolution is the methods suitable for certain disputes which the parties agree to operate; therefore, apart from the issuance of reliable and up-to-date rules and regulations governing the justice of conciliation, the Court of Justice shall organize the tripartite quorum. It shall be accepted by all relevant sections. The quorum shall consist of three personnel, that is, the judge, professional representatives and inter-professional entered in the account of the Court of Justice for the benefit of conciliating the dispute in certain specific field, and the lawyers or University law teachers. The reason is for the neutral conciliation under the reliable criteria leading to the ruling that is closed to the justice as much as possible. It should specify the exact period of time for conciliation in order to prevent the case to be impeded. Moreover, the conciliation shall operate in the court or specific purpose organization, so that the party believe that the conciliation for dispute resolution is systematic and reliable.

2. Conciliator

In order to conciliate the dispute, the conciliator shall be qualified with good personalities; he/she shall also pass the training or curriculum on conciliation for dispute resolution, so that he/she has correct knowledge, understanding and attitude towards conciliation. The court of justice shall list the persons who wish to be the conciliator; therefore, the conciliator carries on the duties within the need and ability of himself/herself. The court of justice shall give a chance for the conciliator to have inter- professional together with lawyers and judges. At a result, the conciliation shall be operate neutrally and fairly to satisfy both parties.

7. Reference

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8. Appendix

8.1 The Number of the Lawyers who Acquainted with the Conciliation

<i>Conciliation</i>	<i>Number of Samplers</i>	<i>Percent</i>
Acquainted	103	95.4
Not acquainted	5	4.6
Total	108	100.0

8.2 The Proportion of the Lawyers Who Enter the Conciliation Separated by the Courts

<i>Lawyer going to the court</i>	<i>Entering the Conciliation</i>		<i>Total</i>
	<i>Yes</i>	<i>No</i>	
North Bangkok Kwaeng Court	19 (17.6)	6 (5.6)	25 (23.1)
Civil Court	21 (19.4)	5 (4.6)	26 (24.1)
Central Labor Court	23 (21.3)	5 (4.6)	28 (25.9)
Central Intellectual Property and International Trade Court	27 (25.0)	2 (1.9)	29 (26.9)
Total	90 (83.3)	18 (16.7)	108 (100.0)

8.3 The Proportion of the Lawyers Who Enters the Conciliation Separated by the Relevance of the Case

<i>Relevance of case</i>	<i>Entering the Conciliation</i>		<i>Total</i>
	<i>Yes</i>	<i>No</i>	
Plaintiff's counsel	49 (45.3)	14 (13.0)	63 (58.3)
Defendant's counsel	41 (38.0)	4 (3.7)	45 (41.7)
Total	90 (83.3)	18 (16.7)	108 (100.0)

8.4 The Number of the Judges and Lawyers Who Give Opinions about the Acceptance of Conciliation

<i>Level of acceptance</i>	<i>Judges</i>		<i>Lawyers</i>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
Much	19	55.8	36	33.3
Moderate	15	44.2	66	61.1
Less	-	-	6	5.6
Unacceptable	-	-	-	-
Total	34	100.0	108	100.0

8.5 The Number of the Judges and Lawyers Who Give Opinion About the Possibility of Conciliation in Problem Solving

<i>Level of acceptance</i>	<i>Judges</i>		<i>Lawyers</i>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
Yes	32	94.1	102	94.4
No	2	5.9	6	5.6
Total	34	100.0	108	100.0

8.6 The Number of the Judges and Lawyers Who Give Opinion on Whether the Conciliation Can Solve Problem Fairly

<i>Conciliation can solve the problem fairly.</i>	<i>Judges</i>		<i>Lawyers</i>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
Yes	26	76.5	87	80.6
No	7	20.6	18	16.7
Not sure	1	2.9	3	2.8
Total	34	100.0	108	100.0

8.7 The Proportion of Level of Conciliation Acceptance Separated by the Amount in Dispute

<i>Amount in dispute</i> <i>(Baht)</i>	<i>Level of Acceptance</i>			<i>Total</i>
	<i>Much</i>	<i>Moderate</i>	<i>less</i>	
Lower than 100,000	11 (10.2)	10 (9.3)	1 (0.9)	22 (20.4)
100,001-1,000,000	10 (9.3)	14 (13.0)	0 (0.0)	24 (22.2)
1,000,001-5,000,000	3 (2.8)	17 (15.7)	2 (1.9)	22 (20.4)
5,000,001-15,000,000	4 (3.7)	15 (13.9)	3 (2.8)	22 (20.4)
More than 15,000,000	8 (7.4)	10 (9.3)	0 (0.0)	18 (16.6)
Total	36 (33.3)	66 (61.1)	6 (5.6)	108 (100.0)

8.8 The Number of the Lawyers Who Give Opinions on Persons Who is the Best in Charge of Conciliator

<i>Person Who is the Best in Charge of Conciliator</i>	<i>Number of Samplers</i>	<i>Percent</i>
Judges	47	43.5
Person experienced in that field	29	26.9
Respectful person	4	3.7
General lawyer	1	0.9
Not specified	27	25.0
Total	108	100.0

8.9 Questionnaire for the Study

ID -

Questionnaire for the Study

Alternative Dispute Resolution Process in Thailand

Instruction Put a ✓ in front of the information you want.

Part I Personal Data

For Researcher

1. Sex

1. Male 2. Female 1

2. Age years 2-3

3. Marital Status

1. Single 2. Married 4

3. Divorced 4. Widowed

4. Level of Education

1. Below Bachelor Degree 2. Bachelor Degree 5

3. Barrister-at-Law (Thai Bar) 4. Master Degree

5. Doctoral Degree

5. Occupation

1. Government/ state enterprise officer 2. Private company officer 6

3. Private business operator 4. Lawyer

5. Other (Please specify)

6. Average salary Baht 7-12

7. Relevance to the case as:

1. Plaintiff 2. Defendant 3. Witness 13

4. Plaintiff's counsel 5. Defendant's counsel

Part II General information of the case.

8. Which type of case you are in contact with the Court? (Please specify types of cases such as infringement, selling, loan, etc.)

..... 14

You are Plaintiff Defendant

Does it have amount in dispute? Yes No

If yes, how much amount involved?

9. Now the case is in the process of:

1. Filing a motion 2. Filing a testimony 15

3. Conciliation 4. Settling an issue in the court

5. Taking of evidence 6. Passing judgment/decision

7. Execution 8. Petition

10. From the beginning to this process, how many years have you spent?

..... years months 16-19

11. According to No. 10. How much money you spent?.....Baht 20-25

12. According to No. 10. Prior to this case, have you ever been involved in litigation?

1. Yes cases 2. No. 26-27

Part III Definition of conciliation

13. Have you ever heard the conciliation before?

1. Yes 2. No (Skip to Part 4) 28

14. If yes, who has you known from? (Feel free to answer more than 1)

1. Lawyer 2. Judge 29-31

3. Court officer 4. Friend/relative/acquaintance

5. Attorney 6. Brochure of the court

7. Other (please specify).....

15. Have you ever operate the conciliation?

1. Yes (Continue No. 16) 2. No (Skip to No. 17) 32

16. Reasons you decide to make the conciliation.

(Please pick 1)(Skip to Part 4)

1. Just try. 2. Conciliation spend short time. 33-34
3. Save the money. 4. Do not want to enter the proceedings.
5. Lawyer suggests. 6. Judge suggests.
7. Relative/friend/acquaintance suggests.
8. The proceedings of the court is tardy.
9. The proceedings process is complicated.
10. The parties agree to conciliate
11. Believe in the fairness of conciliation
12. Experience from the former conciliation
13. Other (please specify)

17. Reasons why you do not enter to the conciliation (Pick one)

1. One of the parties does not agree to conciliate 35
2. Do not believe in the conciliation.
3. Want the judge to proceed the case under the law.
4. Do not know about conciliation. No one suggested.
5. Lawyer suggests.
6. Relative/friend/acquaintance suggests.
7. Experience from the former conciliation.
8. Other (please specify)

Part II General information of the case.

8. Which types of the case you succeed to conciliate? (For example, infringement, selling, loan, etc.)

..... 14
.....
.....

9. How much time you have spent for conciliation?

9.1 (For judge and lawyer).....years.....months (Average from the latest case) 15-16

9.2 (For plaintiff and defendant).....years.....months 17-18

How much money you have spent?.....Bath 19-24

Part III Conciliation

10. Reasons you decide to make the conciliation. (For plaintiff and defendant)

(Pick one)

- 1. Just try. 2. Spend short time. 25-26
- 3. Save the money. 4. Do not want to enter the proceedings.
- 5. Lawyer suggests. 6. Judge suggests.
- 7. Relative/friend/acquaintance suggests.
- 8. The proceedings of the court is tardy.
- 9. The proceedings process is complicated.
- 10. The parties agree to conciliate
- 11. Believe in the fairness of conciliation
- 12. Experience from the former conciliation
- 13. Other (please specify)

11. What do you think are the advantages and disadvantage of conciliation?

11.1 Time

- Advantage
- Disadvantage

11.2 Expense

- Advantage
- Disadvantage

11.3 Reliability

- Advantage
- Disadvantage

11.4 Fairness

- Advantage
- Disadvantage

11.5 Suitability for Thai Society

- Advantage
- Disadvantage

Part IV Expectation of the people concerning the conciliation.

12. In your opinion, which level you accept the procedure of conciliation?

1. Much 2. Average 3. Less 27
4. Unacceptable. Because

13. Do you think the conciliation can solve the problem?

1. Yes. Because..... 28
2. No. Because

Which method, in your opinion, can solve the problem?

- 2.1 Proceeding the case in the court as usual. 29
- 2.2 Other. (Please specify)

14. Do you think the conciliation can solve the problem fairly?

1. Yes 2. Not sure. 3. No. 30

