

[Working Paper Series: Ups and Downs of Direct Democracy Trends in Asia]

## Direct Democracy in Thailand

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### Introduction

Direct democracy is a form of democracy beyond representative democracy. It is the basic political process which allows ordinary citizens to not only vote for their representatives in the parliament, but also participate in political activities and policy decisions (John G. Matsusaka 2005, 187). Moreover, direct democracy is used by the communication technology revolution, and is the better tool when policymakers require deep information that experts do not know (John G. Matsusaka 2005, 186). Nowadays, popular initiatives and referendums are the key mechanisms of direct democracy. According to the V-Dem Institute's report (2015), the use of direct democracy has been increasing worldwide. However, citizens still face challenges in accessing their right to participate in direct democracy due to a lack of measures to participate in direct democracy and a lower capability in assessing its quality (David Altman 2015). In the V-Dem Institute report, direct democracy (DD) refers to the institutionalized process by which citizens of each country register their opinions on a specific issue via a ballot, consisting of initiatives, referendums, and plebiscites. This definition excludes recall elections and deliberative assemblies. Figure 1 illustrates the score of Direct Democracy Practice Potential (DDPP) around the world.<sup>1</sup> Darker shades indicate higher DDPP. The maximum score is 0.849, the minimum score is 0, and the mean score is 0.162. Thailand's score is 0.088, among which its obligatory referendums (OR) score is 0.306, and its popular initiative (PI) score is 0.048 (David Altman 2015).

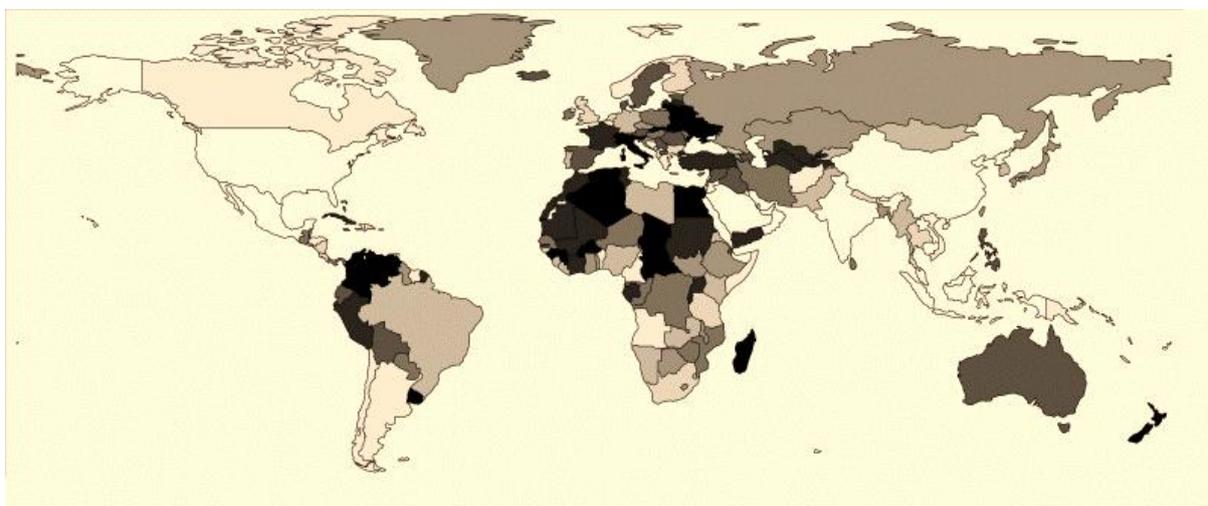
Since 1932, Thailand has changed from an absolute monarchy to a constitutional monarchy. This means that Thailand has moved forward with democracy. In ninety years, Thailand has had 20 constitutions and charters with a series of intervening military coups. In the events of 1997, the National Assembly elected a Constitution Drafting Assembly to hold a public hearing over what the new constitution should contain. This 1997 Constitution is called the "People's Constitution," and

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<sup>1</sup> The results from the addition of the scores of each type of popular vote studied (popular initiatives, referendums, plebiscites, and obligatory referendums). The maximum score of two results from ease of initiative and ease of approval. Each of these terms obtains a maximum value of one and works as a chain defined by its weakest link. The maximum possible overall DDPP is 8 (scale it to a 0-1 range for graphical purposes).

included a section related to law initiative in which by 50,000 eligible voters can propose a law. In the 2007 Constitution which followed, just 10,000 eligible voters can propose a law. The 2017 Constitution also mandates law initiative by eligible votes at both the national and local level. At the local level, residents can propose local ordinances. So far, in addition to the law initiative implemented in Thailand, popular direct democracy through unconventional political participation has appeared. One example is the use of artificial intelligence (AI) by young people and social media to engage in direct democracy. Direct democracy in Thailand is accordingly more important and widely experienced compared to the past. A greater number of people are participating in direct democracy. In this study, the authors would like to study the current state of direct democracy in Thailand and explore how it might be strengthened.

**Figure 1.** Direct Democracy Practice Potential (DDPP) around the world (2000)



**Source:** Photo by David Altman, <https://ssrn.com/abstract=2701164>, 2015

The objectives of this article are therefore to study the state of direct democracy in Thailand and to propose mechanisms for strengthening direct democracy. The methodologies of the study include a literature review on direct democracy including articles, books, journals, newspapers, and official documents; interviews with key informants from relevant sectors, such as the academic research office of parliament, those who have participated in some form of direct democracy such as a law initiative, participate observation from a social movement that drives legal empowerment by law initiative. The research questions are 1) how to describe direct democracy in Thailand, and 2) what are the mechanisms for strengthening direct democracy in Thailand.

## Literature Review on the Concept of Direct Democracy

Democracy means rule by the people, which is based on the principle of representative government. This definition takes a strict representative approach and views direct voting of any kind as impairing

the principle of representative democracy and therefore argues that it should be avoided (Beramendi et al. 2008, 1). Direct democracy is meaningfully contrary to representative democracy as an umbrella term that covers a variety of political processes, rules, and institutions that enable people to vote directly on a proposed political decision, treaty, law, or constitutional amendment rather than candidates for office (Matsusaka 2005, 187; and Bulmer 2014, 3). Direct democracy can override decisions made by deceptive politicians. There are many reasons why representatives may not support a faithful and accurate reflection of public views. One such reason is that political representatives are typically drawn from the higher social classes and could be bound by the will of the old society of rank and caste (Bobbio 1990, 28; and Bulmer 2014, 4). Conversely, there are arguments that the people are not suitable to determine their will. These arguments take a negative view of the public and call into question citizen information and competence, voter irrationality, governability, and conservative bias (Bulmer 2014, 10-12). These opinions set a binary opposition between representative democracy and direct democracy that is restricting and unhelpful.

Direct democracy can vary considerably from one jurisdiction to another. The main forms are referendums, citizen initiatives, and recalls. A referendum gives the public a direct vote that would be binding or advisory on a particular legislative, constitutional, or political issue. This can include nonbinding referendums to get a sense of public opinion. An advisory referendum is sometimes called a plebiscite. There are several concerns about the role of referendums as democratic deconsolidation. Even referendums as the decision of the popular majority can be indicated beyond representatives that are possibly distorted and elitist. However, this mechanism may become a tool of majoritarian populism and empower populist authoritarians. Turkey, Mexico, and Thailand provide examples of how authoritarians can use referendums to undermine liberal democracy (Collin 2019, 1-4). The voting majority risks undermining the rights of a minority. Examples include referendums on same-sex marriage in US states, ethnic minorities in California, and naturalization in Switzerland. Moreover, it can be used both by democratic and autocratic regimes to confirm newly written constitutions. Acknowledged examples are the 1958 French constitutional referendum and the subsequent 1969 referendum that led to the resignation of President de Gaulle, the 1992 apartheid referendum in South Africa, the 1993 Malawian democracy referendum, the 2019 Cuban constitutional referendum (Kyburz and Schlegal 2019, 3), and the 2016 Thailand constitutional referendum. Historically, authoritarian rulers such as Franco in Spain, Pinochet in Chile, Marcos in the Philippines, and Park Chung Hee in South Korea abuse the popular vote by using uncompetitive referendums to create a false veneer of democratic legitimacy. Populist leaders may have also used referendums to bypass legislative, judicial, or constitutional restraints on their power in order to marginalize domestic political opposition or overturn constitutional prohibitions on re-election (Bulmer 2014, 12). The foregoing cases are mostly a problem of top-down referendums in which direct democracy is likely to be used as a political tool of ruling politicians. Bottom-up referenda and initiatives can go beyond the decision of the executive or the legislative branch of government to call a vote. The nature of bottom-up direct democracy complements mandatory referendums that are automatically triggered over the introduction of specific legislation (Kyburz and Schlegal 2019, 5).

Direct democracy is not a substitute for representative democracy to create a full democracy, and it is also not a tool for reducing dissatisfaction with elected representatives. Full democracy is about how and when to compatibly use direct democracy mechanisms to appropriately enhance democratic systems as well as how to build and design democratic structure and institutions in the practical context of very political cultures. Another goal of direct democracy is promoting participation or acting as a check on the executive or legislative body. As Habermas observes, “A political vote is not final, but rather an interim result of an ongoing process of deliberation.” Thus, direct democracy in the sense of the popular vote should never be a one-time game, but an indication of a lively political process and a political tool that citizens must grow into. Measures by which the success of direct democracy as a component of a democratic regime might be judged include the level of participation and engagement. Both direct democracy mechanisms and representative democracy mechanisms can complement and enrich each other rather than being seen as opposed (Beramendi et al. 2008, 1; and Kyburz and Schlegal 2019, 5).

### **History of Direct Democracy in Thailand**

As mentioned earlier, Thailand changed its form of government to a democratic country in 1932. Since then, however, there have been 13 military coups, most recently on May 22, 2014. It can be said that representative democracy is still not very strong in Thailand. However, after the Black May (May 1992), the public was highly involved in its crafting compared to other constitutions. In addition, the social atmosphere at the time was very active and politically engaged, with a trend in civic politics that led to political reforms. There were efforts to include the principle of direct democracy in the 1997 Constitution to allow people to participate in government and exercise greater control over the power of the state. The 1997 Constitution provides that citizens have the right to vote and to participate in politics in three important ways, namely by impeaching a person holding a political position, participation in the legislative process through legislative initiative, and referendum.

Prior to the 1997 Constitution, several constitutions provided for referendums, namely the 1949 Constitution, the 1968 Constitution, the 1974 Constitution, and the 1991 Constitution, the 6<sup>th</sup> Amendment in 1996. However, they were limited to constitutional amendments. The referendum on a law affecting the interests of the country or the people was first recognized in Article 214 of the 1997 Constitution. It can be said that the 1997 Constitution was in many ways the beginning of direct democracy in Thailand in terms of permitting referendums on laws, recalls, and initiatives.

### **Direct Democracy in the Constitutions of Thailand**

The current Constitution of the Kingdom of Thailand promulgated on April 6, 2017, has in many cases guaranteed the right of direct popular participation in politics. The Constitution states that a person and a community have the right to sign a joint petition to make recommendations to a governmental authority

for the taking of action that is beneficial to the people of the community;<sup>2</sup> at least ten thousand persons having the right to vote may submit to the House of Representatives their proposed laws relating to the rights and liberties of citizens and duties of the state;<sup>3</sup> local people have the right to sign names to propose local ordinances or to remove members of a local assembly or a local administrator;<sup>4</sup> and not less than 50,000 voters may sign to propose amendments to the Constitution.<sup>5</sup> Moreover, the same Constitution recognizes the right to participation in several cases, for example, the environment,<sup>6</sup> local wisdom, arts, culture, and traditions,<sup>7</sup> to counter corruption,<sup>8</sup> treaties with other countries or international organizations,<sup>9</sup> local government<sup>10</sup> (sections 252 and 253), and the legislative process.<sup>11</sup>

The 2017 Constitution requires a referendum as part of its constitutional amendment process. In addition, the Referendum Act is part of the national reform law under Chapter 16 of the Constitution. The Referendum Act B.E. 2564 (2021), which came into force on September 12, 2021, sets out five cases in which people have the right to vote in a referendum: constitutional amendment, a matter that the cabinet considers reasonable, when a referendum is required by law in order to hold a vote, a matter parliament deems reasonable, and when more than 50,000 people have submitted their names to the cabinet.

The Legislative Initiative under the 1997 Constitution and the Legislative Initiative Act of 1999 specify that the number of eligible voters required to request the right to submit a legislative proposal has been reduced from 50,000 to 10,000 under current law. The 1997 Constitution provides that at least 50,000 voters have the right to petition the president of the House of Representatives to have the Senate pass a resolution to remove an individual from office. The 2007 Constitution also affirms the rights of the people in the same way, stipulating that the names of more than 20,000 people must be registered. However, the current constitution no longer guarantees the people's right to recall and vote out political officeholders.

### **The State of Direct Democracy in Thailand**

Direct democracy in Thailand includes referendums, law initiatives, and recalls. In addition, some activities such as demonstration and protest march can be considered to be direct democracy. Unconventional political participation is also considered a form of direct democracy (Bureekul and Sangmahamad 2014). The key direct democracy activities in Thailand are as follows.

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<sup>2</sup> Section 43, the 2017 Constitution of the Kingdom of Thailand.

<sup>3</sup> Section 133, the 2017 Constitution of the Kingdom of Thailand.

<sup>4</sup> Section 254, the 2017 Constitution of the Kingdom of Thailand.

<sup>5</sup> Section 256, the 2017 Constitution of the Kingdom of Thailand.

<sup>6</sup> Section 57 (2), the 2017 Constitution of the Kingdom of Thailand.

<sup>7</sup> Section 57 (1), the 2017 Constitution of the Kingdom of Thailand.

<sup>8</sup> Section 63 and 78, the 2017 Constitution of the Kingdom of Thailand.

<sup>9</sup> Section 178, the 2017 Constitution of the Kingdom of Thailand.

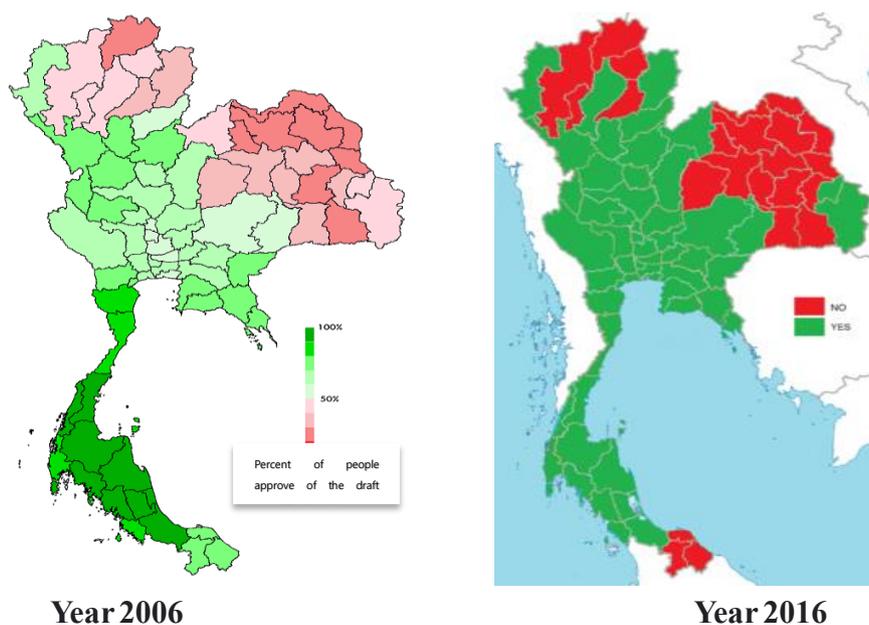
<sup>10</sup> Section 252 and 253, the 2017 Constitution of the Kingdom of Thailand.

<sup>11</sup> Section 77, the 2017 Constitution of the Kingdom of Thailand.

## 1) Referendums

Thailand held the first referendum under the Constitution of the Kingdom of Thailand. (Provisional) B.E. 2549 (2006), which aimed to allow people to vote for approval or disapproval of the Constitution draft of the Kingdom of Thailand, B.E. 2550 (2007), on August 19, 2007. The second referendum, which was held on Sunday, August 7, 2016, was to vote on Thailand's draft 2016 constitution. However, the opposition groups to the constitution were barred by the military government from formally campaigning against it, while the military government actively campaigned for its adoption. These referendums are called "roadblocks to democracy" (International Federation for Human Rights 2016), and seem to be a military representation (BBC 2016). Because the oppressive environment in which the National Council for Peace and Order (NCPO) (Kurlantzick 2016)<sup>12</sup> orchestrated the constitution drafting process and the process of referendum was marred by severe restrictions on people's ability to debate and criticize the content of the draft charter. Moreover, a draft constitution written by an army-appointed committee and has content entrench military control by proposes that the appointed senate should be involved in selecting a prime minister.

**Figure 2.** Provinces of Thailand colored according to referendum results (Charter)



**Source:** Photo from Wikipedia, February 10, 2022, [https://en.wikipedia.org/wiki/2007\\_Thai\\_constitutional\\_referendum](https://en.wikipedia.org/wiki/2007_Thai_constitutional_referendum); [https://en.wikipedia.org/wiki/2016\\_Thai\\_constitutional\\_referendum](https://en.wikipedia.org/wiki/2016_Thai_constitutional_referendum)

The first referendum showed a turnout rate of 57.61 percent of registered voters. Of those who voted, 57.81 percent approved and 42.19 percent disapproved. Thus, the military government would have had the freedom to choose any previous constitution to adapt and promulgate instead. For the second time, the charter offered only semi-democracy and was seen to tighten military rule in Thailand.

<sup>12</sup> The military junta that ruled Thailand between its 2014 Thai coup d'état on 22 May 2014 and 10 July 2019.

However, it was approved by 61.35 percent and disapproved by 38.65 percent of voters, with a voter turnout of 59 percent. Moreover, a second proposal for the next Prime Minister to be jointly elected by Senators and MPs was also approved (the Secretariat Office of the House of Representatives, 2022). Below are the referendum results on the draft charter, with a comparison of the provinces of Thailand between 2006 and 2016.

## 2) Law initiatives

Under the 1997 Constitution and the 1999 Initiative Process Act, there are many conditions for participating in law initiatives that make it more difficult to fulfill the process. Examples include the number of names of qualified eligible voters required, supporting documents, and methods of by which the names must be entered. During implementing the 1997 Constitution, sixteen bills were proposed, with only one legal draft being adopted and promulgated by the parliament. Under the 2007 Constitution, there were 51 draft laws submitted to the parliament, with eight of them being adopted by the parliament and enacted into law. In addition, the number of eligible voters who can propose a law has been reduced from 50,000 to 10,000, although 50,000 are still required for a proposed constitution. Under the 2017 Constitution, people can more easily submit a bill by using only one copy of their identity card. It is not necessary to provide a copy of one's household registration. As of February 23, 2022, there have been 71 law proposals put forth under this method, but none of them have been passed into law yet. However, the process of initiating the law under the Initiative Process Act C.E. 2021, which was promulgated May 27, 2021, makes it easier for people to bring in legislation. Admitting the entry into the introducing bill without having to sign in the case of submitting a bill proposal through the online system.<sup>13</sup> With the previous law requires signature on the specified form along with a copy of the identity card. Because the current legal initiative system is electronic, it is more practical than systems of the past, and people are therefore more likely to propose laws. The trend of public participation and the government's ability to allow people to directly participate in politics through the channels of law initiatives are positive signs of direct democracy. However, there are some constraints to consider, such as political will and the prime minister's endorsement of the public's proposed bills related to demanding financial support from government, concerns taxation or government spending so-called money-bill<sup>14</sup>. In addition, legislative amendments to the bill may also distort the intent of the bill's proponents.

## 3) Recalls

In Thailand, the recall mechanism is frequently used as a political tool by authoritarian dictatorships rather than to promote democracy. This is because there has never been a recall mechanism that can remove a person from office under democratic governments, whereas a recall mechanism has been used to remove people from political office or high-level positions in order to maintain

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<sup>13</sup> Section 8 Initiative Process C.E. 2021.

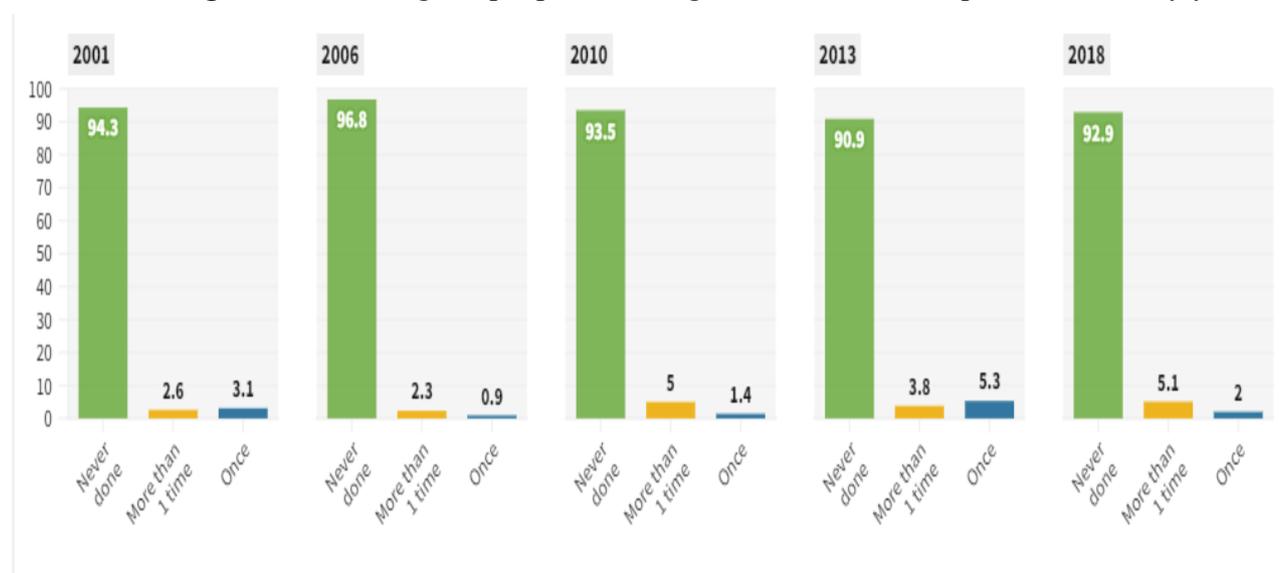
<sup>14</sup> Section 113, the 2017 Constitution of the Kingdom of Thailand.

authoritarianism by the legislature that stems from appointment after a coup. The first was the recall of a member of the Human Rights Commission by resolution of the National Legislative Assembly appointed after the coup in 2006. There was also the recall of former Prime Minister Yingluck Shinawatra by resolutions of the National Legislative Assembly, which was appointed after the 2014 coup, and so on. Furthermore, while the recall mechanism for political office holders and high-ranking positions is not endorsed by the existing constitution, there are political movements to recall incumbents through a signature campaign on the website [www.change.org](http://www.change.org). For example, Ms. Parena Kraikup, a member of the House of Representatives from the Palang Pracharath Party, received more than 75,196 signatures on a petition demanding her recall for inappropriate behavior and not setting a good example for the people. The petition for the Election Commission's recall has more than 861,843 supporters. These campaigns are symbolic representations of the people's political will, although such signatures have no legal effect (the Secretariat Office of the House of Representatives, 2022).

#### 4) Unconventional political participation

The other form of direct democracy is unconventional political participation (UPP) (King Prajadhipok's Institute, 2014). Examples include getting together with others to raise an issue or sign a petition, attending a demonstration or protest march, and using force or violence for a political cause. The following figure shows responses from the Asian Barometer 2018 survey to those asked whether they had ever attended a demonstration or protest march.

**Figure 3.** Percentage of people attending a demonstration or protest march, by year



**Source:** Data adapted from King Prajadhipok's Institute, Asian Barometer Survey, 2018

According to Figure 3, most people have never attended a demonstration or protest march before. However, this percentage decreased after 2006. It seems that after Thailand had the first referendum in 2006, people participated more in political activities. In May 2014, there was a coup d'état in

response to the political situation after months of political demonstrations, a disrupted and ultimately invalidated election, and accusations of government mismanagement. Thus, it can be said that unconventional political participation has become a signal that the temperature of politics is high and more government attention should be paid to the voices of the public.

### **Problems of Direct Democracy in Thailand**

- 1) Referendums have become a political mechanism and no longer reflect the will of the public.
- 2) While the number of people proposing bills through the law initiative mechanism has increased, not many bills can pass the parliament and become law because bills related to the budget have to be endorsed by the Prime Minister. In addition, people have a limited amount of the Civil society helps strengthen direct democracy and supports law initiatives.
- 3) Recalls seem to be impossible.
- 4) The other form of direct democracy is popular democracy. The importance of this mechanism appears to be increasing because of the application of social media and websites like *www.change.org*, which have become tools through which to send a signal to the government, especially on important issues. Unconventional forms of political participation, like demonstrations on the streets through car mobs or other such forms, and the application of social media, have become an increasing role, more than conventional forms. However, people who join in acts of popular democracy risk violating the law.

### **The Trend of Direct Democracy in Thailand**

The authors see positive signs of direct democracy in Thailand, especially in law initiatives, because the new law promulgated according to the 2017 Constitution allowed for the application of social media in lawmaking, while the previous law did not. With the adoption of technology to support law initiatives, the authors think that forms of direct democracy, especially law initiatives, will increase in their importance. However, without political will and support for these mechanisms, the law initiatives will not be realized. Since both representative democracy and direct democracy are a foundation of democratic regime, which consistent and support each other. Therefore, the stability of representative democracy and intention of promoting direct democracy from the government and the politicians are important. Otherwise, if people could not participate in direct democracy via the legally conventional channels, it may lead people to have the movement along the road or the unconventional political participation. Thus, the direct democracy's drive (conventional form) in Thailand may encounter unceasing obstacles, as same as 'walking to the pointless' under the unsteady Thai democratic regime in the current.

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This series of reports was compiled as a part of Asia Democracy Research Network's joint research project on Ups and Downs of Direct Democracy Trends in Asia. The research for these reports was conducted entirely by EAI and its partner think tanks in Asia, including Indonesian Institute of Sciences, Society for Participatory Research in Asia, Jesse M. Robredo Institute of Governance, Verite Research, King Prajadhipok's Institute, Independent Research Institute of Mongolia, and Institute for Democracy and Economic Affairs.

This program was funded in part by the National Endowment for Democracy (NED).

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979-11-6617-414-8 95340 Date of Issue: 27 June 2022

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