Abstract

**Purpose:** The economic crimes targeting an unspecified majority are beyond imagination in terms of economic development and the extent of their damages incurred. Among the typical examples is the crime of unlawful fund raising. Despite the continuous crackdowns and punishments at the pan-government level, it threatens the economy of the commoners. The most unlawful fund raising companies are not subject to financial supervision, yet promise to pay a fixed interest rate or high dividends several dozen times larger than the financial institutions as a bait of high returns. However, there is no source of income, and it is just a ‘Ponzi scheme’ which preserves the profits of existing investors with the investment of new investors. This is a method through which the unlawful fund raising companies guarantee the principal and interest from an unspecified number of people without authorization, permission, registration, or reporting. Furthermore, defrauding multi-level investment by paying referral allowances or commissions when introducing sub-investors is a typical behavior of the unlawful fund raising crimes.

**Method:** This study reviews previous studies through the literature study, and examines the actual situation via the empirical studies along with theoretical review of unlawful fund raising act, which is deceived by high returns, and deceptive behavior through multi-stage investment.

**Results:** This study based on the gravity of the crime of unlawful fund raising, the latest trends in the crime types including the impersonation of financial companies and virtual currencies are analyzed. Sanctions against those who engage in an unlawful fund raising act should be strengthened, and good traders should be protected.

**Conclusion:** Furthermore, the gravity of punishment in the deterrence theory for the crime prevention is presented as a theoretical grounds. As a measure to prevent damages, it is necessary to raise the criminal punishment, and introduce punitive damages and a special judicial police officer system.

**Keywords:** Unlawful Fund Raising, Financial Crime, Investment Fraud, Deterrence Theory, Ponzi Scheme

1. Introduction

Advanced science and technology and the rapidly changing social environment have changed the criminal map into a new one, thereby breaking away from the traditional crime patterns. The modern people's largest interest is finance, and the criminals' interest would also be finance. In the case of financial crimes, unlike the past, where they primarily were committed between individuals, the speed of spread to unspecified people has increased with the development of the Internet, and various crimes occur both online and offline. A typical example of financial and economic crimes is the crime of unlawful fund raising. The “Act on the Regulation of Conducting Fund-Raising Business without Permission” (hereinafter, “Unlawful Fund Raising Act”) prohibits and punishes the unlawful fund raising act. However, despite the fact that 20 years
have passed since the enforcement of the Unlawful Fund Raising Act, the annual crime trend has increased. By abusing the legal network of financial authorities in non-institutional areas, the criminals promise to pay higher dividends and interest rates than the legitimate financial institutions, pay recruitment allowances to the investors, and attract even more investors. Given the economic downturn and ultra-low interest rates, money flows from the banking sector to stocks, real estate, and virtual currencies more and solidly, and the unlawful fund raising crimes seek money flows and diversify the types of deception in line with trends.

Government agencies and financial supervisory authorities have realized the seriousness of the crime of unlawful fund raising, and are also making efforts to mitigate the risks and impact by preparing various countermeasures, yet the effect has been minimal at best. Furthermore, while the court has set the sentencing standards for the unlawful fund raising act, it raises an issue with the effectiveness of the law by issuing a suspended sentence for those other than their representative or key person. Naturally, the characteristics of unlawful fund raising criminals are both the victims and perpetrators. However, the unlawful fund raising crime has a high recidivism rate. Most of the surveillance of the unlawful fund raising act relies on information and reporting by victims. If an unlawful fund raising company evades or refuses an on-site investigation by the financial authorities, it would be difficult to prevent damages and the spread, such as being unable to conduct a basic investigation.

However, the unlawful fund raising act is an act of raising funds from a large number of unspecified people without securing permission or registration or reporting, and is often more malicious and intentional than the general illegal acts. To preclude damages, it is urgent to strengthen criminal punishments and introduce a punitive damages system which compensates for a higher amount than the compensatory damages of the "Civil Act". Sanctions against those who engage in an unlawful fund raising act should be strengthened, and good traders should be protected[1].

This study intends to suggest the criminal policy measures against deceptive behaviors through the unlawful fund raising act and multi-level investments. Furthermore, in terms of crime prevention, it is intended to prepare appropriate and effective damage prevention measures by examining the deterrence theory and the rational choice theory.

2. Theoretical Discussion

2.1. A consideration of the unlawful fund raising act

A financial company can engage in taking, making and extending deposits, installments, loans, receipt, and loans only after securing the approval and permission from the financial supervisory authority such as under the Banking Act and the Savings Bank Act. In the case of companies, the usual methods of financing are borrowing money, issuing bonds, and issuing new stocks. In the process of raising funds, a form of unlawful fund raising emerges. The unlawful fund raising act refers to an act which raises funds to many unspecified people without securing the relevant approval or permission, or registering or reporting, etc[2].

① The act of taking an investment with an agreement to pay the full amount or an amount exceeding this amount in the future, ② the act of making an agreement to pay the full amount or an amount in excess of the principal’s amount in the future, in the name of deposits, savings accounts, installments, deposits, etc., ③ the act of issuing or selling debentures under an agreement to repurchase more than the issue price or sales value in the future, and ④ the act of agreeing to compensate for the future economic losses with money or securities, and taking money in the name of membership fees, etc., are prohibited.

Furthermore, similar trade names in the financial industry such as finance, finance, capital, capital, credit, credit, investment, investment, asset management, asset management, fund, guarantee, factoring, and futures are prohibited under any name which may be recognized as a financial business[3].
Unlawful fund raising companies cannot attract the investors' money by guaranteeing principal or offering a fixed rate of return. Nevertheless, the business method cleverly disguises as if it were a normal business even though there is no profit model. Furthermore, they lure the investors by deceiving them as if they could make several dozen times more money at any instant through the jackpot projects or cutting-edge businesses. They use the psychology of victims who seek large returns to raise funds and defraud them of their money [4].

Among the reasons as to why the crime of unlawful fund raising continues is the long-term economic recession and the criminal environment in which suitable investment targets or opportunities cannot be found due to the low interest rates. It is also the result of the wrong investment tendencies to achieve high returns over such a short period of time. The target of unlawful fund raising crimes is to apply fraudulent techniques for the industries that make easy money and are easily enticed to invest. Unlawful fund raising under the guise of non-performing loans and unlisted stocks that require specialized knowledge, anonymous cooperatives to avoid regulation of unlawful fund raising by law, unlawful fund raising under the guise of planning real estate development and consulting business with the booming real estate market, and as the price of virtual currencies such as coins and Ethereum soared, the number of unlawful fund raising companies with similar virtual currencies have also increased.

The situation in which liquid funds in the market cannot find suitable investment targets or opportunities due to the low interest rates and the economic recession is a target for financial crimes, and deception is constantly evolving with high returns as a bait. Victims raise the fundamental question of whether they invested knowing that it was an unlawful fund raising company or did they want to earn profits by investing in a sound company. For the victims of unlawful fund raising crimes, when it comes to attracting investments from companies, the definitive phrase of principal and return will be considered an attractive and safe investment targets or opportunities from the investor's point of view. It cannot be recognized as an illegal, unlawful fund raising company by itself. The criminals designing an unlawful fund raising act and recruiting victims explain a plausible business model for the victims and recruit their victims by emphasizing only the high profits that follow, deceiving them as if they would give them a fixed return. Furthermore, multi-level investment attraction, such as paying a referral allowance when introducing investors while guaranteeing both principal and high returns, is a typical example of the unlawful fund raising.

2.2. Previous studies

The studies related to the unlawful fund raising were primarily discussed with the issues of the Unlawful Fund Raising Act, financial crimes, and economic crimes from a macro perspective. The previous studies are as follows.

According to Joongjin Doh(2002), as the ultra-low interest rate situation prolonged, it was easy for the vicious financial offenders who emphasized high interest rates to surface, and he claimed that the issue of illegal fund raising companies must be addressed continuously with measures to prevent damages against the commoners' economy by the government, and also claimed for increased fines as punishment [5].

Cheonwon Lee et al.(2009) found that about 20% of the respondents were victims of crimes that infringe upon the livelihood and economy. This is high compared to 8% of the total crime victimization rate, such as theft, robbery, assault, and sexual assault, and as the countermeasures, the claim for strengthening public relations and education activities, preparing measures for damage relief and victim protection, securing stricter law enforcement, and strengthening incentives for whistleblowers.

Jitae Hwang et al.(2010) analyzed the actual types of various transactions for the investment fraud that is developing in a variety and complex ways. Arguing that it affects many victims, it is argued that the problem of investment fraud is not limited to a single country, yet has become so complex that it has to be approached globally by intervening with organized criminal organizations due to the development and informatization of the communication technology [6].
Seungdon Yang(2009) analyzed the relationship between speculative spirit, dependence, impulsivity, and obsession with the personal characteristics of victims of multi-level illegality, and claimed that the victims arise across all groups regardless of age, income, educational background, etc. Furthermore, considering the fact that it leads to financial, mental, and relational damages, and not only personal damages but also social damages lead to the social costs, the senior management of illegal companies must be subjected to strict punishment\[7\].

Kisoo Lee(2016) claims that, due to the prolonged low interest rates and worsening economic conditions, the market’s liquid funds cannot find suitable investment opportunities due to environmental factors, and the criminal justice environment where criminal punishment is weak compared to the crimes’ damages, re-offending is easy, and criminal proceeds cannot be recovered\[8\].

Hyeonsoo Kim(2017) claimed that relevant institutions such as the Public Prosecutor’s Office and the Financial Supervisory Service must establish a close cooperation system and eradicate unlawful fund raising crimes, and prove whether the business is substantive by investigating the progress of the business explained to investors(contractual provisions) at the business briefing session, specific profit structure(model) of the business explained to investors(agreement), feasibility of compensation plan, and continuity of the business, etc\[9\].

Examining the current status of such previous studies, it is difficult to find a case where the deterrence theory was applied for the analysis of the unlawful fund raising act as an independent topic and measures to prevent damages were presented. Hence, this study intends to present the practical measures differentiated from the existing studies.

2.3. Gravity of punishment of the deterrence theory

The deterrence theory focuses on the punishment of the judicial agencies. For the unlawful fund raising crimes, the judicial authorities must promptly arrest criminals, punish criminals with certainty, and impose strict punishments commensurate with the crimes they committed. According to the deterrence theory based on the classicism, crime prevention emphasizes a reasonable level of punishment and its execution because humans are axiomatic beings who make rational choices according to their free will\[10\]. By focusing on the criminal acts, certain and severe punishment for crimes and appropriate punishments for deterring crimes are of the utmost importance. That is, if the punishment is certain, speedy, and severe, crimes can be prevented\[11\]. It also emphasizes the individual’s own responsibility to maximize pleasure and minimize pains. It is assumed that all men have free will and make economic choices in their pursuit of pleasure. The strong psychology of committing a crime occurs primarily when the criminal environment has a greater benefit from the crime than the pain of punishment due to the crime\[12\]. The certainty of punishment for a crime shows that potential offenders are effective in crime prevention by saying that if they break the law, they will be punished. As for the gravity of punishment, it is assumed that the more strict criminal punishment is applied for the criminals, the lower the extent of violation of the law.

The issue of the unlawful fund raising crime is that the recidivism rate for unlawful fund raising is relatively higher than for general financial crimes. Hence, while the certainty of punishment and speed of punishment are important, the correlation of crime prevention will increase only when the punishment is strict\[13\].

According to the State Inspection Data(2018), only 1,145(16.4%) of the 6968 cases handled for violating the Unlawful Fund Raising Act between 2012 and June 2016 were sent to trial. 494 cases(7.1%) were summary indictments, and 2199 cases(31.6%) were non-prosecutions. The court sentenced 1,273 people for unlawful fund raising, but only 224 people(17.6%) were sentenced to imprisonment. The number of probation sentences was 505(39.7%), which was more than twice the number of prison sentences. Consequently, in the criminal structure where only the representatives of unlawful fund raising crimes are punished and the executives and recruiters are lightly punished, the effect of deterring the offenders is inevitably insignificant\[14\]. In
order to prevent repeat offenders from committing a crime again due to fear of punishment, the level of criminal punishment for unlawful fund raising crimes should be raised.

Furthermore, there must exist a perception that unlawful fund raising crimes are punishable and the sentence is very heavy. Then, the individual offenders’ criminal activities may be deterred through their fear of punishment. However, the current law, which requires a person who engages in the unlawful fund raising act of the Unlawful Fund Raising Act to be punished by imprisonment for not more than 5 years or a fine of not more than KRW 50 million, the level of punishment in terms of the crime deterrence is significantly low. As the control according to the punishment level of the Unlawful Fund Raising Act is loosened, crime constantly increases the likelihood of occurrence for ever. If the punishment is severe, crime can be reduced. There are intelligent criminals who are well aware of the contents and regulations of the Unlawful Fund Raising Act, and know how to use them against it based on very through advance preparations as planned.

For the Unlawful Fund Raising Act to deter crimes, at the same level as the current 'fraud', and if the amount of funding is between KRW 500 million and KRW 5 billion, it may be raised to a fixed-term imprisonment of 3 years or more, and if it is KRW 5 billion or more, an imprisonment for life or 5 years or more, and accordingly, such damages can be prevented by strengthening the punishment to an aggravated imprisonment up to a maximum of life imprisonment[15].

Furthermore, it stipulates liability for compensation not exceeding 10 times the amount of damage to the person who performed an unlawful fund raising act, and if the value of money, valuables or other profits acquired through the unlawful fund raising act exceeds a certain amount, it is necessary to increase the effectiveness of sanctions against the unlawful fund raising act by making it aggravated and subject to the criminal punishment. The gravity of the punishment relates to the gravity or intensity of the punishment, such as the length of imprisonment or the amount of a fine. The deterrence effect of punishment will have an effect on not only the potential offenders but also the unlawful fund raising’s repeat offenders.

3. Analysis of the Current State of Unlawful Fund Raising Crimes

3.1. Notification of investigative period and the arrest status of companies suspected of unlawful fund raising

Since the Unlawful Fund Raising Act was enacted on January 12, 2000, the crime of unlawful fund raising has continuously increased in line with the investor sentiment eager to increase their wealth taking advantage of the low interest rates and low economic growth. The number of unlawful fund raising crimes reported increased 10.7 times from 83 in 2013 to 889 in 2018, respectively. The number of investigation requests increased 2.86 times from 65 in 2012 to 186 in 2019. The traditional types of unlawful fund raising crimes, which have primarily emerged in finance, manufacturing, and sales businesses, have diversified and intelligentized new unlawful fund raising along with the flow of financial techniques such as digital currencies, venture business investments, and the individual-to-individual Internet direct investment[16]. However, the unlawful fund raising, despite the fact that there is no revenue model, exploits the psychology of people who aim for high returns to deceive that it guarantees a higher return than the market interest rate, and the method of raising funds differs for the type of crime, yet the structure and method of raising funds render no difference[17]. Meanwhile, the increase in the number of reports is related to the unlawful fund raising act related report and reward system. The Financial Supervisory Service operates a reward system to improve the efficiency of investigations by activating reports on the unlawful fund raising act and prevent damage to commoners due to the unlawful fund raising.
**Table 1.** Notification status of the investigative agencies of companies suspected of unlawful fund raising.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Report</td>
<td>181</td>
<td>83</td>
<td>133</td>
<td>253</td>
<td>514</td>
<td>712</td>
<td>889</td>
<td>482</td>
<td>692</td>
</tr>
<tr>
<td>Investigation requested</td>
<td>65</td>
<td>108</td>
<td>115</td>
<td>110</td>
<td>151</td>
<td>153</td>
<td>139</td>
<td>186</td>
<td>82</td>
</tr>
</tbody>
</table>

Note: The number of unlawful fund raising related reports/consultations filed with the Center for Unlawful Fund Raising Related Damages from 2012 to 2020, Partial Amendment for the Act on the Regulation of Unlawful Fund Raising Act <Suspension of Payment for the Accounts Used for the Unlawful Fund Raising Act, etc.> Review Report (Agenda No. 2108306) February 25, 2021. Reorganized.

<Table 2> illustrates that from 2016 to August 2020, 3,001 cases of unlawful fund raising were spotted nationwide, and 11,152 people were arrested. Unlawful fund raising is an organized crime targeting an unspecified majority. Considering the amount of consumer damage caused by unlawful fund raising, the effectiveness of sanctions should be increased by increasing liabilities for compensation and strengthening the criminal punishment.

**Table 2.** Status of arrests for unlawful fund raising act.

<table>
<thead>
<tr>
<th>Classification</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020 (1-8 months)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of arrests</td>
<td>632</td>
<td>598</td>
<td>519</td>
<td>711</td>
<td>541</td>
<td>3,001</td>
</tr>
<tr>
<td>Personnel arrested</td>
<td>2,052</td>
<td>2,134</td>
<td>2,022</td>
<td>2,575</td>
<td>1,369</td>
<td>10,152</td>
</tr>
</tbody>
</table>


As illustrated in <Table 3>, the regional distribution of the companies accused of unlawful fund raising from 2014 to 2018 accounted for 74% in the metropolitan areas such as Seoul, Gyeonggi, and Incheon. Among which, 59.0% were located in Seoul and 11.1% in Gyeonggi-do. Nationwidely, unlawful fund raising companies are concentrated in Seoul. According to the Financial Supervisory Service(2017), Seoul is concentrated in Gangnam and Seocho, with 62.4% of them located in Seoul[18].

This is primarily distributed in the metropolitan areas and metropolitan cities with large populations and active economic activities given the nature of unlawful fund raising companies which raise funds for an unspecified majority[19]. In particular, Gangnam area can be seen as an optimal area for the investor recruitment in which unlawful fund raising companies pretend to be legal as a symbol of wealth.

**Table 3.** Locations of companies accused of unlawful fund raising.

<table>
<thead>
<tr>
<th>Classification</th>
<th>Seoul</th>
<th>Incheon</th>
<th>Gyeonggi</th>
<th>Daejon</th>
<th>Jeonbuk</th>
<th>Busan</th>
<th>Other regions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>79</td>
<td>13</td>
<td>10</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>17</td>
<td>139</td>
</tr>
<tr>
<td>2017</td>
<td>93</td>
<td>1</td>
<td>26</td>
<td>2</td>
<td>3</td>
<td>11</td>
<td>17</td>
<td>153</td>
</tr>
<tr>
<td>2016</td>
<td>37</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>18</td>
<td>64</td>
</tr>
<tr>
<td>2015</td>
<td>66</td>
<td>5</td>
<td>11</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>19</td>
<td>110</td>
</tr>
<tr>
<td>2014</td>
<td>68</td>
<td>5</td>
<td>16</td>
<td>6</td>
<td>3</td>
<td>5</td>
<td>12</td>
<td>115</td>
</tr>
<tr>
<td>Subtotal (%)</td>
<td>343</td>
<td>26</td>
<td>65</td>
<td>13</td>
<td>17</td>
<td>28</td>
<td>89</td>
<td>581</td>
</tr>
</tbody>
</table>
3.2. Analysis of the handling status of offenders of the unlawful fund raising act and the sentencing standards

The number of unlawful fund raising act crimes which raise funds without authorization or permission, such as the "Banking Act" and the "Saving Bank Act", or without a registration or report, is increasing rapidly. However, as illustrated in <Table 4>, from 2012 to June 2016, out of 6968 cases handled for violating the Unlawful Fund Raising Act, only 1145 cases (16.4%) were sent to trial. 494 cases (7.1%) received summary indictment, and 2199 cases (31.6%) received non-prosecution. The court sentenced 1,273 people on the charges of unlawful fund raising, yet the rate of imprisonment was 224 (17.6%) and 505 (39.7%) probation, which was 2.25 times higher than the actual sentence.¹

Judicial treatment has been largely limited to some of the top-level executives, and middle-level executives in charge of recruiting executives or investors are often excluded from punishment[20]. The money which may be secured from committing crime is tremendous. To lower the recidivism rate for the crime of unlawful fund raising, the target of punishment should be broadened and the level of punishment must be raised[21][22].

Table 4. Status of handling of offenders under the unlawful fund raising act.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Free type</th>
<th>Proba-</th>
<th>Property type</th>
<th>Sus-</th>
<th>Not guilty</th>
<th>Charge exempted</th>
<th>Decision to dismiss indictment</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>tion</td>
<td></td>
<td>pended</td>
<td>sentence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>295</td>
<td>311</td>
<td>47</td>
<td>87</td>
<td>136</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>2013</td>
<td>291</td>
<td>240</td>
<td>62</td>
<td>90</td>
<td>79</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>2014</td>
<td>231</td>
<td>282</td>
<td>45</td>
<td>128</td>
<td>77</td>
<td>-</td>
<td>18</td>
<td>-</td>
<td>13</td>
</tr>
<tr>
<td>2015</td>
<td>301</td>
<td>273</td>
<td>42</td>
<td>132</td>
<td>83</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>13</td>
</tr>
<tr>
<td>Jan-Jun 2016</td>
<td>181</td>
<td>167</td>
<td>28</td>
<td>68</td>
<td>65</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>1,299</td>
<td>1,273</td>
<td>224</td>
<td>505</td>
<td>440</td>
<td>-</td>
<td>40</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

¹ According to the Supreme Court’s probation sentencing standards, if there is a special reason for taking part in a crime or committing a crime as a major extenuating reason, if there is a reason for taking part in a crime, or if the amount of money received from a crime or the scale of business is very small, and if the reason is that there is no criminal punishment history in the case of complete and voluntary initiation of punishment for self-initiation, whistle-blowing, or complete crime(type 2), or in the case of recovering a substantial part of the damages. Furthermore, as an accomplice for extenuating circumstances, passive participation as an accomplice, if the actual profits are insignificant, general investigation cooperation, no criminal record beyond probation, clear social ties, serious reflection, recovery of some damage, if the defendant is old, and the defendant's health is very poor, and if it is argued that the detention of the accused entails undue hardship for the dependents.
Note: The data on the “Violation of the Act on the Unlawful Fund Raising Act’ among the cases of violation of the Special Act for first trial for criminal charges (Source: State Inspection Data, October 4, 2016, Supreme Court).

<Table 5> illustrates the sentencing standards for the crime of unlawful fund raising. The sentencing standards for the crime of unlawful fund raising act are applied for adult(19 years of age or older) defendants who have committed crimes as applicable under Article 6 Paragraph 1 of the Unlawful Fund Raising Act. Organized crime refers to a case where multiple people share their roles and plan in advance for the purposes of violating the Unlawful Fund Raising Act, and commit the crime systematically and professionally. It is evident that the level of punishment for the crime of unlawful fund raising is low in connection with the scale of the damages. It is necessary to discuss the sentencing standards for unlawful fund raising crime based on the amount of profits under the “Act on the Aggravated Punishment of Specific Economic Crimes, Etc.” or the “Financial Investment Business and Capital Markets Act”. This will be effective in preventing recidivism.

Table 5. Punishment type and sentencing standards for the crime of unlawful fund raising.

<table>
<thead>
<tr>
<th>Type</th>
<th>Classification</th>
<th>Exemption or reduction</th>
<th>Standard</th>
<th>Aggravated</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unorganized commission of crime</td>
<td>8 months</td>
<td>4 months - 1 year</td>
<td>8 months - 2 years</td>
</tr>
<tr>
<td>2</td>
<td>Organized commission of crime</td>
<td>10 months</td>
<td>6 months - 1 year and 6 months</td>
<td>1 year - 4 years</td>
</tr>
</tbody>
</table>

Note: The supreme court’s sentencing standards for the crime of unlawful fund raising.

4. Issues and Improvement Measures for Preventing Damages of the Crime of Unlawful Fund Raising

4.1. Development of the standards for the imposition of appropriate criminal punishments in line with the standards of profit amounts

In the case of the unlawful fund raising crime, the higher the crime rate when the economy is depressed and the interest rates on savings and savings deposits are lower. Given the recent COVID-19 triggered economic recession, low interest rates, real estate booms, stock market surges, and virtual currencies speculation related craze, commoners want to find safe investments in order to increase their wealth and move towards safe assets. However, without a prior or objective prior information on investments, they fall for the high dividend related inducement of promising companies. As is evident in the statistical data of investigation agencies of companies suspected of unlawful fund raising of <Table 1>, the number of requests made with investigation agencies from 2012 to 2019 has continuously increased. The reason criminal psychology does not decrease is that the benefits of crime are large when considering the criminal environment and the level of punishment. Furthermore, as evident in the sentencing standards, even if a prisoner is sentenced, it can be seen that the actual sentence is lower than the proceeds from the crime.

Strict punishment of the deterrence theory can lower offences. This is because the criminals make rational choices by empirically analyzing the risks of arrest and punishment [23][24]. Only then can the effectiveness of sanctions and punishments related to the unlawful fund raising act, which destroys the economy of people’s livelihood, be increased. This will be effective in reducing recidivism. Key stakeholders in unlawful fund raising practice the habit of committing a new type of crime by planning and complicating new crimes, from the habit of making easy money psychologically. Furthermore, the fundamental reason that the unlawful fund raising act is not eradicated or reduced is that the fear of criminal punishment is weak, while it is a crime.
with a large social impact which produces a large number of victims and paralyzes the local economy[25]. Since the benefits of the unlawful fund raising crime outweighs the expected punishments, they act as a strong criminal incentive.

This is a phenomenon which occurs in economic crimes, especially financial crimes. In order to preclude the unlawful fund raising crime, the punishment related provisions of the Unlawful Fund Raising Act should be further strengthened. However, the Unlawful Fund Raising Act “provides the imprisonment of up to 5 years or a fine of up to KRW 50 million.” It is a light sentence and punishment compared to the crime committed. Excluding the representatives and key people, the level of punishment is not as high as the probation rate is high. Considering the characteristics of both the victims and perpetrators of the crime, in order to preclude the unlawful fund raising crime and prevent the recidivism, the level of punishment based on the amount of profit as specified under the “Act on the Aggravated Punishment of Specific Economic Crimes, Etc.” or the “Financial Investment Business and Capital Markets Act” should be raised. Imposing appropriate criminal punishment will inevitably give rise to the effect of prevention and punishment in crime prevention. Recently, even at the academic level and the National Assembly, there has been a strong argument that the level of criminal punishment should be raised[26].

**4.2. Development of the standards for the imposition of punitive damages system according to the standards of compensation amount**

To prevent damages incurred from the unlawful fund raising crime, not only strong criminal punishments but also the punitive damages system of the “Civil Act” should be introduced. It can strengthen sanctions against those who have committed an unlawful fund raising act and protect good traders. The damages of the unlawful fund raising is so serious that it is necessary to introduce punitive damages that are higher than the compensatory damages of the Civil Act. Furthermore, if a prompt and strong, planned investigation is not carried out from the initial stage of the case, it is highly likely to escalate into a large-scaled financial investment case and recovery from damages would be very difficult. For the victims of unlawful fund raising, the punishment of criminals is important, but the recovery of economic damages will be the top priority. The compensatory damages only compensates for the amount of damages caused, but the punitive damages must be made to prevent the malicious and intentional unlawful fund raising related damages.

In the case of unlawful fund raising act, property damages suffered by the investment victims must be compensated on top of the principal and interest, along with the amount as a penal element. The purpose of this provision is intended to prevent repeating such crime or unfair act in the future by awarding large amounts of damages[27]. The crime of unlawful fund raising causes not only monetary damages, but also relationship damages with close friends. Unlawful fund raising attracts close groups such as family, friends, and acquaintances as the sub-investors to receive a recruitment allowance, which ultimately leads to terminal damages around the victims. Furthermore, in the case of large-scaled unlawful fund raising crime, the economic ripple effect which paralyzes the local economy is not insignificant. Considering the vicious illegality,

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2 Article 3 Paragraph 1 of the “Act on Aggravated Punishment of Specific Economic Crimes, Etc.” provides for a fixed-term imprisonment of 3 or more years for fraud, embezzlement, and professional negligence, etc., if the profits are KRW 500 million to less than KRW 5 billion, and if the profits are KRW 5 billion or more, imprisonment for life or 5 or more years.

3 According to Article 443 Paragraph 2 Subparagraphs 1 and 2 of the “Financial Investment Business and Capital Markets Act,” if the amount of profits gained or losses avoided are KRW 500 million or more and less than KRW 5 billion, a fixed-term imprisonment of 3 or more years, and if the profits are KRW 5 billion or more, it is punishable by imprisonment for life or 5 or more years.

large-scaled damages, and huge proceeds of the crime, and punitive damages should be sought.\textsuperscript{5}

When the punitive damages system is introduced against the unlawful fund raising act, in order to sanction the unlawful fund raising company that has committed an illegal act, it will give the victim the satisfaction of retaliatory psychology and also deter any repeated unlawful fund raising act.

5. Conclusion

Unlawful fund raising attracts investments with dividends from additional recruitments as well as large returns and principal guarantees even while there is no real profit model. They deceive their investors by saying that they can make a lot of money by investing in the early stages of their business. It can be successful only by recruiting a large number of members, and it uses a Ponzi scheme which pays out incentives according to the performance of investment attraction. Funds are raised by advertising business registration certificates and multi-level door-to-door sales registration certificates as if the government had permitted them to raise funds. The damages cannot easily be uncovered since the introduction and recommendation of existing investors or investment solicitations blind people, and hence, it is difficult to distinguish between a legitimate company and an unlawful fund raising company at the initial stages of the crime. In order to prevent damages of the unlawful fund raising crime, macroscopically, a close cooperation among related agency such as the National Police Agency, the Public Prosecutors' Office, the National Tax Service, and the Financial Supervisory Service will be of the utmost importance\textsuperscript{[28]}. The consideration of the unlawful fund raising and multi-level fraud prevention measures are as follows.

First, it is necessary to prepare appropriate standards for the imposition of criminal punishments according to the standards of profits. In the case of criminals, the "Act on the Aggravated Punishment of Specific Economic Crimes, Etc." or "Financial Investment Business and Capital Markets Act" should be taken as a reference point since a strict punishment is rationally selected by empirically analyzing the risks of arrest and punishment. Second, a standard for the imposition of the punitive damages system according to the compensation standard should be established. The focus of the debate over the punitive damages system is the calculation of the amount of compensation. In the "Credit Information Use and Protection Act", a punitive damages system which compensates up to 3 times the amount of damage is implemented. On top of the strong criminal punishment for precluding the unlawful fund raising, sanctions should be strengthened and good traders should be protected via the punitive damages system of the "civil Act"\textsuperscript{[29]}. Third, a special judicial police officer in charge of the unlawful fund raising should be introduced. To prevent the increase in crime related damages, the Financial Supervisory Service, which is consisted of professional personnel, should conduct investigative activities equivalent to those of an investigation agency from the early stages of the crime\textsuperscript{[30]}.

6. References

6.1. Journal articles

\textsuperscript{5} While such punitive damages are primarily practiced in countries based on the British and American law, such as the United Kingdom, the United States, and Canada, there are laws where the punitive damages system has been introduced in Korea. For example, up to 3 times the amount of damages is compensated. There are the Fair Transactions in Subcontracting Act, the Credit Information Use and Protection Act, the Personal Information Protection Act, and the Act on the Fair Agency Transactions Act.

"Punitive damages system for media to be careful about", Uber In Site, June 29, 2021.
http://uberin.mk.co.kr/view. (Searched on July 30, 2021)

6.2. Books


6.3. Thesis degree

6.4. Additional references


7. Appendix

7.1. Author’s contribution

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