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A Study on Prevention of School VIOLENCE and Measures

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Abstract

The problem of the school violence of the youth is not merely the deviation of the individual, but the social problem that our community must solve as a top priority. In recent media reports on juvenile school violence, newspapers and portal sites have spread. People who were angry at the school violence filed a petition to abolish the Juvenile Law on the Cheongwadae homepage, and more than 270,000 people have complained about it, resulting in a huge societal aftereffect. It does not mean that they do not understand community members' sympathy. Although they trust the strong national obedience as a measure against school violence, they do not have a great effect. At the end of 2011, Daegu's suicide incident became publicized, causing a great social shock.

The government announced that it would eradicate school violence in 2012, and announced the "Comprehensive Measures for the Elimination of School Violence". After the announcement of the measure, it was reported that the violence was reduced by simple numerical figures. However, after several years, we can not help asking whether the measure emphasizing unilateralism is effective. This shows the limitations of not being able to create a healthy community and not fundamentally reducing school violence and juvenile delinquency as a powerful imperative of the current judicial system in which the punishment of the perpetrator punishment = problem solving is widespread in our society. Therefore, in this study, how is the direction of school violence and genuine restorative justice defined in the current situation, where the national criminal justice system paradigm is shifting from the victim-centered traditional criminal justice system to the offender-centered criminal justice system?

The current Criminal Justice Review examines the meaning and effectiveness of the traditional national criminal right to combat and complement the ideology of restorative justice as a preventive measure against serious school violence. It is necessary to plan ways to bring about substantial change.

[Keywords] *School Violence, Prevention of School Violence, Restorative Justice, Severe Punishment, Perpetrator*

1. Introduction

All students have the right to learn in an equitable and pleasant educational environment. The school violence problem, which has been forgotten for some time, has once again become a serious social problem in our society, raising a tremendous resentment beyond the patience of our community. The problem of school violence, which has evolved from the shadows to the aging of the aged, the fog, and the brutality of the group

violence, is emerging as a social problem, not merely a deviation of the individual. As a result, in March 2004, the government adopted the School Violence Prevention and Countermeasures Act(abbreviated as "School Violence Act"), and as a solution to the school violence in 2012, And the school violence law and the enforcement decree that it is punishment. Recently, a number of policies have been proposed in order to fundamentally solve the problem of school violence nationwide by promulgating amendments to the

10th revision of the Law No. 15044(Law No. 15044, recently revised). However, it has been criticized as a tinkering type of provisional policy and has failed to fundamentally solve the problem of school violence including juvenile crime. In order to establish effective preventive measures against school violence at the Korea Educational Development Institute in December 2017, the Ministry of Education, Culture, Sports, Science and Technology We are conducting surveys on school violence. The main purpose of this study is to examine the main contents of the survey and to propose measures to prevent school violence based on the results.

In recent years, "Restorative Justice", a concept that focuses attention on many people as a good alternative to traditional criminal justice in school juvenile justice including school violence, is enough to discourage a new transition to school violence prevention and countermeasures It is worthy of discussion, and it is also considered to have a high level of currentness. 'Restorative Justice(Justice)' calls for reconciliation efforts to restore victims' injuries and sufferings based on the reflection and reflection of the perpetrator, rather than imposing simple discipline and punishment on the perpetrator's severe punishment. In addition, the victim accepts and forgives himself / herself for a real relationship restoration. Therefore, it is a proactive and developmental concept that enables the transition of a new paradigm in the prevention and control of school violence. Therefore, in this study, we review the countermeasures that contain the concept of restorative justice among the excellent precedent studies on the prevention and countermeasures of the existing school violence, examine practical alternatives by expanding the concept of restorative justice. There is a purpose in presenting.

2. Principles of School Violence Concept, Characteristics and Prevention of School Violence

2.1. Concept of school violence in school violence prevention law

In the 21st century, our educational reality is, in short, a crisis of school violence. "School violence" as defined in Article 2, Paragraph 1 of the "School Violence Act" refers to the violence of the school violence(injury, assault, detention, abduction, incentives), violence Psychological or property damage by means of violence, intimidation, money laundering, forced errands, sexual violence, bullying, cyber bullying, and information or communication network. As for bullying, two or more students from inside and outside the school are subjected to a physical or psychological (emotional) attack or attack on a specific person or a group of students to make them feel pain Cyber bullying"(No. 1, No. 2) (using information and communication devices such as the Internet, mobile phones, etc.) Or any act that causes a person to feel pain by spreading personal information or false facts related to a specific student. There are also various types of violence in schools. ① Language violence includes nicknames, insults, dislike jokes, rude speech, scribbling, threats, sarcasm, mobbing, and mocking. ② Physical violence includes actions such as stabbing, pushing, hitting, kicking, holding and waving, improperly touching, obstructing the path, holding, touching with objects that can be used as weapons. ③ social violence includes behaviors such as bullying or insult the cycle by peer rejection from transparent to human handling Rigi spread bad rumors, to gossip, to force the behavior of peers, Sunder side with the other points. ④ cyber violence the Internet, e-mail, letters sent to harass the victim via a wireless telephone, dialing, picture or audiovisual transmission, chat, action such as a Web page, published in the Bulletin, the scene plague victims Rigi spread the video . ⑤ View staring into non-verbal violence, and to send the eyes of disdain, scooping narrowed his eyes racially offensive, to follow behavior to control behavior to intimidate, to control a gesture to invade the personal space, keep silent, spitting, attend along, Refusing to reach, and playing a psychological game. In addition, it is necessary to establish the scope of school violence law and current law(juvenile law) and reestablish the concept[1].

2.2. Characteristics of school violence

2.2.1. Low-age actors(addicts) and objects (victims)

Article 9 of the Criminal Act, which distinguishes under age 14, cannot impose criminal punishment on students who do not reach the age of 14 because they are generally, systematically, physically and mentally immature regardless of the individual's de facto ability, and therefore cannot be held liable for biological abnormalities. In particular, low age, crime, crime, and cruelty are among the major issues in Korean society, as some cases involving low-age tactile boys have been suggested for punishment, and whether they will be ignored in a blind spot of violence on the grounds of their normative incompetence, and thus even lowered the age of criminal underage.

2.2.2. The presence of a large number of anstiftung and beihilfe

School violence can be said to occur in a bystander who is distracted by the fear of retaliation and retaliation among many students in the same group. There are also cases where the violence in the school is borrowed from the power or indirectly from the back of the group(violent sail organization). It is difficult for school violence to take place if the absolute majority of students do not tolerate school violence and actively respond to preventive measures[2].

2.3. Principles of school violence prevention(restorative justice)

Introduced as the most generalized definition of restorative justice today is the definition of "the process by which the affected parties affected by the crime are gathered together to form an agreement on how to recover the damage caused by the crime have[3] Or "the process of collectively collecting and resolving how all parties involved in the offense are to deal with the consequences of the offense and what it means in the future"[4]. On the other hand, if these definitions emphasize the procedural aspect of consultation between the parties, it emphasizes the resultant aspect of recovery and

broadly defines it as "any activity aimed at realizing justice in order to recover the damage caused by crime"[5]. Restorative Justice(Justice) has emerged since the latter half of the 20th century as part of an effort to overcome the limitations of the traditional Western criminal justice system in resolving conflicts among members of a complex and diverse group. The crime of restorative justice is a new paradigm that seeks to find ways to rectify the mistakes among such people, focusing primarily on the infringement of people as a starting point and eventually as a conflict between individuals. In order to resolve the conflicts that arise here, victims and perpetrators are freed from anger and fear by expressing their misfortune in front of the mediator acting on behalf of the community. Through the real conversation of the parties, the victims' Facilitating healing should be a key aspect of restorative justice.

The first purpose for realizing the content of restorative justice should be restitution and healing of the victim and the second should heal the relationship between the victim and the perpetrator[6]. The idea of a restorative justice is to solve the problem in the social relation involving the perpetrator, the victim, the family and the community together, and ultimately to recover the psychological and material damage caused by the crime, The goal is to contribute to the prevention of crime by healing the relationship and restore legal peace[7]. Restorative justice has emerged as a paradigm shift from traditional criminal law to criminal law in the midst of these discussions[8]. Criminologists refer to this as the "Renaissance of Victims" in criminal policy in preparation for the "Renaissance of the Criminal Law"[9].

Therefore, in this study, we try to find a way to expand the application of restorative justice to the criminal justice actively by studying its role based on the definition of restorative justice as described above. In addition, the practical application of restorative justice for developing students' problematic behaviors such as juvenile school violence as educational opportunities for "offender-victim reconciliation and adjustment system and social community-friendly crime prevention and

correction policy" And to provide measures for preventing and coping with school violence.

3. The Legal Nature of the School Violence Prevention Act and Its Relationship to Other Laws

The concept of "need for protection" in juvenile justice is sometimes interpreted as protection from criminal justice[10]. In this sense, the restorative justice program in the context of 'recovery concept for viewing' is not a criminal justice act and becomes a solution to private conflicts. For example, if the case of minor boys is resolved in the case of a minor boys' case, if the conflict between the perpetrator and the victim is resolved, the general public Rather, it is a claim that it will accept the state's penal servitude as a meaningful act[11]. This claim seems to be inextricably linked to the claims of purely analysts who want to separate and operate the existing criminal justice system in order to adhere to the nonspecificity and spontaneity of the restorative justice program. However, the claim of restorative justice for grieving is rather risking the restorative justice program to be a blind program that can avoid the harsh penalties of criminal justice and ensure the effectiveness of control. Such an approach is no different from a 'criminal consensus' that dismisses the ideology of restorative justice. To prescribe juvenile justice as a traditional retributive criminal justice system and to refer to the juvenile justice system as a restorative justice program for the elimination and separation of the juvenile justice is not intended to recover the damage but to literally look at it. Crime victims participating in the Restorative Justice Program will work with the perpetrator in restorative justice programs, including mediation, to restore the damage. The victim is not involved in the program in order to escape the abuse of criminal justice. There is another argument that emphasizes the effect of community reintegration on the claim that restorative justice is introduced with a focus on maltreated boys.

4. Measures to Prevent and Prevent School Violence

4.1. School violence perpetrator-victim reconciliation recommendation system

In the case of school violence, it is perceived as a minor mischief and disguised, and because of the paternalistic view of school violence, it is more educational than the punishment[12]. Therefore, the lack of awareness of the seriousness of school violence, The perceived right of the perpetrator's reflections on the victim, rather than the victim's side, amplifies the damage and leaves a greater heartfelt scar from the nightmare of school violence. In this respect, this system still has limitations in preventing school violence, and as mentioned above, there is a problem. First of all, the recommendation for reconciliation is only applicable as long as the school violence incident is a problem in the juvenile protection process, so the possibility of restoring the violence incident on the school site is lacking in the school[13]. As school violence is common in the school scene, it is important that the possibility of restorative justice can be practiced at school immediately after school violence. Therefore, in order for this system to be truly respected as a system that contains the will to practice restorative justice, it is necessary for the school to be rooted in school violence, It is necessary to supplement the institutional weaknesses that can expect effects.

4.2. Police dismissal system, minor case reduction system and leading conditional indictment system

With the advent of the School Violence Act in 2004, many public and private efforts to resolve school violence autonomously and educationally came to the fore. As of July 2018, 15 revisions have been made to reflect the demands of changing times and school realities since the enactment. After more than a decade, will the voices of expectation opinion be numerous? Considering the fact that there are many opinions of concern, the community agrees with the urgency of preparing the measures. Especially in March 2013, the scope of school violence expanded from pre-

vious "student-to-student" incidents to "student-related" incidents, expanding student protection by expanding student violence cases out of school and by adults Respectively. In this chapter, we focus on the practice of restorative justice for school violence prevention and countermeasures, the court-level reconciliation recommendation system, the leading conditional probation system of the prosecution phase, the police discipline system of police stage and the ministry case reduction system. And the role of mediator or adviser in the case of school violence as well as professional counseling activity of professional counselor.

5. Conclusion and Suggestion

There is no doubt that school violence is more important than preventative measures. Several studies in Korea and abroad have demonstrated the importance of preventive education. As a method to solve the school violence problem, the intervention after the occurrence of school violence requires a lot of time and effort, but its effectiveness is negligible. In order to prevent such violence, it is necessary to look for measures to improve the situation or environment where the occurrence of school violence is anticipated, and to approach and resolve preemptively if any signs are found. It is also important to intervene early in the event of school violence. In view of the nature of such school violence, the government has established and operates special laws including school violence prevention and countermeasures. However, after examining the main individual clauses of the Act, it is found that there are few inadequate parts of the current law system considering the specificity of school violence and the specific cause of the violence. First of all, it seems that more confusing parts related to the basic concept should be removed to make it clearer.

And the relationship between the juvenile law and criminal adjustment system and the law should be clearly established. Efforts should be made to prevent the second and third damages by introducing a system of helping the victims in the judicial process. In

addition, it is necessary to restore the damage after the psychological counseling and the financial support of the professional counselor to the victim in a direction of the reasonable criminal policy. The adolescents 'aggravation of school violence' or 'juvenile offenders' were 'irrevocable misfortunes' in their youth. However, if a criminal is the subject of free personality and is the subject of human dignity and the right to pursue happiness, let him be the plural object of the victim or the potential victim, or restored as a member of an open society, The community will have to ask themselves if they will let them go.

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A Study on the Concept of National Confidentiality in South KOREAN CRIMINAL LAW

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Abstract

Legal interests are the best value for maintaining a peaceful order in society. The legal interests of penal law is one of the most significant values among others protected by so many laws. The fundamental principle of criminal law is the benefits and protection of the law, which consists of national, social and individual legal interests. In particular, the national legal interests is related to the existence and security of the state, therefore it is a very important legal benefits. Thus, this study will try to formulate the concept of national secret in order to apply the criminal law accurately.

*This research has been conducted to draw the concept of judging the national confidentiality based on the principle of legality(*nulla poena sine lege*). The Supreme Court precedents of the Republic of Korea state that the national confidentiality should not include facts, articles, or knowledge that are already widely known to the general public through proper procedures in Korea. National confidentiality should be kept as a secret for national interests. To be treated as national confidentiality, there must be a real threat to national security if it were publicly available. In general, there are three criteria for judging national security. First, a 'theory of formally designated as secrets' recognizes only the national secret as an explicit indication that the government organization prohibits the public from being known. Second, a 'practical secret theory' means regardless of a formal designation as a secret, if the contents of a document is critical to be preserved and it has a substantial value as a secret, which is recognized as confidentiality. Third, a 'merge theory' is a position that can become national secret if it has both formally designated and practically valuable as secret.*

*In conclusion, it is reasonable that 'publicly known facts' and 'trivial things' should be excluded in order to comply with the meaning of national secret. And conventional wisdom and current social atmosphere of Korea should be reflected during the process of classifying actual secrets. Furthermore, it needs to have an objective and concrete analysis on each field. Nevertheless, if the judgment on confidentiality is still ambiguous and unclear, then the principle of *in dubio pro reo* should be applied and favorable to the defendant.*

[Keywords] Criminal Law, National Legal Interests, National Secret, Principle of Legality, Military Secret

1. Introduction

The interests that is worth protected by laws is called 'Rechtsgut'. Legal interests are the best value for maintaining a peaceful order in society. The legal interests of criminal law is one of the most significant values among others protected by so many laws. The fundamental principle of criminal law is the benefits and protection of the

law, which consists of national, social and individual legal interests[1]. In particular, the national legal interests is related to the existence and security of the state, therefore it is a very important legal benefits. There are many types of crimes threatening national security, and there is a great need to prevent information leakage related to national security. National security information is a part of national confidentiality, but

the act of detecting and collecting information to reveal the national confidentiality shall be punished as a spy pursuant to Article 98 of the Criminal Code. In addition, special laws stipulate leakage of national secret as a crime such as the Military Criminal Act, the National Security Act, and the Military Secret Protection Act, and many laws have specified the term "national confidentiality" in their contents. However, the concepts of national confidentiality used in the criminal law and other laws are not mutually unified. The criminal law is of the nature of last resort and should be carefully interpreted and applied, because it applies punishment as a retribution. Therefore, in order to exclude the judge's willingness and apply the law fairly, the principle of legality(*nulla poena sine lege*) should be used as a guiding principle and the correct concept should be used[2]. This is a common view of legal positivism. Thus, this study will try to formulate the concept of national secret in order to apply the criminal law accurately.

2. Concept of National Confidentiality

2.1. Comparison of national confidentiality and 'official secret'

The concept of national confidentiality has changed with ages and political systems. In addition, various factors of each country such as the governing system, social structure and nationality, which are requisites of judgement have influenced a premise of recognition of state confidentiality[3].

National confidentiality is generally defined as 'national defense or diplomatic information that should keep a secret from foreign countries for the sake of national security, and it can cause damage to national security if it is disclosed without authorization'. On the other hand, 'official secrets' means 'secrets' not only defined as secrets under the law, but also classified and specified as secrets or confidential matters according to political, military, diplomatic, economic and

social needs, and recognized it is worthwhile to protect it as a secret, even if it involves considerable interests in something that is not generally known outside. For example, the important affairs related to urban planning are official secrets. If the government classifies the issues as confidential, they are protected as secrets based on security procedures and applications, and even if they are not, they are protected as official secrets when they have substantial value to be protected. Prosecutors and police investigations and investigation information are also official secrets stipulated as confidential in the statute. Therefore, the criminal law shall punish the person who leaked official secrets, if such secrets are disclosed.

2.2. Definition of Korean supreme court on national confidentiality

The Supreme Court of the Republic of Korea has broadly grasped the concept of state confidentiality, which is the object of espionage in the Criminal Act and espionage in the National Security Act. In other words, the Supreme Court has removed confidentiality from the known facts, reflecting the criticism that it had caused unreasonable criminal penalties by including publicized facts into national confidentiality. The Supreme Court said that national confidentiality "should not contain the facts, objects, or knowledge already known to the public through legitimate procedures in the country". And when it comes to making public, it is judged "there is no need for detection, collection, verification or confirmation by anti-government organizations or persons, considering the development of the mass media and communication means such as newspapers, broadcasting, the scope of the reader and the listener, the subject of the publication, etc."

The Supreme Court creates a following standard on judging whether there is a substantial value to be protected as confidential or not: it reflects conventional wisdom in the confrontation era with the anti-government organizations such

as North Korea at the time of collecting confidentiality, and even if the confidentiality is trivial, once it is classified as secret and it is clear that disclosure of confidentiality is beneficial to anti-state organizations and puts Republic of Korea in danger, then it should be confidentiality.

In addition, under the National Security Act, national confidentiality should be restrictively construed as a fact that this is not widely known to the general public, and the contents are important, so its disclosure may pose a risk to national security. In this light, it is fair to say that the Court precedents stick to a following principle: a Korean legal system has ruled “the fact of ‘disclosure’ is not confidential, when it defines penal regulations violating protection of secrets.” [4].

2.3. Stance of Korean constitutional court on national confidentiality

The Constitutional Court presents ① an unknown fact and ② a substantial secret as requirements of national confidentiality. The Constitutional Court stated, “an unknown fact means that it is not known to the general public, and the need for secrecy is recognized by necessity and significance to be concealed and protected as a secret, and the practical secret means that there is substantial value to be protected as a secrecy.” The Constitutional Court, in which such a judiciary is based, has argued that “national confidentiality is necessary to ensure that it is not known to the enemy or anti-state organization in order to prevent the occurrence of disadvantages to national security, and there must be substantial value to preserve the safety of the nation.”

The Constitutional Court has also ruled the meaning of an apparent threat to national security as “the degree where the effect on the national security is objectively ambiguous, trivial or not specific should be excluded in the case of any information leakage. And the judiciary must decide whether it is confidential or not, and the contents and the value of confidentiality must be

determined by reasonably interpreting the functions of the national security in accordance with the criteria mentioned above.”

3. Requirement of National Confidentiality

3.1. Unknown facts

The Supreme Court precedents of the Republic of Korea state that the national confidentiality should not include facts, articles, or knowledge that are already widely known to the general public through proper procedures in Korea. In other words, the known fact is not confidential because it lost its value as a secret, which is neither profits nor value to the enemy or anti-government organization[5].

In view of the principle of legality, known facts should be beyond the scope of confidentiality in order to comply with the meaning of itself. The Constitutional Court also interprets secrets as “something that is not known to the general public. Likewise, a conventional wisdom excludes known facts from the boundary of national confidentiality[6].

3.2. Necessity

National confidentiality should be kept as a secret for national interests[7]. To be treated as national confidentiality, there must be a real threat to national security if it were publicly available. And if any information is leaked and the democratic and efficient operation of the state becomes impossible, then the information can be classified as a national confidentiality by recognizing the necessity of secrecy.

Necessity is the key criteria to consider when deciding whether it is national confidentiality or not. The concept of national secret is abstract and ambiguous, although the concepts are prescribed in the Secret Protection Act of each country. Therefore, it is difficult to judge whether a concrete case is relevant to national secret or not. In other words, there is a question

to judge which factors are applicable as confidential elements in detailed cases. To solve the problem, it is essential to set the criteria for judging confidentiality. In general, there are three criteria for judging national security[8].

First, a 'theory of formally designated as secrets' recognizes only the national secret as an explicit indication that the government organization prohibits the public from being known. That is, documents that are marked as a secret by government agencies are regarded as secrets, which are sometimes referred to as designated secrets. If an act of confidentiality designated by the state and a mark of a secret are contained in a document, it is equivalent to national confidentiality, even though the contents have no substantial values.

According to this theory, the range, kind, and degree of the confidential matters are formally specified, so there is an advantage that it is possible to know objectively what is confidential. However, from the side of addressing confidentiality issues, there is a possibility of not only procedural difficulties but also a loophole of confidentiality protection. For example, when crucial and urgent secret information has been obtained, if a person who assigns a secret mistakenly omits the secret designation, or if the secret is leaked before the designator specifies the secret, a person in charge of handling secrets can not be protected by a criminal law. There is also the problem that even the content that is not practically valuable is classified as national confidentiality by a willingness of person in charge of handling secrets, which infinitely broadens the scope of national confidentiality.

Second, a 'practical secret theory' means regardless of a formal designation as a secret, if the contents of a document is critical to be preserved and it has a substantial value as a secret, which is recognized as confidentiality. Although the theory is faithful, it is unclear whether the information is confidential at the stage of information leakage, and there is a problem that the leaker can not accurately understand he/she

leaks the secret or not. There is also the problem on the criteria and methods where it is ambiguous to judge substantial values to be protected. However, the standards for judging the value of state confidentiality, called 'substantiality', are 'a degree of danger' and 'unknown facts'. The problem is how to judge the degree of risk. The Korean Supreme Court and the Constitutional Court set the standard for the apparent danger to disadvantage to the Republic of Korea.

The Supreme Court, however, has clarified national confidentiality as follows: "Disclosure of secrets, even though it is trivial, will make a profit to anti-state groups, and if it is clear that it will endanger the safety of Korean society, which is categorized as national confidentiality," but it makes the requirement of obvious threat meaningless by using a contradictory expression of "trivial" and "apparent danger." On the contrary, the Constitutional Court has taken a different position by stating that "if the degree of secret leakage is objectively ambiguous, trivial, and not specified, it should be excluded from confidentiality of a possible threats to national security."

Third, a 'merge theory' is a position that can become national secret if it has both formally designated and practically valuable as secret. These theories can be found in the Korea's National Intelligence Service Act, the Military Secret Protection Act, and the Security Business Regulations. However, the theory of merge can not protect national secret that is not formally designated as a state secret but is practically worthy of protection, because only information that is recognized as a state secret by a person designating substantial value can be preserved as national confidentiality[9].

4. Conclusion

This research has been conducted to draw the concept of judging the national confidentiality based on the principle of legality(*nulla poena sine lege*).

The merge theory sets the scope of national secret as formally designated to be a national confidentiality, which can have a narrow meaning compared to a practical secret theory. Of course, despite a practical value of secrets, there can be a problem of protection gap caused by not being designated as national secret. However, the limitation can be addressed by not only formally designated as secrets in the National Intelligence Service Act, the Military Secret Protection Act, and the Security Business Regulations, but also the provisions of the National Security Act, the Criminal Act, and the Military Criminal Act.

And when judging whether it is national secret or not, the Supreme Court and the Constitutional Court, apart from the fact of "known facts", present the requirement of 'obvious danger' to national security. The problem is the degree of risk. The Supreme Court shows that even if it is trivial, it sees it as a state secret if the risk of causing threats to the Republic of Korea is clear. But it is doubtful whether the 'little things' can bring disadvantages to the national security. Therefore, the Constitutional Court has corrected the contradictory expression of the Supreme Court, stating that "if a secret leaked is objectively ambiguous, trivial, and not specifically influenced on national security, it should be left out from confidentiality.

It is also not easy to judge whether a secret is actually dangerous. However, judicial precedents said, "in order to judge whether there is a substantial danger, it should be judged based on common sense and conventional wisdom, considering the situation of confrontation with anti-government organizations at the time of collecting the confidentiality." Although it is possible to say that the precedents have provided relatively specific criteria, but common sense and conventional wisdom are still ambiguous.

In conclusion, it is reasonable that 'publicly known facts' and 'trivial things' should be excluded in order to comply with the meaning of national secret. And conventional wisdom and

current social atmosphere of Korea should be reflected during the process of classifying actual secrets. Furthermore, it needs to have an objective and concrete analysis on each field. Nevertheless, if the judgment on confidentiality is still ambiguous and unclear, then the principle of *dubio pro reo* should be applied and favorable to the defendant.

The Constitutional Court has argued that the Supreme Court has to play a role as a main actor for making a final decision, saying "the Supreme Court should make a judgement on the actual and substantial values of secrets, which is undoubtedly fair and natural."

Korea does not have a comprehensive legal system for the protection of national confidentiality, but it is meaningful to set the concept of state confidentiality precisely in a regard of excluding judge's willingness at court by providing a unified interpretation.

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Changes in Law and its Limits in RISK SOCIETY

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Abstract

The rapid development of science and technology in the late industrial society has changed the civilization of mankind rapidly. Especially, due to the development of advanced information and communication technology, the world is free of the barriers between countries so that the word 'global village' disappears. As a result, free movement of people, money, and technology makes economic ripple effect, spreading democracy, I brought it. On the other hand, there are also side effects that can enforce enormous economic damage as well as human life and body, such as the abuse and abuse of nuclear power due to advanced science and technology, serious environmental crimes, unpredictable accidents, It is the dark side of the development of science and technology. The dark side of this technological development is the object that human beings must overcome to exist as human beings and to live a safe life while they exist.

To do this, we examine the emerging risks in the transition from industrial society to late industrial society, and the role of the criminal law in coping with these dangerous people and their changes. In other words, as a means of controlling risk, we have examined the legal response, and the change in the concept of legal benefit through transposition of such a criminality and the expansion of abstract dangerous people are suspected to be effective and may adversely affect the fostering of healthy social communities. In addition, it has been confirmed that it is reasonable to abolish this approach because it is possible to promote the quantitative expansion of the criminal law in a clear sense that it copes with a new phenomenon, rather it may even doubt the effectiveness of the criminal law itself. In addition, the problem of management of the risk source is not socially controlled by the state but it is reasonable to go to the social management based on the social consensus of the concerned civil society and the people who have easy access to the risk source. And the administrative law area, it is reasonable to consider the criminal legal action as the ultimate means.

[Keywords] Risk, Risk Society, Risk Criminal Law, Abstract Legal Interest, Excess of Punishment

1. Introduction

The rapid development of science and technology in the late industrial society has changed the civilization of mankind rapidly. Especially, due to the development of advanced information and communication technology, the world is free of the barriers between countries so that the word 'global village' disappears. As a result, free movement of people, money, and technology makes economic ripple effect, spreading democracy, I

brought it. On the other hand, there are also side effects that can enforce enormous economic damage as well as human life and body, such as the abuse and abuse of nuclear power due to advanced science and technology, serious environmental crimes, unpredictable accidents, It is the dark side of the development of science and technology. Furthermore, the threats of genetically modified food and cloned human beings due to the development of biotechnology have not become a problem yesterday, which could shake the foundation

of mankind beyond the problems of individual groups. The dark side of this technological development is the object that human beings must overcome to exist as human beings and to live a safe life while they exist.

The new form of risk that characterizes modern society has been an issue in various academic disciplines such as law, political philosophy, and journalism as well as sociology since the German sociologist Ulich Beck presented the concept of 'risk society'. Discussions on the dangerous society in law have been discussed mainly in the field of criminal law. In order to discuss how to cope with the new types of large-scale risk factors in the late industrial society, I have been actively engaged in discussions. Since the late 1990s, there have been discussions on risky society and dangerous criminal law in the fields of economic criminal law, environmental criminal law, and information criminal law.

In this article, we will examine the role of the law to cope with the dangerous society by looking at the changes of the criminal law that directly governs the new types of risk factors based on the basic understanding of the dangerous society.

2. Concept of Risk Society and Change of Law

2.1. Concept of risk and risk society

It is a difficult problem to define the concept of dangerous society uniquely. According to Beck, a dangerous society is a society in which the dark aspects behind human social development are increasingly dominated by societal debate, namely the possibility of artificial nuclear power, chemistry, ecology and genetic engineering destruction. In other words, it means a contradictory society in which the scientific civilization designed for human convenience threatens human existence itself. According to Beck, ourselves, just as modernization dismantled the feudal society of the nineteenth century and created an industrial society, today's modernization is dismantling the industrial society of the 20th

century, and the present society, which dismantles this industrial society, But as a continuation of the continuing development of modernity." [1]. In other words, he is trying to define a dangerous society based on the aspect of society change due to the change of time. However, the notion of such a dangerous society is so abstract that it is not well understood what a dangerous society Beck would like to discuss. Eric Hilgendorf pointed out that the concept of risk society proposed by Beck is quite unclear in terms of philosophical, sociological and legal aspects. He pointed out that the danger society is the destruction of the natural environment due to the rapid development of science and technology in late industrial society And threats to human survival, the disabling of the human sensory system, the assertion of industrial progress, and the arrival of fear society as a result of the collapse of community consensus [2]. The concept of this abstract dangerous society became a hot topic in human society in 1986 when the Chernobyl nuclear reactor incident. Since the development of atomic power in the West in the early 1960s, the introduction of advanced science and technology, including global ecological risk and abuse of nuclear energy, and the social reflection on the danger have begun in earnest in the 1970s and early 1980s but There was little interest to Korea society [3]. However, in the late 1990s, the Korean society, due to the collapse of the Sungsu Bridge, Sampung Department Store, and the oil spill in Taean, reminded society that large-scale disasters could occur due to the adverse effects of these technological and technological developments. The discussion of the mass risk of the form has begun.

If so, what is the new form of risk that Beck presents? Two aspects of Beck's risk concept are raised in Korea. In other words, it is a discussion of how to distinguish between traditional forms of risk and new forms of mass risk. First, Beck distinguishes 'risk' from 'past' (Gefährdung) and a new form of mass risk (Risiko) It is a personal threat by political power, and the latter is the view that technological-economic development, corporate production, and threats that can arise at the heart of society itself [4]. Risiko is already

aware of the danger of foreseeing the legal interests(ie, nuclear power plants, genetic engineering, etc.), although it is already aware of the danger, , Gefahr is a view that interprets it as a danger of unexpected corruption, and Gefährdung as a traditional danger that means the possibility of infringement of an individual's personal interests[5].

The controversy seems to be that the traditional form of risk(or crisis) is viewed from the same point of view, but the viewpoint of how to look at the new form of risk is different. However, because the concept of Risiko as a social entity is not a concept with its limitations as opposed to the traditional threat (Gefährdung), which means the possibility of infringement of the individual's legal interests by this division, The definition is still unclear. Therefore, the concept of a new type of risk has to have a certain abstraction, and the above-mentioned argument suggests that a new type of risk is “expected in human society in the late industrial world, As well as a certain industrial mass risk that appears to be unavoidable in the unprotected personally”.

2.2. Characteristics of risk society

It is necessary to examine the conceptual characteristics of risk society based on the concept of risk and risk society discussed above. Based on these characteristics, it is necessary to confirm whether modern Korean society is involved in the risk society proposed by Beck.

First, human beings are aware of the danger through scientific knowledge, because the new form of mass danger is created by humans but is a risk of outgrowing human cognition(think of radioactive hazards). That is, risk can change within the knowledge, be exaggerated, adapt or diminish[6].

Second, the risk is gradually leveled. In other words, in the industrial society, the person who has to recognize and take negative side products of the industrial society has been decided. While traditional risk varies according to the status of the class, the new form of risk is equally applied to the rich and the poor, not to distinguish between rich and poor. As the size of the risk increases, its

propagation becomes wider. In other words, new risks lead to the disappearance of the line between the privileged and the non-privileged, which means that all socio-economic differences in terms of 'exposure to risk' have become meaningless due to the strengthening of certain kinds of risks globally, It is not normal but normalized.

Third, the risks in a risk society have boomerang effects that return to those who produce the risk or benefit from the risk. For example, a farmer who produces a large amount of crops through chemical fertilizer will be at an inherent risk of soil erosion on his farm, as well as the side effects of consuming large quantities of lead in his grain.

Fourth, a new form of mass risk becomes a new market for capitalist development. In other words, risk is an avid demand that economists have been waiting for a long time. Hunger can be filled, and destitution can be fulfilled, but the danger of civilization can not be fulfilled because it has a demand like underneath poison, and it can be infinitely self-produced. It can be said that the legislation like the expansion of the insurance market in economics and the expansion of the abstract risk law for the safety society from the legal point of view shows this.

The discussion of this danger society is that the structural risk factors of the late industrial society, which occurred artificially, will exceed the predictable range of mankind while experiencing the industrial society, and that the survivors' And it is impossible to recover the infringement results[7]. How has the law changed and responded to this mass risk? This is because the necessity of legal interpretation and legal method is constantly raised through reflection on the existing regulatory method as well as the necessity of regulation on the new phenomenon[8].

2.3. Changes in legal functions in risk societies

Why did the discussion of dangerous society occur? Though there may be various perspectives according to the writer, I think it is basically because it prompted the desire of safety for oneself existence. In other words,

the objective aspect of the emergence of new mass risks due to the development of science and technology, and the subjective aspects of increasing the anxiety and fear of the members of society caused by this competition. Of course, it is true that the traditional and natural dangers of our society have been reduced compared to the industrial societies due to such economic growth and development of science and technology. However, this objective safety has increased, but the subjective anxiety that the members of society have in the new form of mass dangerous danger poses a serious threat to objective safety. For this reason, members of our society are demanding active intervention in new risk factors.

3. Changes in Criminal Law as a Means of Controlling Mass Risk and Its Limitations

As we have seen, the new emerging risk factors in late industrial societies require legislation to expand its coverage area based on reflective considerations that it should rethink its existing traditional role. In other words, it is required that the law intervene not only in the conventional role of traditional social deviations, which are traditional roles, but also in the newly emerging (but not presumably illegitimate) forms of elements. This danger law has its significance especially in the field of criminal law, which can be found in the sense that it regulates the inherent characteristics of criminal law, that is, human behavior as punishment. In the following, we examine how the criminal law changes as a control of mass risk in a post industrial society, and examine whether such a change can achieve such a purpose.

3.1. Changes in criminal law in risk society

3.1.1. Macroscopic aspects

The most distinctive feature of Western-style democracy since Charles De Montesquieu's distinction between the legislative and executive powers of John Locke and the three-divisionist theory was the division of the three factions into the principle of checks

and balances. Under such a system of separation of powers, the law was characterized as passive existence. However, the advent of dangerous societies and the active intervention of laws to counteract them have led to a shift in the nature of these laws (or the judiciary). This is because the proposition of the last law of the law has been raised in the past because the human race demands the change of the law through the result of the unforeseeable atypicality and the enlarged risk which is the risk source in the risk society. However, the active involvement of the law in these social disputes is a serious risk, apart from its usefulness, that it is the breakup of the separation of powers that causes the executive power to intervene in the jurisdiction. In other words, it entails the examination and judgment of what is the danger and how to set up the countermeasures, and as a result, it causes the jurisdiction of restraint and judgment of the state power[9].

Also in this case, the role of the administrative office is to intervene in a crisis that can be resolved by social consensus under the pretext of preventive measures against unpredictable risk sources. It is suspected that this is intended to prevent the dangerous society derived from late industrial society from being aimed at the advent of dangerous premises.

3.1.2. Microscopic aspect - the pursuit of social safety through early intervention in criminal law

3.1.2.1. The rise of universal legal interest

Legal interests refer to the interests and values of individuals and communities for which the violation is prohibited by law. Most of the major interpretation work, such as legislative review and legal interpretation as well as the construction of the theoretical framework[10], This is because the law has a clear legal interest to be protected by means of forcible means, the state intends to intervene only for obvious violation of legal interests, and inevitably minimizes the concept of the legal interest that the state intends to protect and maximizes the freedom of community members It can be interpreted as a purpose.

As the post-intervention of the law based on the concept of the traditional legal interest can not satisfy the new security need of the people in the dangerous society, the preemptive intervention of the law has been demanded, which is a modification of the conventional concept of the legal benefit. In other words, it is difficult or impossible to prevent and eliminate new types of large - scale risks in the traditional legal interest, and it recognizes the prejudiced legal benefits, that is, universal legal benefits, rather than the traditional and individual legal benefits that are traditionally recognized[11]. Recognizing this broad universal legal interest has its own place in protecting the value of the community itself as well as its members[12]. However, this universal benefit has difficulties in practical application of the law because it can not explain to the life loner of the norm what the object of protection is specifically. Furthermore, the concept of foreclosure entails the risk of being filled with non-legal elements that are mixed in our notions of morality and ethics.

3.1.2.2. Expansion of abstract endangerment offences

In the late industrial society, a new type of risk is scattered throughout society, and the production and distribution of such risk is an important task of modern society, and thus a new role of the state and the law is required inevitably. The purpose of this risk penal code is to try to play an active role in resolving the anxieties that the members of society have about the dangers of modern society and try to control the risks that are objectively present through these roles[13].

According to the traditional criminal law theory based on criminal justice, the first consideration in the application of the criminal law is the supplement of the criminal law. However, focusing on these principles of complementarity can not effectively deal with the new types of risks facing mankind, so the criminal law must actively intervene to cope with the new types of crimes that cause these risks. In the area of modern risk, it is difficult to confirm concrete protection law, and if we adhere to the last means of criminal

law, which is the basis of modern criminal law, we can not prevent the realization of danger.

In general, criminal law is realized through the infringement of legal interests, which means personal or social / national goods or functions that are worth protecting, but illegal acts caused by new mass danger of modern industrial society must be violated It does not[14]. However, since the occurrence of 'concrete risk' in these specific dangerous beings depends on the accidental factor, the vicious circle is extended again by the second stage, In other words, in order to actively reduce and prevent the new massive risk, it is necessary to intervene in advance at the early stage of the culpability, so that any act that has a certain possibility of risk creation irrespective of the concrete result of the act is subject to punishment An abstract risk taker who does not require a causal relationship between the act and the outcome of the infringement by taking is introduced by the legislator. However, the expansion of such an abstract dangerous criminal has a problem that it is placed with the modern law thought that causal relation of action and result is the premise of responsibility. In the description of the selection and constitutional requirements of criminal acts, the abstract risk to legal interest is only a matter of legislative or criminal policy considerations, thus raising criticism as a serious violation of accountability[15]. In addition, despite the fact that the expansion of abstract endangerment offence is a countermeasure against future risks, there is a question about whether the preventive effect is effective.

3.2. Possibilities and limitations of security guarantees through the criminal law - the pains of criminal law in a risk society

In such a dangerous society, criminal law is expanding its temporal and spatial scope through its active role, but there are many perspectives on the change of such criminal law.

Of course, as Hegel puts it, law can not be meaningful because it is influenced by that age and the state of society belonging to it. The law is a means of solving social conflicts,

not a self-existent being. In this regard, legal interpretation (as well as legislation) to respond to the massive risk factors in late industrial societies should reflect changes in the times.

In the risk society, what the social community demands of the criminal law is prevention of the risk occurrence through the control of the risk source, which means safety from the mass risk. But before we cry out for safety from the danger, we should consider what safety is. Safety means a state free from danger or a source of danger. These hazards were safety from nature, which was largely a force majeure before industrialization, safety from poverty in industrial society, and safety from mass danger in late industrial society. In other words, it means that only incomplete safety has been maintained before the full-scale risk society has arrived, and the concept of safety means relative. In what ways can safety be secured in modern society? There are many forms of risk in a dangerous society, but in order to prevent this type of danger and ensure safety, infringement of the fundamental rights of the people is a necessary phenomenon. In other words, the relationship between freedom and safety is inversely related, which means that the higher the desire for safety, the greater the violation of fundamental rights.

Here we can reconsider the existence of criminal law in late industrial society. In the past, citizens who have been favored by civil society as a means of securing citizens' freedom and rights are forced to perform an excessive role (and criminalization) in order to achieve the same goal as before. In addition to the protection of citizens from such risk sources, the government is also suffering from the task of ensuring maximum freedom of citizenship. However, in a dangerous society, freedom and security are inevitable core values for community members. If so, then there remains the question of whether to enjoy relative safety and absolute freedom, or else to enjoy absolute safety and relative freedom. At the crossroads of this choice, we think that the basic principles of criminal law (as well as law), such as the principle of clarity, the principle of responsibility, the principle of

proportionality, and the principle of complementarity are necessary.

4. Outro

We have briefly reviewed the emerging risks in the course of transforming from the industrial society to the late industrial society, and the role of the constitution and criminal law in response to these dangerous people and their changes. The changes in the legal functions in the dangerous society confirmed that there is a destination to the liberation from the risk, that is, to the safe social orientation, by preparing against the new type of risk. For constitutional aspect, it examines from the aspect of constitutional theory and guarantee of basic rights where the responsibility of the state for securing the safety of members of community is derived, and examines the legal response as a means of controlling such risk sources. The change of the concept of the corporation and the expansion of the abstract dangerous beans through the transposition of this verbal nature are suspected to be effective and the possibility of adversely affecting the fostering of healthy social community is examined. In addition, it is reasonable to abandon this approach because it is possible to promote the quantitative expansion of the criminal law in a clear sense that it copes with a new phenomenon, rather it may even doubt the effectiveness of the criminal law itself. Therefore, even in a dangerous society, the interpretation of the Constitution and the law should be done within the scope of not harming the rule of law and national tradition. In addition, the problem of management of the risk source is not socially controlled by the state but it is reasonable to go to the social management based on the social consensus of the concerned civil society and the people who have easy access to the risk source. And the administrative law area, it is reasonable to consider the criminal legal action as the ultimate means.

This requires a new analytical model for the distribution and management of mass risk while maintaining the legal basis of the legal system in legal interpretation. This is the role

required for all of us living in the late industrial society. It will be a way to minimize.

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