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Improvement of the Citizen Participation in CRIMINAL Trial in KOREA

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Abstract

According to 'Act on Citizen Participation in Criminal Trials', Citizen Participation in Criminal Trials took effect from 1st of January, 2008 in Korea. Korea have accumulated 10 years of experience, and reached the present.

Commonly, we call Jury participation criminal trial as Citizen Participation in Criminal Trial. But Citizen Participation in Criminal Trial is let citizen participate as an Juror to suggest opinion of recognition or right of punishment. Therefore, it could increase the citizen's reliability and democratic legitimacy of judicial.

Especially, this act can make understandable trial to both dependent and victim by let ordinary non-legal professional people to participate a criminal trial. This could make an effect on faith and validity of the trial.

However, this act have been 9 years in Korea and going to 10th year. And it is time to reconsider this act, that it really effect as we expected when we started. This process is necessary work required for the development and proper settlement of this act.

The national involve Judicial Council of Supreme Court in Korea, already work on this process from 2008 to 2012; after the analysis, they confirm the final form. On the other hand, Ministry of justice legislate a notice for twice.

This study is look for a procedures of Citizen Participation in Criminal Trial, accomplishment of enforcement and development.

[Keywords] ***The Citizen Participation in the Trial, Amendment of Public Justice Participation Committee, Binding Effect of Jury's Verdict, Law-Related Education for Citizen, Jury System***

1. Introduction

In Korea, the National People's Participation Trial was held on January 1, 2008 under the "Act On Citizen Participation In Criminal Trials", which has accumulated about 10 years of experience. In the case of the public participation trial, the jury selected among the people participates in the criminal trial to present the opinions on the fact recognition and the control of the brotherhood, and the democratic legitimacy of the judicial system and the It was introduced to increase the credibility of the Korean people. In particular, this system is expected to increase the public's understanding of the judiciary and increase the confidence in the justification of the trial if the general public, who is a non-expert of the law, participates in the criminal trial and realizes a trial that can be grasped by the defendant or victim It seems to be effective[1][2].

The Citizen Participation Trial was not a definite introduction at the time of the first introduction in 2008 but decided to finalize the Citizen Participation Trial System after the implementation of 5-6 years. Accordingly,

the Supreme Court's National Judiciary Participation Committee confirmed and finalized the final form at the eighth meeting on March 6, 2013, by analyzing the progress of the public participation trial conducted for five years from 2008 to 2012. However, the Ministry of Justice revised or added the final draft of the National Judiciary Participation Committee on October 11, 2013, and announced two final legislative amendments to the Ministry of Justice. On June 12, 2014, the government submitted an amendment based on the Ministry of Justice to the 19th National Assembly, but it has been abolished due to the expiration of the 19th National Assembly. In this article, I am criticizing this law and amendment in view of the fact that the "Act On Citizen Participation In Criminal Trials[3]" and the amendment of the abolished Justice Department are not in line with the purpose and purpose of the public participation trial[4]. I would like to examine the development of the public participation trial.

2. Problems Raised after the Citizen Participation Trial

The Supreme Court has consistently analyzed the situation during the trial period of the Citizen Participation Trial. The analysis of the period from January 1, 2008 to December 31, 2011[5], as well as public participation trials in other publicly available materials, It can be pointed out that it must be improved and improved at the same time.

2.1. The implementation rate of the citizen participation trial

As the implementation rate of the Citizen Participation Trial is too low, it is necessary to solve the cause of poor implementation rate. During the above period, out of the total 21,912 cases covered, 574 cases were treated as the Citizen Participation Trial, showing 2.62%. Only 1490 cases(6.8%) of the total cases were received as the Citizen Participation Trial, 582 cases(2.66%) were withdrawn and 274 cases(1.25%) were excluded. Most of the exclusionary decisions were made under Article 9 (1) (3) of the Citizen Participation Trial.

2.2. Problem of bad judgment

It is the concern of bad judgment in accordance with the due date which ends in one day or two days. 527 cases(91.8%) out of the 574 cases that were treated as the Citizen Participation Trial completed all the procedures except one sentence in one day, only 47 cases (8.2%) took two days.

2.3. Problem of the severity and fragility of the verdict

The jury's verdict and guilty verdict require the unity of the jury, and even if they reach a verdict, they are merely advisory. Thus, it is necessary to change the structure of the guilty verdicts to a majority method, to give a speed to the verdicts, and to change the way the jury is involved in sentencing. In the case of 90.6% of the 570 cases, the verdict and the judgment were consistent with 520 cases, and in the case of 92.6% of the cases, the majority of the sentences of the jury and sentences imposed by the judge were close. By 2012, the jurors' verdict and court rulings were concluded in 782 cases, 92.2% of 848 cases involving public participation in the five years from 2008 to 2012. On the other hand, in the jury's verdict of innocence, the judge ruled guilty of seven cases in 2008, six cases in 2009, 13 cases in 2010, 24 cases in 2011, 12 cases in 2012, 62 cases, There were four cases in which the judge ruled innocence[6].

2.4. Problem of high appeal rate

This is a high appeal rate for the Citizen Participation Trial that fade the meaning of public participation trials. Of the 514 cases that were treated as he Citizen Participation Trial, 491 cases were appealed and the appeal rate(85.5%) was higher than the appeal rate (68%) when the cases were treated as ordinary trials. Of these, the defendant's appeal rate(including the case of both appeals) was 66.6%, which was somewhat higher than the defendant's appeal rate of 59.4% in the general trial, while the appeal rate(including both appeals) The appeal rate in the trial was more than twice as high as 23.3%.

3. Critical Review of the Improvement Proposal of the Citizen Participation Trial

Based on the results of the public participation trials mentioned above, the Supreme Court's National People's Justice Participation Committee finalized and finalized the public participation trial system at its eighth meeting on March 6, However, despite the procedural problem[4], he Ministry of Justice notified the final draft of the National Assembly on the Participation of the National Assembly on the revision of the Act on Participation in Criminal Justice[7]. After the criticism that the jury of the public participation trial is shaken in the local emotion and the emotion in the case of the public election law violation case[8]. And on June 12, 2014, the government submitted an amendment based on the Ministry of Justice to the 19th National Assembly, but it has been abolished due to the expiration of the 19th National Assembly and is now under discussion at the 20th National Assembly. In the following section, we will look at the problems raised in each of these areas and how they are developed.

3.1. Improvement of binding power of verdict

The amendments to the National People's Judicial Participation Committee and the Citizen Participation Trial of the Ministry of Justice do not recognize the binding power of the jury verdict in common, but merely give the ambiguous "de facto bridging force". This is because judging from the idea that constitutional reconciliation is not feasible when the jury's judgment is binding, and when the decision of the unskilled jurors is decided by the jury, it is considered to be due to self-superiority of the judiciary. However, these amendments have limitations in solving the distrust of the existing judicial system and securing the democratic legitimacy of the judicial system. Article 27 (1) of our Constitution Law states that “all citizens have the right to a trial under the law by a constitutional law and a law.” This fundamental right constitutes a constitutional guarantee of the defendant's right to a trial by a judge, but it is not necessarily the case that a judicial trial alone guarantees the defendant's fair trial. In other words, the fairness of a trial can be achieved not only by a judge who is guaranteed by law, but also by a jury trial by the same fellow citizen. Also, since the life of a criminal trial is fair, the proper procedure in a criminal case can not be achieved without a fair trial. However, the fairness of a trial can not be guaranteed only by a judge who guarantees independence and term of trial[3].

In addition, the fears of misjudgment that may arise because jurors are non-experts have already been resolved through the results of five-year the Citizen Participation Trial. In other words, according to the Supreme Court's data, the verdicts and judgments of 782 cases, 92.2% of the 848 cases, were concluded in five years, which is enough to eliminate such concerns. The essential reason for admitting public participation in justice is to overcome the limitations of the trial by professional judges and allow the public to participate as jury members to realize their core concerns about the judiciary[4].

3.2. Problem of the ministry of justice that excluded political events from the citizen participation trial

The revision bill of the Ministry of Justice (Article 5, Paragraph 1, Subparagraph 1 of the Ministry of Justice) is a case of violation of the Public Election Law(Article 32 (1) 6 of the Court Order Act) This is not valid considering that the purpose of the public participation trial is to guarantee the right of people to participate in the judiciary. In other words, the purpose of the legislature is to make certain events not under the sole judge but under the jurisdiction of the consensus, as this is a serious event that requires the experience of the judges and consensus of the judges. Therefore, because it is necessary to reflect the will and common sense of the people about such a serious event, it is legislated as a subject of public participation trial. In the case of “power crime” such as political crime, civil service crime, election crime, economic crime, etc., the Ministry of Justice's proposal is against the institutional purpose of public participation trial It should be deleted[4][9].

3.3. The introduction of some mandatory measure

As with the amendment, it is only feasible to adopt some form of compulsory caution based on the application principle, provided that the court and the attorneys are willing to act fairly. However, considering the background of the introduction of the system of public participation trial due to the mistrust of judiciary, and the self-determination attitude of the courts and prosecutors in the process of legislative and institutional settling, some of the compulsions that the final draft introduces are based on overly optimistic expectations and assumptions I will not. In other words, the compulsion proposed by the amendment is meaningful only in terms of the limitation of the applicant's right of application, and the substantive merely divides the right of referral of procedure by pluralizing the right to refer the procedure to the court and the prosecutor[9].

In the end, in view of the subtle understanding and dynamics between the trial participants in relation to the referral of the people's participation trial, it is not entirely up to the judgment of the trial participants to decide whether or not to submit the proceedings, It is considered desirable to enforce or mandate the procedure[9].

3.4. Improvement plan with appel

Since the trial of the people's participation in Korea can appeal regardless of whether or not the first judgment is a crime, the first trial is not final. Rather, rather than the appeal, the trial is conducted by a professional judge. However, in all jurisdictions, an appeal against a verdict of innocence is not, in principle, allowed by the principle of unilateralism and the principle of prohibition of dual risk. The defendant is only able to appeal the guilty verdict on the basis of a violation of the law. In general jurisdictions, in the case of an innocent verdict, the first trial jury trial is final, and in the case of a guilty verdict, the appeal is based on the principle of law.

Of course, it may be possible to recognize an appeal against the decision of the People's Participation Tribunal in terms of remedies. However, the recognition of the appeal of the innocent conviction of a jury's unanimity can be attributed to the fact that the doctors of a majority of the jurors representing the people can be overturned by a few professional judges. Therefore, it is reasonable that the prosecutor's appeal against the juror's unanimous decision is prohibited[4].

3.5. Improvement plan of reasons for excluding verdic

According to the amendment, the courts have substantial judgments and decision-making powers throughout the proceedings of the Participatory Court, and in this process the jury is supposed to have only a subsidiary position and role. In this situation, the amendment also includes the exclusion of jury verdicts. However, the reason for exclusion includes the case of 'violation of Supreme Court precedent', which in effect declares abandonment of the Citizen Participation Trial.

Because, if there is a considerable reason, the case of the Supreme Court can be changed. Also, there may be cases where the case should be changed due to the change of social awareness. In addition, although Korea is not a case law country that recognizes the legal effect in the case, excluding the verdict for such a reason recognizes the legal power of the Supreme Court case. It would be an outcome of the court's authoritarian and authoritarian idea that it is not necessary to respect the jury's verdict that the revision bill violates the Supreme Court's case even though the revised bill admits the jury's verdict. Therefore, it is reasonable to remove the part of the Supreme Court precedent in the exclusion grounds[4][9].

4. Conclusion

Through the Citizen Participation Trial in Korea, we have opened a new chapter in the history of our judicial affairs in that the people's mistrust of the judiciary has been solved and democratic control by the people has become possible. It is encouraging that the Citizen Participation Trial is a place for education to teach democracy to the people and it is

positive that the problem of 'whole courtesy' and 'genocide guilty guilt' is not posed in the case of participatory trial. However, unlike the anticipation that the application will be overcrowded in the first place, there are also problems such as the application rate is lower than the case and the actual withdrawal rate is not so high. In addition, the appeal rate was higher than that of the general trial. In order to solve these problems, the Supreme Court's National People's Judicial Participation Committee and the Ministry of Justice have proposed revisions of each, but the above - mentioned problems are pointed out. In retrospect, compared to a country where we have experienced jurors for hundreds of years, the system of public participation trials is so unfamiliar that many problems now appear. However, since it is impossible to overlook such a problem, efforts to resolve it in a short period of time are emerging.

However, at this point, it is important to overcome the problem, not to create an eclectic improvement plan as a quick solution, but to form a consensus that meets the purpose and purpose of the Citizen Participation Trial. In this process, I think that the merits of 10 years after the implementation of the Citizen Participation Trial can be maximized and the model of the Korean-type People's Participation Trial which can overcome the problems can be settled.

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Indecent Act by Compulsion in KOREA Criminal LAW

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Abstract

This paper deals with the controversy over the gap between the theory and practice of the concept of forced harassment in Korea, in particular so - called 'indecent act by blitz'. The concept of 'indecent act by compulsion' is necessary for a criminal offense to be established by korean criminal law. However, since the Supreme Court admits that 'indecent act by blitz' is one of indecent act by compulsion, there is a difference in opinion on the concept of indecent act by compulsion between the legal practice and legal academia. The concept of indecent act by compulsion includes sexual molestation. The concept of the sexual molestation that academics and practitioners generally agree is as follows. The content of sexual molestation is an act in which an actor acts for sexual stimulation, excitement, or satisfaction, and is an act that causes the victim to feel feelings of sexual shame and disgust, and is an act that infringes the victim s sexual freedom. However, there is a great difference between the general interpretation of the academic community and the interpretation of the practice in relation to the specific scope of indecent act by compulsion, which is the subject of criminal offense.

This paper analyzes Supreme Court precedents and academics viewpoints to solve these problems. The purpose of this study is to analyze the meaning of sexual molestation and threat and assault expressed in cases and doctrines and analyze the meaning of sexual self - determination right, the essential characteristics of sexual molestation, and the threat and assault.

[Keywords] ***Indecent Act by Compulsion, Indecent Act by Blitz, Sexual Self-Determination, Freedom of Intent, Simple Indecent Act***

1. Introduction

On September 10, 2015, the Korean Supreme Court declared simply 'an act of holding both arms high and holding a victim to stop,' as an attempt to force a sexual assault without physical contact[1]. The judgment " acts of force against the will of the other party on the purpose of sexual assault, that is, acts of violence have been carried out, but failing to achieve the results of an act of indecent assault, an attempt has been made to commit an act of force abuse priority." After the argument, "This law also applies to the so-called" surprise attack "in which the act of assault is recognized as an abusive act." After approaching the victim and hugging the victim suddenly from behind, the act of sexual harassment or disgust The defendant's arm does not reach the victim's body because it can be regarded as an act of so - called "surprise attack" because it is an act that violates the victim's sexual freedom as an act against the good sexual moral notion. The act of embracing the victim suddenly behind the victim is an act of tyranny against the will of the victim and corresponds to the act of assault. This is the view that certain acts without physical contact can be seen as the beginning of vio-

lent acts that can be recognized as forced enforcement[2]. However, in the background of such a position, the attitude of recognizing the exercise of sexual tactile force on the body, which is carried out in an anticlimatic manner against the will of the victim, as the compulsory act of constitutional act of forced indictment under the Korean criminal law. In addition, it appears that there is a position that does not place a de facto lower limit on the extent of assault, which is a means of enforced extortion and the requirement to establish. This article explains the background of the position of the Korean Supreme Court and discusses the requirements for the constitution of forced indecency in Korean criminal law.

2. Controversy over Interpretation of Forced Apology in Korean Criminal Law

2.1. Raising the issue-practice on the concept of forced enforcement and disagreement among academics

There has been considerable disagreement between practice and academic circles since the Supreme Court acknowledged what it called “indecent act by blitz,” as one form of punishment for criminal law. In terms of the constitutional nature of the perpetration act, which is a premise in the establishment of the concept of forced extortion, the actor's point of view is 'act for sexual stimulation, excitement or satisfaction' and from the victim's point of view, But it seems that both academics and practitioners generally agree that sexual violence is an act that violates sexual freedom. However, there is a great difference between the general view of academia and the range of practice recognized as to whether or not an act is evaluated as forced enforcement and is subject to the rate of duty of forced enforcement. This difference is due to the difference in viewpoints between conceptual distinction between the perpetrator's act and the "forced" perpetrator, and the viewpoint of the meaning of demanding assault or intimidation as the means of establishing forced extortion, Of the total population.

2.2. The position of the practice in the case of the supreme court of korea

Among the judgments of the Supreme Court, which are judged to represent the position of the practitioner, a relatively recent precedent defines the concept of extortion as follows.

Forced offense is a crime that infringes the individual's right to freedom of sexual freedom, and "indecent act by force" in the provisions of the above law is not enough to cause sexual shame or disgust for the general public and is against the good sexual morals, of the victim's sexual self–determination. Therefore, the act of "lewd act"(or the act prescribed in Article 41, Article 1 of the Act on Punishment of Minor Offenses Against Overexposure) defined by the performance of Article 245 of the Criminal Act for the purpose of protecting the general social legitimacy of sound sex, It can not be said that it is not necessarily a "indecent act by force" against the person. Above all, the act of the problem should be evaluated as infringing the victim's sexual freedom[3].

In addition to the definition of this concept, this case describes the assault or intimidation, which is a means for establishing a forced assertion as follows.

A compulsory assertive offense is committed by assault or intimidation by extorting a person, so that the assault or intimidation is enough to make it difficult to reprimand. And whether or not the assault was such that it would make it difficult for the victim to protest, not only the content and extent of the assault, but also the fact that she exercised her tactile power, the relationship with the victim.

In summary, the concept of suicide refers to an act that has a characteristic of behavioral effects that it is insufficient to have the essential character of causing sexual shame and disgust, and that it infringes on the victim's freedom of sexual self-determination. In addition, forcible abduction in order to constitute a forced assertion can be defined as a case in which abusive behavior such as the above-mentioned concept is performed by means of assault or intimidation enough to

make it difficult for the victim to stand up. In some cases, however, when the act of assault is the nature of an abusive act, it is judged as follows.

Indecent act by compulsion include cases in which an assault or threat is imposed on an opponent to make it difficult for the person to stand up and then the offense is perceived as a misdemeanor. The assault in this case does not necessarily require that the opponent's intentions be suppressed, and it does not matter whether the strength of the force is present as long as there is an exercise of tangible power against the other's intention. (...) Even if the act of touching the victim's breast is only a momentary act while dancing with the victim, it is not only a violation of the sexual freedom of the victim, but also a violation of the victim's will The act of assault itself is recognized as an abusive act, which is a indecent act by compulsion[4].

If the assault activity itself is recognized as an abusive act, as it expresses in the same case, it is judged that this is a Indecent act by compulsion, which is a constituent of forced abuse, even if it is only a momentary act. In regard to the so-called 'indecent act by blitz', it takes a position different from the previous case in which it is demanded that the abduction or intimidation, which is the means of such abduction, is such that it is difficult for the victim to protest by saying "regardless of the strength or weakness of the force". The position of this case follows from the case of 1983[5] and the case of 1994[6], which took this position for the first time in a similar case. According to this position, cases where the offense of forcible assault pursuant to Article 298 of the Criminal Code is applied include ① cases in which abusive acts are carried out together with assault or intimidation to make it difficult for the victim to protest; and ② cases of assault, And the case where the act of killing is performed at the same time. The position of the case in which the assault offense is to be extended to the case where the assault activity itself is recognized as a misdemeanor is confirmed once again in the judgment of 2015 introduced in the beginning.

2.3. Academic view of interpretation on indecent act by compulsion

In academia's interpretation of forced offense, recent observations show that an act that meets the constitutional requirements of this crime has an objective attribute of raising sexual shame or disgust, while at the same time[7], It should emphasize that it should have the character of infringing on freedom[8][9]. These views embody this in two aspects in the concrete interpretation of the forced assertion. One is to limit the concept of suicide, which is a constituent requirement, to remarkable acts that violate sexual freedom, It is demanding a certain degree of intimidation in terms of the effect of the victim's difficulty in protesting.

2.3.1. Limited interpretation of the concept of indecent act

Many of the views on the concept of forced harassment are not forcible, such as 'touching a woman's hand or knee' or 'touching her breast over a woman's clothes'[10]. On the basis of this, it is said that such an act is not enough to cause sexual shame or disgust[10], even if it raises sexual shame or disgust, it is difficult to evaluate it because it is weak because of the infringement of sexual freedom[11], and that there is a need to be limited to acts that seriously infringe sexual freedom based on the principle of supplementality of the criminal law[12]. Specifically, sexual shame or repulsion which is the criterion of abduction can vary greatly depending on the individual, and it is a concept that can not but be influenced by the sex culture of the society in question. Therefore, in order to objectively secure the victimization of the abusive act, it is a concept that can not be restricted by the standard of the prominence of the infringement.

2.3.2. Limited interpretation of the extent of assault

Most of the theories about assault and intimidation, which is a means of forcible assault, understand assault and intimidation as a requirement for the abusive act to be evaluated as forced enforcement. In other words, it is necessary to understand the assault or intimidation in the concept of certain means distinguishable from the perpetration act itself, and to make certain forcible acts to be

carried out by assault or intimidation, And that it is a requirement. Many opinions on the degree of assault or intimidation should be seen at the same level in terms of assault and intimidation, which is a requirement for the establishment of rape. In the current Criminal Law, rape and forced assault are equally grounded in the basic crime constitutional requirement of protecting the right to sexual self–determination. However, because of the diverse nature of the act, enforced extortion does not necessarily need to be overridden by the opponent's rebellion like rape, so the assault or threat does not have to be enough to suppress the opponent's rebellion, There is a lot of opinion recently that it is enough[13]. This dissenting opinion appears to be due to the perception of the fact that extortion is an infringement of the arbitrary freedom of sexuality and that such infringement can be achieved even if the victim's objection to it is still present.

3. Conclusion

The Supreme Court's case in 2015, which acknowledged the attempted compulsory extortion, can be regarded as a demonstration of the court's intention to strengthen criminal legal protection for victims of sexual freedom. Yet while the Supreme Court's precedents have long been such a practice of sublimating a clearly punishable act into the scope of a forced act, such as a blitz attack, academic circles still see it as an attitude toward it. The reason that many opinions of academics oppose this attitude is not because of taking a sexual conservative position that does not acknowledge the victimization of surprise attack but because it is clearly defined for assault. The normative meaning of the law should be settled at a universally reasonable level, and the establishment of such normative meaning can not be free from the fact that the general principle of the supplementary principle of the criminal law works. Such freedom is solely owned by legislators.

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Some Problems about Victim's Consent under KOREA Criminal LAW

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Abstract

The consent of the victim is that the subject of the legal interest allows the other person to infringe on his or her legal interest, and in some cases it is an effective system to engrave the illegality of the act by consent. In KOREA, as a legislative case, the consent of such victims is prescribed in the Article 24 of the Criminal Law, and it is a mainstream interpretation of our criminal law academics to view such acts as justification of illegal acts as self - defense, emergency evacuation. Of course, we also acknowledge that there is a possibility that the constitutional requirement may be denied by the consent of the victim even in this legitimate position. In other words, if the consent of the victim is accepted, the constitutional qualification of the act is denied, and the constitutional qualification is recognized but the illegality is sculptured.

The study initiates a discussion on what kinds of legal interests victims of a violation can accept. The consent of the victim is recognized only if the right of the disposition is greater than the social necessity of disposing of the disadvantage. However, there are cases where the willingness of the individual to be consent may be a problem if there are individuals who are also victims of the national and social. There is no doubt that the legal interests of a victim's consent is personal interests, but it will focus on the case of conflict between personal and legal interests. In this case, we will confirm that the consent of the person concerned does not affect the establishment of the crime if there is overlap between personal and legal interests and national and social interests.

Next, the dispossessed right will review whether any legal interest is disposable, unless there are special restrictions. This is to examine whether it is possible to limit the freedom of disposition by law. In this regard, we will consider that it is very difficult to uniformly define the limits for the restriction of consent, and that judging this by an uncertain phrase of social equity is not reasonable in terms of legal stability. It also examines how to see the effect of consent when the consent of the dispossessed person is made for illegal purposes. This is to examine whether it is possible to limit the freedom of disposition by law. In this regard, we will consider that it is very difficult to uniformly define the limits for the restriction of consent, and that judging this by an uncertain phrase of social equity is not reasonable in terms of legal stability. If the consent of the dispossessed person is made for illegal purposes, how to see the effect of the consent shall also be examined.It also examines how to see the effect of consent when the consent of the dispossessed person is made for illegal purposes.

[Keywords] ***Consent of the Victim, Understanding, The Right of Self-Determination, The Effect of Consent, Legallinterests.***

1. Introduction

The consent of the victim`s is that the subject of the legal interest allows another person to infringe on his legal interests. This has the effect of engraving the illegality of an act by consent in certain cases. The consent of these victims comes from the Roman adjective Ulpianus, a jurist and politician of the Roman era, who said that it is not illegal to coincide with the will of the victim(Nulla injuria

est, quae in volentem fiat)[1]. Although Korea has stipulated the consent of victims(The Consent here is meant to encompass consent to carve a piece of constitutional requirement and consent to engage in illegality) in Article 24 of the Criminal Code, controversy over the consent of these victims is still ongoing. In this study, we examine the items that have recently become a problem for the victim's consent.

2. What Are the Legal Interests That a Victim Can Dispose of?

2.1. Theoretical argument

The consent of the victim is recognized only if the right of the disposition is greater than the social necessity of disposing of the disadvantage. However, there are cases where the willingness of the individual to be consent may be a problem if there are individuals who are also victims of the national and social. If there is an individual's consent in the performance of this constituent requirement, can the consent have the same effect as the consent to the personal interests? In this way, the victim's consent sculpts the constitutional requirements because it is only possible to satisfy the type of crime if both kinds of legal interests are violated on the effect of consent in the event of the infringement of personal legal interests and national / social is raised first[2]. In addition, it is argued that even if personal legal interests and national and social legal interests are overlapped, the personal's right to dispose of them can not be recognized[3], so the consent of the dispossessed person can not rule out illegal[4]. Furthermore, it is argued that the important illegal part of the crime should be considered individually whether it infringes on personal interests or infringes on national and social interests[1].

2.2. Supreme court's position in Korea

The Supreme Court concluded, “The Supreme Court concluded that" an indecent act is a criminal offense, or a fine of disciplinary power, which is the main protection interest of the state, but it is a criminal offense that protects the interests of the personal from unfair punishment or discipline. Even if it had been, it did not affect the establishment of false charge[5].”

2.3. Review

Even if the personal legal interests and the national and social legal interests are overlapped, the subject of the personal legal interest may abandon his/her legal interest within the overlapping limits, but since there is no right to dispose of the national and social legal interests, Is not valid. The point of judging which one is the center of the illegality of the infringement benefit is that the standard of judgment is unclear, and there is a possibility that the legal stability is deteriorated. In cases where the direct victim of the violation becomes a specific individual in the interest of protection of national and social interests, it may be a crime related to explosives under Article 119 and an offense under Article 164. However, in this case, the main protection law is the safety and tranquility of social and public security, which is the national and social protection legal benefit, and the body and the right of life of the individual protected by it are the secondary protection law benefits. Therefore, the right of disposition of subsidiary protection interests does not have the right to dispose of the main protection interests. In other words, if the personal interests and the national and social interests are overlapped, it is reasonable that the individual's consent does not affect the establishment of the crime.

3. Limitations by Social Norms

Article 20 of the Criminal Law provides the concept of social norms while defining party acts as a general illegal sculpture reason. In addition, Article 21 and below require “Reasonable” requirements while stating the grounds for individual illegality carvings, but the requirements of Article 24 of the victim are not required to reasonable. Furthermore, Article 24 stipulates that “any act that damages the legal interest by consent of the person who can be disposed of shall not be punished unless there is a special provision in the Act”. If so, there is a question of whether any

discretion can be disposed of, unless there are special restrictions.

3.1. Bodily injury due to consent

3.1.1. Theoretical argument

The human body can not be replaced with life, it is the basis of existence of the subject of the legal interest, and if the person is entrusted with the possibility of disposing of the body to the person, the foundation of the social existence can be shaken. And if such a right exists, the extent to which it can be discussed. In other words, even though the dispossessed person approves of his/her injury to his/her body, the consent of the consent is effective because such consent violates social norms, and furthermore, Should be reviewed.

In this regard, it is stipulated that the act by consent of the person who can dispose of criminal law is not punishable unless there is special regulation in law. Therefore, It is a legal interest to be able to do it, and it has the position that it is possible only for the offense of injury[6].

On the other hand, in the premise that the grounds for justification for the fraudulent sculpture are based on the social profit appraisal in terms of monism, the consent of the victim is also the individual fraudulent sculpture recognized by our criminal law. Therefore, the general principle of justification, In addition, the consent of the victim is not limited to the “social norms” requirement such as self-defense, but because the criminal law is limited by social norms, it is necessary to examine the limitations of social crimes there is admission[1]. Furthermore, there is an eclectic position that, in view of the constitutional view of the inviolability of human dignity, in the case of a high level of personal benefit such as freedom of physical activity in addition to life and body, restrictions on acceptance are necessary[7].

3.1.2. Supreme court's position in Korea

The Supreme Court concluded that the consent of a victim whose fraud is carved in accordance with Article 24 of the Criminal Law is not only the consent of the person who can dispose of it in the case of damaging the personal legal interest but also the consent of the victim is contrary to the social norm of ethical and moral I do not know. In other words, consent should not be contrary to social norms in order to engrave the illegality[8].

3.1.3. Review

The view that the only consent for criminal offenses should be restricted by social norms seems to have been influenced by German criminal law. Since the German Criminal Law provides that, in the interpretation of our criminal law[9], the victim's consent of the offense of crime is to engrave the illegality, it is interpreted as requiring a social justice in the interpretation of the criminal law, even if the criminal offense against the offense is against the good customs[10]. However, unlike Germany(and the Japanese Criminal Law), our criminal law has a single provision of consent of the victim. Despite the facts in this Act, it is hard to accept the fact that demanding judgments of fairness only for criminal offense without any explanation is reduced by “interpretation” of the fraudulent sculpture and means expansion of actual criminality.

If so, is it possible for an individual to be dispossessed for the benefit of the body? Although the body is the personal interest that an individual can dominate exclusively, there is a two-faceted aspect that is the foundation on which the individual can survive and is an essential component of the social community. Therefore, the possibility of individual disposition to the body is acknowledged in terms of recognizing the individual's right to self-determination, but the right to dispose of the body also has to be restricted in other respects(ie, as part of the formation of a social community).

Of course, even now, the limitation of social consciousness of victim consent is accepted by interpretation, but a legislative solution is also required. There are three possible solutions to this legislative solution. ⅰ) to Article 24 of the Criminal law, how to add “norms” requirements as for other reasons of misconduct; and ⅱ) how to add a norms level of individual injury as in Germany; ⅲ) A measure is taken to establish separate conditions for commission and acceptance of an

offence of manslaughter, similar to murder by proxy or consent.

First, it was tried to revise the past criminal law to establish a provision of Article 24. If this is followed, it is balanced in terms of the reasons for the other fraudulent sculpture and its substantiality, and it is advantageous that the legal relationship related to the consent can be handled simply by legally stating the reasons for the restriction. However, this position poses the problem that the ambiguity of the 'fairness' itself is ambiguous and the anti - ethics of the act which is not related to the legal interest in criminal law is subject to legal judgment. The same criticism will be used to add a considerable requirement to the offense. In other words, it is a problem due to inherent limitation of its ownness or social ethics.

So, how about creating a separate set of requirements? It is argued that it is necessary to refer to the provisions on murder and to establish a similar requirement on the offense of injuring the legitimacy of the body. However, this is not a valid solution because of the difference in the types of acts of murder and injury. In other words, conscientious objection is a matter of 'whether or not to commit murder' with consent. There is a problem that murder is a matter of killing or salvaging a person, but there is a problem that can not be uniformly judged by how harming a person by harming a person and damaging a physiological function. Therefore, it would be difficult to make a distinction between common offense and consent offense reasonably, which would inevitably be judged by social considerations, and furthermore, criterion of social equality is unclear and the same criterion applied in the third case will be. Therefore, the method of iii) is also a solution that can not overcome the intrinsic limit of significance.

In this sense, it is very difficult to define the limits for the restriction of consent uniformly, and judging this by a very ambiguous measure of social norms may undermine the legal stability. Although it is still reasonable to limit the theory and case law to the present, it is considered to be an unjustified legislation to try to solve the legal problem based on the criteria that can not exceed the current theory and case law. The limitation is "social norms", but it is reasonable to impose restrictions by interpretation.

3.2. Effect of consent for illegal purposes

3.2.1. Theoretical argument

If the consent of the dispossessed person is made for an illegal purpose, how will the effect of the consent be seen? Regarding this, the majority of KOREA's theories say that an act that violates social norms[11], or the method of undermining legal interests in the act of consent does not have any effect[12]. First, it should be judged by the purpose prayed by the act, that the act itself is contrary to the social norms, and that it is not a problem that the acceptance is contrary to the social norms. There is a view to take out for the purpose of exclusion, injury for insurance fraud purpose[7]. On the other hand, it should be noted that the act of violating the social provisions does not constitute consent for itself or for the purposes of consent, but that the act of consent is not an offence and that it is not against the intent of the act to which it is subject, and that it is against which it is partially immoral. In addition, there is also a claim that if the consent of the dispossessed person does not require the consent of the motive(or purpose), the illegality of the infringement act is sculpted by the consent, which is different from the dominant view of the KOREA. This would be a stance on whether the dispossessed author should place the criterion of discretion in the motivation for acceptance or the act itself. The reason why this position does not take into consideration the motives of acceptance is presumably because it is not easy to judge whether or not it is against purpose or motivation against social norms. Because it is often the case that an illegal motive or purpose is against social norms in order to judge whether the object to which the restriction by consent of society is applied is the motive of acceptance or the act of infringement for legitimate interest due to acceptance, It is because the acceptance due to the purpose is also highly likely to be against social norms.

3.2.2. Review

It is not easy to distinguish the violation of social norms and the purpose of acceptance in violation of the social norms and the violation of legal interest for the time of acceptance. The act of infringement on legal affairs due to consent shall be based on the consent of the dispossessed person, and the relationship between the two is inseparable, so it can not be different. Therefore, I think that it is a reasonable interpretation to the social norm which is the guiding principle of the illegality sculpture reason that if the violation of the social norms is not able to engrave the illegality in any of the legal interests and motivations of consent.

4. Conclusion

The following discussion was considered based on the premise that the consent of the victim differs from the understanding that the composition requirement is relevant. In order to do this, the court first examined whether the legal interest to be granted in relation to the requirements for the establishment of consent of the victim is limited to pure personal interests. Furthermore, the victim's consent was declared by the legislature in a manner that did not, unlike the individual judges who consider the cases to remain under the statute of limitations as a result of the review of the reasons for the considerable limitations.

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The Study on the CRIMINAL Subject and Liability of AI Robots

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Abstract

In the midst of the advancement of cutting-edge science and technology, the wave of the fourth Industrial Revolution that has come to the front, there are new types of crime that have not been seen before. The advent of such a dangerous society also results in changes in the role and function of the criminal Law, so the change and the modification of the preexisting criminal theories are called for.

This paper also focuses on this point. Especially, the main focus is regarding whether to recognize the criminal identity of the Artificial Intelligence robot and the measure to impute criminal responsibility to it which can be called as the leader of the fourth industrial revolution.

At first, regarding whether or not to recognize the criminal identity of the Artificial Intelligence robot, I examined whether it was acceptable or not on the basis of theoretical views that affirm the criminal ability of a corporation. Through these discussions, I could confirm that this frame of thought that only the natural person can have the ability of acting and responsibility should be broken, if Artificial Intelligence robots become recognized as criminal identity later. Next, I point out the there is no legislation in Korea yet in preparation for accidents which caused by Artificial Intelligence robots malfunctions, although these occur frequently. So, I suggested desirable legislative direction. In addition, I examined the possibility of impute the responsibility to the manufacturer and owner related to the penal code interpretation theory, in order to cope with the emergence of strong Artificial Intelligence in the future.

At present, the fourth Industrial Revolution is moving forward faster than any other in the past. Also, the development of Artificial Intelligence will further accelerate. Thus, with the change and amendment of the criminal law, fundamental changes will be required beyond the level of simple reconstruction. I expect new legislation to be devised quickly in the near future, with the support of new theories to prove the appropriateness of punishment related to accidents caused by Artificial Intelligence robots malfunctions.

[Keywords] ***AI Robots, Crime Identity of AI Robots, Liability of AI Robots, Manufacturer's Liability, Owner's Liability***

1. Introduction

At present, humanity has entered the fourth industrial revolution era. Artificial Intelligence(AI) is the representative of the revolutionary changes in the economy and society in the fourth industrial revolution[1]. Such Artificial Intelligence has already penetrated deeply into human life and has been utilized in various industrial fields, military fields, medical fields, legal fields, and game companies. For examples, Google's 'AlphaGo', Tesla's autonomous vehicle, and Artificial Intelligence lawyer 'Ross' who works in New York Baker and Hostetler.

The problem is that the development of Artificial Intelligence does not only give a pure

function to human life, but also the dysfunction that arises from malfunction of Artificial Intelligence(robot). In this case, the traditional problem of the criminal system and responsibility that is formed by the human behavior is faced with fundamental problem that it should be regrouped. So, in this paper, I investigate the problem of Artificial Intelligence criminal responsibility which can be judged as a blind spot of liability.

At first, I establish the theoretical basis(2) that can give Artificial Intelligence independent criminal responsibility. Second, I will examine the rationale for imposing criminal responsibility on Artificial Intelligence producers(3).

2. Crime Identity of AI Robots

2.1. The legal status of AI robots

For a criminal discussion on 'Artificial Intelligence robots', It is first necessary to clarify the definition of terms related to Artificial Intelligence robots. In this situation, "INTELLIENT ROBOTS DEVELOPMENT AND DISTRIBUTION PROMOTION ACT" provides a clue to the discussion in Korea. On March 28, 2008, Korea instituted the "INTELLIENT ROBOTS DEVELOPMENT AND DISTRIBUTION PROMOTION ACT" with the aim of continuously developing the intelligent robot industry.

In particular, Article 2(1) of this Act stipulates that 'intelligent robots' are 'machines' that operate autonomously by self-awareness of the external environment and judging the situation. There is no big problem in Korea yet. However, if a problem arises in Korea concerning legally related Artificial Intelligence robots, the definition of this law will be the basis of the trial. Therefore, the legal definition of the intelligent robot specified in the Act is very important.

First of all, by looking at these definitions(machines that operate autonomously by self-awareness of the external environment and judging the situation) in detail, we will be able to specify to what extent the Artificial Intelligent robot, which is legally meaningful among various machines that can be called Artificial Intelligent robots in our society. According to this definitions, it is important to "Self-awareness", "Self-judgment the situation" and "operate autonomously". Therefore, even robots that have high-performance functions and close to human form can't be called Artificial Intelligence robots if they are moved only by human manipulation. But even if it is a simple robot cleaner, it can be called a legal Artificial Intelligence robot if it is a machine that recognizes and judges obstacles by themselves and cleans autonomously.

2.2. Crime identity of AI robots

Can Artificial Intelligence robots recognize the subjectivity of crime? In order to discuss the legal entity of an Artificial Intelligent robot, the operation and function of the Artificial Intelligent robot must be a legally meaningful "act"[2].

In this situation, discussions about the behavior of Artificial Intelligence robots can be helpful in discussions of the corporation criminal ability. This is because the corporation is an area where the problem of crime ability is being treated in earnest even though it is not a natural person. Most of the discussions to get implications for the crime ability of Artificial Intelligence robots through the discussion of the corporation are based on the positive theory that recognizes the criminal ability of corporations[3]. The reason for positive theory is that the corporation has the possibility to have criminal ability even though it is not natural person. This paper also examines the possibility of acknowledging the entitlement of Artificial Intelligence robots and the possibility of acknowledging the ability of Artificial Intelligence robots perform and responsibilities based on the viewpoint of the positive theory.

2.2.1. Possibility of recognizing entities of AI robots

First, This positive theory is that a corporation can have the same personality as a natural person because it has an organization and an organization corresponding to a natural person. Based on this positive theory, I examine whether or not the Artificial Intelligence

robot can recognize the crime subjectivity. It may be premature to discuss such a discussion with commercialized intelligent robots until now. However, there is already a debate on the possibility of adopting the robotic law in Germany. It is argued that the so-called 'Electronic Persona' should be given. In the field of philosophy of law, it raises fundamental questions about a modern human being, and is looking for possibilities to recognize Artificial Intelligence robots as a subject of personality. Established in modern times, modern legal view on human being is based on rational and human rational reasoning abilities, on the basis of principle of the Kant's practical reason[4]. At least, it was not a big problem to maintain this view of humanity. But the advent of highly developed Artificial Intelligence robots led to the need for the redesign these human-centered views. Modern Artificial Intelligence robots are expanding their roles and functions beyond simple calculation and remembering into the realm of learning, judgment, reasoning, creativity and emotion.

First, there is a view theoretically reconstructed and interpreted Kant's philosophy by discussing the possibility of incorporating Artificial Intelligence robots into the subject of human rights as a nature person. According to this view, Kant's thought is "the dignity of human beings is not only given to rational, autonomous, moral people now, but those people who are trying to be moral." Kant's thought implies the theoretical possibility that can transcend human's inherent properties. Therefore, it is evaluated the possibility of emergence of new intelligence is also open[5].

Second, there is a view that Artificial Intelligence robots should be recognized as the subject of human rights based on the fact that Artificial Intelligence robots are capable of interacting and communicating with humans. In particular, according to this view, Artificial Intelligence robots are likely to evolve into social intelligence through the adaptability to social situations or relationship with humans. In other words, this means that human can also mature both the ability of reciprocity by encountering Artificial Intelligence robots, thereby nurturing humanity. In my opinion, the range of people who have rights has changed continuously. In the past, the punishment was imposed upon the animals and women were not recognized as the subject of the rights. but today, the fetus is partially recognized as a right. If so, in the concept and category of criminal responsibility, there is room for change[6]. therefore, I think the possibility of recognizing Artificial International robots as a subject of rights is highly probable.

Given this, Professor Hildgen Dorf, leading the robot discourse in the German criminal law, argues that the Artificial Intelligence robot can be recognized as independent entities and so, the concept of so-called 'E-PERSON' can be introduced.

2.2.2. A discussion on ability of the performance and liability of AI robots.

Second, let us consider whether the possibility of recognizing the ability of the performance and liability of the Artificial Intelligence robot is or not, by associating the argument of corporation punishment positive theories that the corporation can recognize legal capacity and responsibility. while the corporation and Artificial Intelligence are the same in that they are not natural person, there is a fundamental difference in that the act of corporation is a collective act of humanity, but the act of Artificial Intelligence robots is independent by itself. Currently, in Germany, there is a lively debate that hopes to introduce the so-called "Robot Criminal Act". Although various opinions are suggested, I would like to examine the possibility of the Artificial Intelligence robot crime ability focusing on the view of Hildgen Dorf, who insist on the possibility of introducing a robot criminal law based on a purposefulness viewpoint[7].

First, Hilgendorf premises capacity as a result of normative attribution rather than Factual attribute.

In that sense, the act is not natural fact, but an institutional consisting of legal and social interpretation models. Just as corporate body are obliged by law such as civil and criminal liability, the Artificial Intelligence robots can

capacity with the same logic. In other words, considering the purposefulness of the concept which is composed in the social community, there is basically no problem with expanding the act to the robots.

Second, regarding the liaibility of Artificial Intelligence, Hilgendorf said that the liability of a natural person can't be applied to corporation as it is, corporation's responsibility should be judged differently from that of a natural person. This view can also be interpreted as taking the same as corporation punishment positive theory which stated that there is no reason to limit the legal entity to natural person only, in that 'responsibility' is not ethical but legal. However, as described above, corporate body and Artificial Intelligence robots are the same in that they are not natural person. But, there is a fundamental difference between them. Corporate behaviour is an act of collective human nature, but Artificial Intelligence's is independent act by itself. The dispute over the theory of whether or not a corporation can recognize its responsibility ability has such an opposing structure. 'There is no reason to acknowledge the responsibility of a group. (Negative theory)' VS. 'There is no reason to limit the capacity of responsibility to natural persons only. (Positive theory)' In other words, there is a conflicting structure presupposed that the subject of responsibility is human. However, the debate over whether or not to recognize Artificial Intelligence capabilities is intended to apply the possibility of responsibility to equipment created by human. Therefore, I can't help but ask Artificial Intelligence robots in a different way than a corporate liability regarding how their liberal opinion and the possibility of criticism exist and why it exists. On these matters, Hilgendorf made a breakthrough by claiming that the concept of 'liberal opinion', which is pre-condition for accountability, is nothing but theoretically unproved agenda[8]. Also, by citing the German federal court's decision, Hilgendorf said that the 'the liberal opinion' was a vestige of natural law in the middle of the 20th century, and that it has already been proved to be a problematic through 21st century brain research. So, if liberal opinion is the nature of this agenda, there is no reason to apply it to Artificial Intelligence robots.

2.2.3. Conclusion

As mentioned above, the matter of whether to recognize the crime ability of Artificial Intelligence robots has become a moot print in our society's social and normative viewpoint. If there is a need to punish Artificial Intelligence robots, they will also need to be recognized for criminal subject. Or, if there is no need to punish them, it may be possible to deny their intelligence capabilities. At present, most of the discussions draw the conclusion that Artificial Intelligence robots are unable to recognized the subject of crime.

Of course, there is no doubt that Artificial Intelligence robots, who are unfolding at the moment, cannot be recognized a criminal subject. Still, it is undeniable that Artificial Intelligence robots are a typical system created by human. There is pointed out that it is premature to develop discussing about Artificial Intelligence robots at the present stage[9]. Yet, Artificial Intelligence robots are just a program, so it is not possible to assume the program's behavior itself. However, there is no need to preemptively block the possibility of responsibility of Artificial Intelligence robots.

In addition, these views that deny the possibility of criminal liability of Artificial Intelligence robots are based on the perspective of the criminal law, which is on the basis of 'human behavior and responsibilities'. However, it is also possible that these discussions are equally capable of setting the threshold value of argument clearly at the moment and opening the possibility for recognition of the Artificial Intelligence criminal ability. For example, there is a point in view that refers the possibility Artificial Intelligence robots can be punishable by re-programming or disposal as the death penalty is imposed on human[10]. I think these discussions on whether to judge on Artificial Intelligence robots actually, how a monetary penalty will be imposed, what does it means to be punishable by re-programming or disposal to Artificial Intelligence robots in perspective of the retributivism viewpoint are not only point out the possibility of penalties for Artificial Intelligence robots at the present level, but also provide

foundation for discussing about the possibility of future practical measures.

3. Criminal Liability for Accidents Caused by AI Robots

3.1. Necessity of introducing new legislation

Currently, Accidents cause by the Artificial Intelligence robots are now emerging rapidly. A typical example is that Tesla's autonomous driving vehicle caused an accident during autonomous driving, and resulted in the driver's death. About this accident, it is widely believed that it is sufficient to resolve by means of civil product liability law and insurance solution if such an accident occurs. However, although Artificial Intelligence robots are mostly weak, an infringement on the benefit and protection of the law caused by their malfunction is emerging rapidly and if robots becomes stronger in the future, the problem will become serious than now. So, there is a need to discuss liability attribution in area of criminal law beyond civil product liability.

First of all, it is possible to consider imposing a criminal liability for both manufacture company and manufacturers who developed an Artificial Intelligence robots by revising the Article 47 and Article 48 of the current “Intelligent Robot Development and Promotion Act”. The violation of Article 47, which is subject to Article 48 of “Intelligent Robot Development and Promotion Act”, is limited to violation of the asset management method, violation of the use of the name of the intelligent robot investment company, violation of submission of business report and violation of confirmation of completion. So, it can’t cope with the infringement on the benefit and protection of the law caused by the Artificial Intelligent robot malfunction. Thus, it is necessary to establish regulations that can punish manufacturer company and manufacturers who develop robots in case of infringement of the benefit and protection of the law caused by robots' malfunction by expanding the scope of application of Article 47(penalty). Of course, there is a lot of challenges to deal with the issue to be solved in the future, such as problems of the legislative format of Article 48 of the Intelligent Robot Act, as well as the theoretical problems for applying the joint penal provisions to manufacture company and manufactures[11]. It is also possible refer to foreign laws for the establishment of a new law. As noted in the UK, there is a “Coporate Manslaughter and Corporate Homicide Act(2007)” , which is asking for liability for serious accidents caused by corporations.

One can also imagine the possibility of introducing such legislation if the Artificial Intelligence robots can lead to serious danger of human life. In particular, this law is characterized by imposing Highest-free fines on the management and operating bodies, not requiring a specific operator to assume responsibility, concerning the deaths caused by corporate accidents. If we adopt this Act in Korea, it would be easier to ask manufacturer company to impose criminal responsibility.

3.2. The criminal liability of the AI robots manufacture

3.2.1. Recognition of AI robots manufacturer's fault liability

3.2.1.1. Predictability of manufactures

It is impossible to predict what the Artificial Intelligence robots recognize, how it will interpret the collected information and how it will respond, and so on, since it collects information from the surrounding environment and performs it mission independently[12]. Based on this, the producer of Artificial Intelligence robots can claim that he is not responsible for negligence. However, given considering the use of the robot or its properties carefully, the manufactures can predict that the majority of the malfunctions will be within a predictable category, even if it is impossible to predict 100% of the behavior of Artificial Intelligence robots. For example, if the manufacture of autonomous vehicles develops carefully into it's attributes, it will never be possible to predict most of the possibility of a malfunctioning situation in road traffic. Therefore, it should be considered that one should assume criminal responsibility for the consequences of the results where robot's malfunction can be predicted, in most cases.

If the fault liability is denied in such a case, no one will be able to blame anyone.

3.3.1.2. Objective attention of manufacture

The intrinsic factor of negligence lies in the breach of objective attention, which neglected the normal state of attention. It is the duty of anticipating the likelihood of occurrence of results and making necessary measures to avoid the anticipated consequences. This could be apply to Artificial Intelligence robots makers as well. The problem is that the rationale for the objective-related obligation regarding Artificial Intelligence robots is not stipulated in the current statute. Therefore, based on social norms such as general reason and social customs, the basis and scope should be determined objectively and individually, according to specific circumstances. In this regard, the Supreme Court case of the Federal Republic of Germany in particular has developed a very strong mandatory principle of obligations regarding the production and sale of potentially hazardous products, and Korea precedent is demanding strict attention to it such a state of obligation. Such standards and principles may be passed to the Artificial Intelligence robot maker, so that the manufacturer should be demanded more strict attention requirements[13]. Of course, this can be offset somewhat by balancing the logic of the accepted risk theories given the usefulness of Artificial Intelligence robots in the modern age of advanced technology.

4. Conclusion

In the wave of the Fourth Industrial Revolution, we can't predict all the future crimes, however new types of crimes that are previously unseen are emerging. The role of the criminal law in preparing for such a dangerous society is to find the right responsible person and impose reasonable responsibility.

This paper's focus was on this point, in particular, whether to uphold the criminal identity and the attribute criminal liability of the 'Artificial Intelligence robots' which can be considered as the leader of the Fourth Industrial revolution.

First, whether to recognize the criminal identity of the Artificial Intelligence robots, I examine the positive opinions affirming the corporation's crime ability.

Second, I point out the lack of legislation that was not introduced in Korea, although accidents caused by Artificial Intelligence robots' malfunction have been occurring frequently and suggest desirable legislative direction. In addition, in the current stage, the criminal identity of Artificial Intelligence robots can't be acknowledged, so it is also possible to discuss the possibility of transferring liability to the relevant manufactures. Serious discussions in the criminal law field should be continued in the near future, with the support of the new theory, new legislation will be enacted quickly to prepare for the punishment justification of the malfunction of Artificial Intelligence robots.

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Internet Gambling POLICY: Prohibition versus Legalization

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Abstract

The fastest growing form of gambling in the world is Internet gambling. Internet gambling creates many new potential problem in modern society. Gambling can be a very addictive behavior, for some it becomes pathological. And the liquid and ever-changing environment of the Internet provides a perfect cloak for criminal activity. One of the primary concern is that the encryption and anonymity of accounts in off-shore gambling sites provides a conduit through which criminals can launder money. Also, the Internet is readily accessible by young people. As such, teenagers also have access to the multitude of new gambling websites.

There are good arguments for both prohibition and legalization of Internet gambling. In reality, it is difficult to crack down or ban Internet gambling sites, and laws or policies that reverse people's behavior practices are ineffective. And therefore, it is also argued that it is necessary to bring into the legal regulatory areas to promote economic benefits such as securing the national tax revenue and to use it in the prevention and treatment of gambling addiction. But the argument that it will create new net revenues by legalizing Internet gambling is simply red-herring taxation that misleads the government, because the monies converted from a taxable consumer economy into vacuous gambling account will significantly diminish overall tax revenues. Internet gambling should not be allowed because the sybaritic monetary philosophy will eventually infect, destabilize and destroy the global economy and financial system.

[Keywords] ***Internet Gambling, Gambling Addiction, Problem Gambling, Legalization, Prohibition***

1. Introduction

For better or worse, the Internet offers new ways of satisfying age-old human desires. For the most part it serves blandly virtuous ends, such as private correspondence, public discourse and legal commerce. But it serve pornography and gambling as well[1]. In little more than a decade, Internet gambling has exploded from a minor sideshow on the Internet into a substantial global industry[2]. Thanks to the Internet, now gamblers no longer have to fly to Las Vegas to play the slots, drive to nearest authorized track to play the horses, or even walk to the corner store to play the state lotto. Consumers can now play such games at home via the many Internet Web sites that offer gambling services[1].

As such, Internet Gambling refers to gambling in the cyber space, and is an act that is regarded as gambling in the real world. This is done through e-money or electronic financial transaction, which is a new means of payment in the virtual space of the Internet. It is also referred to as online gambling or cyber gambling[3].

Internet gambling can be gambled instantly, without having to worry about time and place at all times, wherever the Internet is connected, without having to go to a gambling place like a real gambling in the real

world. These characteristics show that addiction to on-line gambling is stronger than offline gambling, and the openness and high profitability of Internet gambling are causing social ills such as explosion of users. Moreover, It is used as a means of money laundering and has many social pathologies[4]. Especially, as the spread of portable smart devices has expanded recently, the accessibility to internet gambling sites has been increasing, and there is a concern that the illegal internet gambling is rapidly increasing. As gambling online games are widely accepted, the distinction between online game and internet gambling is blurred, and gambling is increasingly recognized as a game or entertainment. Especially, since the use of adolescents for online gambling games is facilitated, there is a serious problem that gambling learning opportunities increase before gambling hazards are recognized[5].

Today, there is a growing concern about the spread of Internet gambling, both at home and abroad, as well as the need for policy responses. In the meantime, the social malpractice of Internet gambling has been mentioned a lot through media. But although there have been many discussions on the regulation of Internet gambling, there is still no fundamental solution.

In reality, it is difficult to crack down or ban Internet gambling sites, and laws or policies that reverse people's behavior practices are ineffective. And therefore, it is also argued that it is necessary to bring into the legal regulatory areas to promote economic benefits such as securing the national tax revenue and to use it in the prevention and treatment of gambling addiction. An example is the UK's Gambling Act of 2005. It is necessary to examine the realization possibility by comparing and analyzing the advantages and disadvantages of legalization.

2. Impact of Internet Gambling

2.1. Characteristics of internet gambling

Many internet gambling sites are very easy to use with very little effort. Most sites initially require users to set up an account and a password. After doing so, the user creates an ID and a password. This enrollment procedure typically involves entering some basic information, such as name, address, age, and credit card number. Once the account is established, the user can continue to access it[6]. Users can then play blackjack, slots, roulette and many other gambling games. The user makes various decisions, including choosing a game and how much money he or she is comfortable in his/her home[4]. By clicking a button or clicking on a mouse, the information entered by the user will reach the server computer of the Internet gambling through a nationwide or international network. The server is usually located in places like Antigua or Australia, which are legalizing Internet gambling. And the internet gambling server also transmits the information back to the user's computer to create a game environment that interacts with each other[3].

Compared to real world gambling, characteristics of internet gambling include ubiquity, openness, anonymity, accessibility, addictiveness, and possibility of crime. Online gamers can gamble in their home 24 hours a day. Minors can also gamble online without strict age verification. Betting using credit cards can reduce the user's perception of the value of cash and can lead to criminal activities such as gambling game addiction, bankruptcy, long absence from work, suicide, and fraudulent gambling. Moreover, these can be easily and rapidly spread by the anonymity of cyberspace, the unlimited nature of time and space[6].

2.2. Perceived danger of internet gambling

The following problems arise due to the characteristics of Internet gambling mentioned above.

First, anonymity and openness of Internet gambling increase the gambling behavior of minors. Gambling on the Internet does not meet personally but gambles on the network, so that their identity is not disclosed. This guarantees that anyone can easily participate in gambling. This anonymity creates the risk of mass production of gambling activities, especially for minors. Most gambling sites require membership for adults only before

gambling, but they rarely check the information you enter when you sign up. As a result, a minor can immediately play any online gambling game by entering his or her parents' information and credit card number[5].

Second, the addictive nature of Internet gambling leads to social and economic bankruptcy. Internet gambling is much less costly than going to an offline gambling site, and it can aggravate the addiction of gambling because it allows users to gamble quickly whenever they want in a private space[4]. Such gambling addiction can lead to bankruptcy, unemployment, and suicide, and can cause criminal behavior such as fraudulent gambling to make a lot of money at once. Thus, it can be a serious risk to the family economy of the gambling addict family as well as the national economy[3].

Third, Internet gambling can be used as a means of other crimes. In other words, by using the anonymity of cyberspace, Internet gambling can be used as a criminal means in various ways without revealing its existence in cyberspace[6]. Specifically, the money for gambling can be intercepted by repeating establishment, transfer, closing, etc. of a gambling site. For example, a gambler can have his or her money for gambling intercepted by closing a gambling site as soon as the gambler has made a payment with a credit card or the like in advance. Internet criminals can also close the site without paying the gambling winner[7]. They can also play fraudulent gambling. This is done by manipulating the game by manipulating the software program for gambling. This is accomplished by match fixing through manipulation of a software program for gambling[4]. It can also be used as a means of money laundering. A person who wants to do money laundering deposits his money into a foreign account, gambles on the internet with that money and loses a little. He then withdraws his remaining funds and claims that the money is a winnings[6].

3. Policy Implications and Options of Internet Gambling: Prohibition vs Legalization

In 2010, the “Room for Debate” section of The New York Times posed the question, “Should Internet gambling be legalized?”[8] Several respondents identified an increase in gambling addiction as the probable outcome if Congress lifts the ban on online gambling in the United States. Some respondents also insisted on legalizing Internet gambling and imposing taxes on the premise that public use of gambling revenues in the depression[9]. Those who advocate the legalization of Internet gambling claim that it is difficult to control or prohibit Internet gambling sites in reality. They also argue that laws or policies that back people's behavior practices are ineffective. Therefore, they argue that Internet gambling should be legalized to secure tax revenue and to use it to prevent and treat gambling addiction.

However, the problems caused by Internet gambling as mentioned above also appear to be serious in the country and society. The purpose of this paper is to examine the legalization and illegalization of internet gambling and to examine what is the benefit of gambling reality in Korea.

3.1. Arguments for legalization of internet gambling

The main arguments for legalizing internet gambling and managing it through public regulation are as follows[9].

First, it is nearly impossible to effectively prohibit online gambling, because of the difficulty in blocking individual player’s online access to these sites, and the difficulty in prosecuting companies that legally provide these services from other countries. As evidence of this, the rate of Internet gambling in the United States with prohibitionist legislation(2.0%) is roughly equivalent to Canada (2.1%), with more permissive legislation[10]. Also, laws or policies that go against the behavioral practices of many people have no effect. Some commentators cite the widespread societal disregard for alcohol prohibition as a model of what would happen with online gambling prohibition.

Second, regardless of whether online gambling is good or bad for society, it is better for

it to come under some form of legal regulatory control so as to accrue the economic benefits(gambling revenue, tax revenue, employment, decrease the flow of money leaving the jurisdiction), and to better ensure player protection(fair games, responsible gambling practices, etc.). Furthermore, some of the new online gambling revenues could be used for the prevention and treatment of online problem gambling[11].

Third, even if Internet gambling is accompanied by some risk, the state should not try to shape people's leisure behaviour or how they spend their money. In other words, people should have freedom of choice.

Fourth, because the average household income of internet gamblers is higher than average, online gambling revenue appears to be less regressive than most other forms of gambling.

Fifth, even if online gambling does initially increase rates of problem gambling, the evidence from land-based gambling suggests that, over time, populations adapt to the presence of problematic products and develop some "inoculation" from further harm. As evidence, the rates of problem gambling in Western countries appear to have stabilized or declined in recent years despite continuing expansion of gambling availability and increased revenues. Furthermore, an argument can be made that unless the populace will never be exposed to this product then it may be better to develop this inoculation early on rather than later.

3.2. Arguments for prohibition of internet gambling

The arguments that Internet gambling should be prohibited are as follows[9].

First, the purpose of the law is not to conform to people's behaviour, but to help shape it, and codify societal values. Child pornography or illegal drugs are practically widespread in many places, but they are prohibited. These efforts can reduce such illegal behaviors.

Second, general disregard for the rule of law is more of a risk when prohibiting something the majority of people engage in(e.g., alcohol use) rather than when prohibiting something only 1–7% of people engage in(i.e., Internet gambling).

Third, many internet gambling sites are showing unsatisfactory business and responsible gambling practices. Moreover, the means to correct this is not clear.

Fourth, a significant portion of the Internet gambling revenue comes from problem gambler(27% internationally, 41.3% in Canada). It is unethical to get more tax revenue from vulnerable groups, especially in cases where the government is the primary operator and/or beneficiary.

Fifth, the legalization of internet gambling will increase the availability, which will increase the percentage of total gambling and problematic gambling. Internationally the prevalence of Internet gambling is largely proportional to the extent to which a country has legalized or allowed Internet gambling. For example, the U.K. has one the world's most liberal Internet gambling laws as well as the world's highest known rate of Internet gambling.

Sixth, Internet gambling is more likely to cause problems than other types of gambling. Policies that prohibit higher risk types are common. For example, it prohibits automatic weapons and handguns rather than hunting rifles and prohibits cocaine, methamphetamine, and heroin rather than alcohol. Internet gambling is one of these types, along with electronic gambling machines.

Seventh, even if Internet gambling is legalized and tax revenues are used to treat gambling addiction, it will not reduce dysfunction. In other words, legalizing Internet gambling and using some of to prevent and treat gambling do not reduce the risks that may arise from Internet gambling[8]. This is equivalent to suggesting that automatic weapons and handguns should be legalized but redirecting some of the licensing/registration fees into health care and rehabilitation for the shooting victims. Preventive education of gambling addiction has a very limited effect. Once an addiction has been established, a lifelong

propensity for this behaviour has been created. Treatment helps decrease risk of relapse, but does not eliminate it.

4. Conclusion

In Korea, where digitization is rapidly progressing, Internet gambling will spread more and risk will increase. This is something we have not experienced before, and there is lack of empirical knowledge and information about it, and cultural wisdom to cope with it is not accumulated yet. However, it is difficult to resist, and it seems difficult to manage risk effectively. However, despite the fact that gambling is illegal, in Korea, where many types of gambling are practiced in practice, it is very likely that there will be many side effects of implementing a full regulation or permitting policy.

According to a final report submitted by the National Gambling Impact Study Commission in 1999, the social cost of gambling is three times greater than its benefits. The report says that the benefits of gambling on the Internet are just one more addition to the already existing electronic entertainment. The social costs of gambling include crime, suicide, and business. Furthermore, people feel bitter pain because of the loss of property lost by gambling rather than bitter pain in the fact that they are lost the game. Also, people usually do not commit suicide or murder because they are embezzled in the company or lost the tennis match, but do so if they lose money in gambling. Internet gambling is a crack cocaine of gambling[12], and it will be located in every school desk, office desk, and every living room. This simplifies the ability to lose a house by clicking the mouse. The lobbyists' claim that it will create new net revenues by legalizing Internet gambling is simply red-herring taxation that misleads the government, because the monies converted from a taxable consumer economy into vacuous gambling account will significantly diminish overall tax revenues. Internet gambling should not be allowed because the sybaritic monetary philosophy will eventually infect, destabilize and destroy the global economy and financial system.

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