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Abstract

The general tendency of contemporary Crime in the 21st century is transnational, intelligent, difficult to prove, related to much illicit money and collaborative among criminals especially in North East Asia. It is difficult to recover criminal assets in North East Asia not only because of the lack of the necessity recognition for the criminal asset recovery but also the limitation of the governance for the efficient mutual legal assistance in criminal matters including the incompletion of the legislation for the Asset Recovery. Non-Conviction Based Confiscation is also based on the completion of the legislation and the willingness for the substantial collaboration among the judicial organizations in Northeast Asian countries.

[Keywords] Asset Recovery, Confiscation, Victim Protection, Mutual Legal Assistance, Criminal Proceeds

1. The Lack and Limitation for the Crime Prevention and the Victim Protection through the Criminal Asset Recovery

The increase of the International Trade and exchange have also brought us the necessity for the global performance on the crime prevention and the transnational protection of Crime Victims. The International Co-operation in the Criminal Asset Recovery is very important for the crime prevention and the protection of the victims, but it is very much difficult to have successful results because of the difference between venue and jurisdiction including the lack of understanding of the legislation from the each countries[1].

It may be important to increase the understanding of the situation of each countries for the success of the international co-operation of the confiscation of the criminal proceeds and asset recovery. The international co-operation for asset recovery may depend on the agreement, treaties, recommendations, (in)formal information toward the Common goal based on mutual trust and understanding.

2. Mutual Understand and Encouragement for the Asset Recovery

2.1. The difference of the domestic law and crime response system


People, Parliament and Government in each country need to know the crime phenomenon and the characteristics of criminals about the criminal proceeds and assets, it can lead to the proper legislation for the Crime Response.

Each Country has the different background about their own domestic law[3], it has the dissimilar Crime Response System including the (im)possible Investigation method and the different ways of Co-operation with other
counties and the international organization in spite of the agreements and some recommendations[4].

There are many special laws related with the confiscation of criminal proceeds and Asset recovery in Korea, but the enforcement of the law is not conducted well, the default of paying under the confiscation is estimated at 21 billion dollars by 2015 in Korea.

2.2. The unsuccessful cases of the asset recovery

The case of former president known as a corrupt offender, Chun Doo-Hwan, has still been in default of paying under the confiscation of about 100 million dollars even if he paid about 100 million as a confiscation for 20 years. He said “I have only about 250 dollars” but he has lead luxurious lives until now.

The case of Corrupt Businessman infamous for Sunken Ship – Sewol ferry- Yoo, Byung-Eun died as a fugitive criminal on 2014. Although the ministry of Justice of Korea has frozen his asset, the asset recovery about him has been through the Civil litigation, but it is not so effective and it is also difficult to get the evidence related with the corrupt money.

The case of big fraud like the pyramid scheme fraud, the amount of the damage is about 3 billion dollars, Cho Hee-Pal died in China on 2011, his death was officially recognized in China on 2016. The 30 victims even committed suicide, many victims hope to get their money back.

Although there are many laws including criminal law that related with confiscations in Korea, the laws have no specific regulations on Non-Conviction Based Confiscation especially about the fugitive and the death of the criminal, it is also impossible to confiscate the criminal proceeds when the statute of limitations on the crime has expired.

2.3. The efforts and endeavor of the supreme prosecutor’s office in Korea

Supreme Prosecutor’s Office in Korea tried to establish a Network for Asset Recovery with a plan to have an annual meeting from 2013.

It has established an on-line system(ISF) for the improvement of the information utilization about Criminal proceeds and Asset Recovery from 2009.

It is important to start with the recognition and detailed understanding of the difficulty about the law and the regulation[5], it may also significant to have mutual respect and trust in the Co-operation through the Sympathy and Encouragement for the common safety and the stable development.

3. Difficulty, Necessity and Discussion for the Asset Recovery

3.1. Sharing the criminal cases and the criminal statistics

Firstly, it may be necessary to share the Crime cases and the statistics[6] about the confiscation of the criminal proceeds and Asset including the problems of the success and failure of the Asset Recovery. It is also for the mutual understanding about the real situation about the phenomenon of the crimes including the prevention of the crimes internationally. The statistics on crimes based on the different legal system may be difficult and inaccurate but it can be useful for interactional approach[7].

The productive and practical ways for Asset Recovery may need to have the estimation about the Co-operation with the investigation teams and judicial authorities in each country, but it may also be difficult to have the proper estimation from each other, nevertheless the results about the estimation from the each party may be necessary to be used for the improvement of the procedure and the sharing of the investigation methods including the revision of the legislation in some counties.

3.2. The effort for the legislation and international judicial co-operation

Secondly, it is essential for the Government and the Parliament in each country to have the willingness by making appropriate efforts for the confiscation of the criminal proceeds and Asset Recovery. The integrity and the meaningful independence of the judge and the court can be the basement for
the international Co-operation from the evidence-based viewpoint despite the difference of the power structure[8].

But it may also be difficult to recommend on the judicial reformation towards some directions, but the importance of the evidence can be emphasized in each country.

It may be necessary to discuss on the reasons about the problems of the enforcement and ineffective regulations of confiscation in Korea, the investigative authorities in Korea can investigate into financial transactions about the offenses of the public officials with or without warrant, but it may be necessary to discuss on the scope and the propriety of the issuing the warrant and the order of court comparing with G20 about the criminal proceeds in Korea.

Furthermore, it may be very helpful and critical to have opportunity to have comprehensive understanding on the real situation and problems about law enforcement and law reform with G20.

3.3. The modification of the presumption and the burden of proof

Thirdly, one of the main difficulty about the confiscation of the criminal proceeds is related with the presumption of illegal profits and the burden of proof. The special laws like “Act on Special Cases Concerning Confiscation illegal political funds” “Act on Special cases concerning Forfeiture for offenses of public officers” “Act on special cases concerning the prevention of illegal trafficking in narcotics, etc.” have the clauses about the presumption of illegal profits, but the other special laws like “Act on regulation and Punishment of criminal Proceeds concealment” “Act on Special Cases Concerning Confiscation and Recovery of Stolen Assets” don’t contain the clause about the presumption of illegal profits[9].

Korean criminal law and special laws about the confiscation and asset recovery do not include the reversal of the burden of proof, but the introducing it has been controversial and much discussed for the effective confiscation and recovery[10].

3.4. International victim protection through the asset recovery

Lastly, it is important to give the criminal proceeds and Asset back to the legal owner and the rightful person for the material restoration of the victims internationally[11].

When it is impossible or very difficult to restore them in some cases, it may be necessary to discuss on the using the Criminal Asset for finding ways for preventing the similar crimes and the protection of the victims as a common fund.

4. Co-Operation and Leadership

4.1. The role of G20 for the asset recovery

The effectiveness and efficiency for the confiscation of the criminal proceeds and Asset Recovery between countries may be enhanced by the process transparency and the reciprocal trust through the agreement or joint(investigative) organization.

G20 countries may be necessary to show a good leadership for the prevention and the response of the crime.

Firstly, the countries G20 may make a plan to issue the present condition about the asking and requested situation about the criminal proceeds and assets with some explanation for sharing.

It may be useful to share the systematic statistics and the analysis of the cases about the criminal proceeds and assets including the related victims, it also will assist joint confrontation and joint response system that can be established despite the difficult of the statistics of the crimes and victims from a worldwide view.

4.2. Education and programme for the asset recovery

Secondly, it can be necessary to analyse the performance and categorize the crimes about the confiscation of the criminal proceeds, it may need to follow the review the domestic law and the implementing law from a comparative perspective for the enhanced Co-operation.
It may be necessary for G20 to consider on the global education programs about the prevention of the crimes including the confiscation of the criminal proceeds and asset recovery[12]. It can not only share the ways of the investigation and the understanding of the legal system in each country, but also offer some information about the domestic difficulty and the improvement of the international co-operation. The programs may have especially about the pending issue and problem about the confiscation of the criminal proceeds and asset recovery.

4.3. The importance of the international cooperation and proper legislation

Thirdly, it is not easy to have successful results for the criminal asset recovery internationally because it may be the deficiency of the proper procedure that holding a binding effect, therefore it may be necessary to reform the inadequate legislation and revise the unestablished or unprepared distribution structure about the Co-operation with the requested counties for the confiscation of the criminal proceeds and criminal asset recovery.

4.4. Leadership and community for the prosperity

Finally, G20 may show the good leadership toward the stability and the international co-operation through the preparing for community about the confiscation of the criminal proceeds and asset recovery, it may narrow the difference of the perspective for the response about the Criminal proceeds from each country. It may lead G20 to peaceful development and common prosperity.

5. Asset Recovery as the Foundation and the Source for the Crime Prevention and the Deterrence of the Crime

Criminal proceeds and criminal assets are the source and the foundation of many crimes like money laundering, terrorism, organized crime, smuggling, cyber crime and corruption crime and so on. The present crimes in one region or one country has become international and co-operative, the criminal proceeds and asset is very difficult to find and search with the effort of only one organization or one country.

It is necessary for G20 countries to share the information about the effective and efficient ways for the asset recovery in spite of the difference of the law and the crime response.

Regardless of the effort of the related organizations for the asset recovery in Korea, Korean criminal law for the confiscation and asset recovery is not so effective now shown as the absence of Non-Conviction Based Confiscation.

Asset recovery may be a tough labor through co-operative working by many organizations and countries, it also takes a very hard and complicated task. If we make an effort for the deterrence of crimes together basically, we need to eradicate the source of the crime, it may start with the confiscation of the criminal proceeds, the asset recovery is related with having the same goal toward the Common prosperity that considering on the criminal victims.

6. Reference

6.1. Journal articles


### 6.2. Books
