

日本の組織犯罪対策における不法利益 剥奪規定の研究

李傑清

応用日本語学科助理教授

【概要】

組織犯罪の現象と定義は国によって差異があるが、組織犯罪(者)が最高利益を獲得しようという目的は依然として変わらない。その際に、国家は犯罪者を厳しく処罰するとともに、その不法利益(犯罪所得)を現状より効果的に剥奪できないと、次のような状況が生じかねない。一、被害者の精神的・物質的な損失が回復できない。二、犯罪者は経済利益の確信犯(犯罪で利益を稼ぐ)となる。三、一般の国民による司法正義への期待と信頼が失われる。その結果は、司法面においては、犯罪の一般予防・特別予防及び国民の遵法精神等規範意識の強化に不利を与える。政治面においては、組織犯罪による不法利益が選挙資金または政界・財界の利益の一部になると同時に、政・財・官界の癒着関係から生じる金権政治の合流が加わり、国家財政の困難と憲法の危機さえもたらす羽目に陥るだろう。

本論文は比較法の視点から、まず、日本の暴力団対策法の立法経緯、特徴及びわが国(台湾)が同様の法律を導入できない理由を分析する。次に、日本の組織犯罪処罰法の立法背景(目的)、犯罪収益の規制対象、マネー・ロンダリング罪の処罰、没収・追徴とその保全手続の強化、疑わしい取引の届出制度及び国際共助手続などの問題を論議する。最後に、日本と台湾における組織犯罪による不法利益に関する法律問題と欠点を明らかにし、組織犯罪の不法利益を剥奪する効果、法治国家としての基本原則(財産権の保障、責任主義、無罪推定、残酷刑禁止など)を堅持する重要性について考察する。

キーワード：組織犯罪，犯罪所得，暴力団対策法，組織犯罪処罰法，
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The research of the illegal profits deprivation regulation in the measure against an organized crime of Japan

Jye-Ching Lee

Assistant Professor, Department of Applied Japanese

【Abstract】

Although the phenomenon of an organized crime and a definition varies within countries, the purpose of an organized crime (person) to gain the highest profits is still not changed. In that case, while an offender is punished severely, if the illegal profits (criminal income) cannot be deprived more effectively, then the following situations may arise.

1. The victim's mental and property loss is unrecoverable.
2. The offender is apt to become the convinced criminal (profits are earned by the crime) of economic profits.
3. People will lose their expectation and confidence of judicial justice.

The three situations mentioned above may cause some disadvantages in deterioration in the following two aspects:

1. Judicial aspect: It is disadvantageous to the promotion of law-abiding spirit, general criminal prevention and special criminal prevention.
2. Political aspect: The illegal profits from organized crime are possibly used for political election campaign as well as the exchange of interest between politicians and enterprises. which will cause the financial difficulties and constitutional crisis.

This theses uses comparative study methodology to analyze legislation process of Anti-Organized Crime Law of Japan, feature and the reasons that R.O.C (Taiwan) can't adopt that law. In this these, it also discuss questions about Organized Crime Punishing Law of Japan in legislation background (purpose), regulation of criminal object of illegal profits and the penalty for money laundry, enhances the process of confiscation and fine, reports the suspected financial transaction, and designs the

cooperation of judiciary among countries. At last, it points out the problems and defects of the related laws in Japan and Taiwan. Meanwhile, I will also emphasize that while we, Taiwan, deprives the illegal profits, we will also abide by the rudiment principles (e.p. safeguarding the property right, crime punishment, innocence inferring, severe law prohibition etc.) that Taiwan is a country which exercises a legal system.

Key words: organized crime, illegal profits, Anti-Organized Crime Law of Japan, Organized Crime Punishing Law of Japan, money-laundering crime, confiscation