

Abstract

**Study on the Consistency of the Property Rights
Guaranteed by the Article 23 of the Constitution and
the Copyright Limitations and Exceptions**

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Our Constitution guarantees the fundamental right to property as a prerequisite for the free life of the individual. Although author's property rights are different from other tangible property because they are intangible and can be easily influenced on the process of social formation, finiteness of rights, and can be a potential conflict against other property rights, they meet the requirements of Article 23 of the Constitution such as the constitutional basis of the property, private usability, economic value, and disposition of power, etc. Therefore, in order to determine whether compensation is properly awarded by the restriction of property rights, constitutional principles should be applied. Copyright act puts certain restrictions on the author's property rights, such as uses for the purpose of education non-profit broadcasting or performance, copies in libraries. However, the copyright act does not recognize all kinds of compensation. If the compensation is not recognized, it raises a constitutional problem with consistency. This paper examines the theories (theory of boundaries and separation) related to compensation due to the limitations of constitutional property rights. Taking any opinion, the principle of proportionality shall be applied. As far as the Article 23 of the Constitution is interpreted as the limitations of property, the principle of proportionality is applied to the article and compensation should be in accordance with the principles. There are three kinds of compensation recognized under the current law such as use of textbooks for school educational purposes (Sec. 25, Paragraph 1 and 4), use of copies for class work purpose (Sec. 25, paragraph 2), and copy or transfer in the library (Sec. 31, paragraph 5). However, in cases of use for topical reports (Sec. 26), citation of published work (Sec. 28), and non-profit performing and

broadcasting (Sec. 29.), it is not clear whether the compensation should be awarded. In addition, in the fair use provision (Sec. 35(3)), these problems still exist. Therefore, the issue of compensation for limitations of the author's property rights should be reviewed with perspective of the constitutional principle of proportionality.

Keywords

the property rights guaranteed by the Article 23 of the Constitution, Copyright limitations and exceptions, compensation, the constitutional principle of proportionality

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