

## Review on the Form and System of North Korean Law\*

Hyowon Lee

The Unification Law is a legal system related to the unification of the North and South Korea, and further, the institutional unification can at last be completed through legal integration. A systematic understanding of North Korean law is essential for effective prosecution of inter-Korean exchange and cooperation. It is the basis for interpretation and application of laws and systems of the two Koreas in the process of achieving peaceful reunification. The North Korean law is based on socialist law theory, but its contents are changed according to the Juche theory of law and the perspective of the revolutionary leader.

North Korea maintains the system of the written law, and the Constitution is known to have the highest authority. There are important sector laws and general sectors law under the peak of constitution, and regulations, bylaws, and rules are systemized below. The North Korean Constitution stipulates decrees and decisions that can be adopted by the Supreme People's Assembly. The decrees, decisions, and directives refer to the way in which laws such as sectoral laws or regulations are adopted, not the forms of laws themselves. On the other hand, the North Korean Constitution recognizes treaties as international law, and distinguishes between general and important treaties. In North Korea, common law and case law are not recognized as legal sources according to socialist law theory. However, the directive of the Central Court may serve as a guideline for judicial proceedings in practice.

**Keywords:** The Unification Law, North Korean law, Inter-Korean exchange and cooperation, Socialist law theory, Form and system of law

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## I. Introduction

The Unification Law is a legal system related to the unification of the North and South Koreas, and their institutional unification can at last be completed through legal integration. The Unification Law is a norm that governs inter-Korean relations in the process of achieving peaceful unification. The inter-Korean relationship is special in that North and South Korean laws differ in their ideology and system, and thus they are applied in contradiction to one another. If the dual status of North Korea is approved in accordance with the theory of the special relationship between South and North Korea, the normative effect of North Korean laws can be recognized and applied to the inter-Korean relations in areas where North Korea acts as a partner that cooperates for peaceful unification.<sup>1</sup>

In the Kaesong Industrial District and the Mt. Kungang Tourism District, the Kaesong Industrial Zone Act enacted by North Korea was directly applied to South Koreans as well. In addition, various inter-Korean agreements have normatively recognized the laws and institutions of each other, adhering to reciprocity. Thus, a systematic understanding of the laws of North Korea is one of the important areas of the Unification Law. North Korea, which has the nature of a state, has enacted and implemented North Korean law with normative grounds in accordance with the legal system including the Constitution. It is an effective law that is applied directly to North Korea and its people. North Korean law also applies to foreigners who enter North Korea as well as South Koreans who enter North Korea for inter-Korean exchange and cooperation.

North Korea published the Code of the Democratic People's Republic of Korea (supplementary edition) in 2016 and cited Kim Il Sung's teaching in its preface and announced as follows:

The Socialist Law is an important means for the people's government to

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1. About North Korean Law's domestic legal effect, Hyowon Lee, *The Normative System of Inter-Korean Exchange and Cooperation* (Kyungin Munhwasa, 2006), pp. 192-213.

realize politics, and is a collective code of conduct that everyone must observe. We shall enact and complete the laws and regulations of the state to fulfill the needs of the developing reality, strengthen the socialist judicial life so that all national economic institutions act strictly on the law, and all workers keep the socialist law in a self-sustaining manner.

The North Korean Constitution does not clearly define the form and system of North Korean law, and various opinions have been presented. A systematic understanding of North Korean law is essential for effective prosecution of inter-Korean exchange and cooperation. It is the basis for interpretation and application of laws and systems of the two Koreas in the process of achieving peaceful reunification. It is a basis as well for organizing the laws and institutions in case the North changes its system in the future, and is also a necessary task in preparation for legal integration and unification of courts in the future unified Korea.

## **II. The Theory of North Korean Law**

### **1. Socialist Law Theory**

#### **a. Socialist State View and Legal Theory**

Article 1 of the North Korean Constitution states that “the Democratic People’s Republic of Korea is an autonomous socialist country that represents the interests of the entire Korean people,” and Article 11 states that “the DPRK shall carry out all activities under the leadership of the Korean Workers’ Party.” The preamble to the Korean Workers’ Party Code also states that

The Workers’ Party of Korea... strengthens Kim Il Sung-Kim Jong Il’s culture, and rejects all kinds of reactionary and opportunistic ideas such as capitalist ideology, feudal Confucianism, revisionism, dogmatism, toadyism and adheres to the revolutionary principles of working-class principles and Marx-Leninism.

In other words, North Korea declares its national identity to be a socialist state based on Marx-Leninism. Therefore, in order to systematically understand North Korean law, it is necessary to understand the socialist state view and the legal theory, which is the basis of North Korea's national ideology.

The socialist state and legal theory were originally based on the traditional Marx-Engels materialistic view of history, but was partially amended in the course of carrying out Soviet revolution and constructing a socialist state in 1917. However, since the Soviet Union collapsed in the 1990s and East and West Germany became unified, socialist law theory has been changing. China and Vietnam especially have introduced legal systems that are contradictory to traditional socialist law theory, promoting external reform and opening since the 1980s. Since then, the normative meaning of socialist law theory has been changing drastically. Socialist law theory is fundamentally characterized by the following qualities.

First, according to the Marx-Engels theory, the state is the governing body of the bourgeois class, and law is a means used by the state to realize violent repression and exploitation.<sup>2</sup> In Marx's Declaration of the Communist Party, he stated that "the state is the product of class struggle," and Engels said in *The Origin of Private Property and State* that "a state is an instrument for one class to suppress other classes," meaning that the bourgeoisie with economic power created a violent governing body—a state—as a means to oppress and exploit the weaker proletarian class. That is, law is the measure for the bourgeoisie to suppress the proletarian class, as the state uses it as the most important weapon for such violent repression and exploitation.

According to the Marx-Engels materialistic view of history, social institutions and laws are elements of superstructure, and are based on the underlying substructure formed around the economic production relations of the time. Thus, law does not stand by itself. It cannot exist beyond economic structure. Additionally, legal reform cannot bring

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2. Gwang Hew Shin, "The Legal Theory of Socialist Countries and Constitutional Theory of North Korea," Hankuk University of Foreign Studies Essay Collection no. 25 (1992), p. 685.

about any social change by itself. Also, according to the theory, if the socialist revolution and the socialization of the means of production achieve communist equality without class confrontation, then the state will eventually disappear. This is the theory of state extinction. At the same time, the law as a means of oppression and exploitation becomes no longer useful and ceases to exist.<sup>3</sup>

Second, Lenin actively recognized the functions of the state and the law in the course of the Soviet revolution and argued for a semi-national theory. He reinterpreted the nature of the proletariat dictatorship and the theory of state extinction, while accepting Marxist class theories in *State and Revolution*. That is, the proletariat constructs a proletarian autocratic state as a transitional socialist state in the process of overthrowing the capitalist state and establishing a communist state through violent revolution, which is the anti-state that distinguishes it from the conventional bourgeois state.<sup>4</sup>

The proletarian state continues to carry out dictatorship to suppress the remaining bourgeois rebellion even after the revolution, and the law continues to function as a means to realize this authoritarian power. A proletarian autocratic state realizes the communist ideal by establishing a new communist economic order, where people work according to ability and get distribution according to need, while using law as a means to suppress and eliminate the disobedience of the overthrown hereditary class during the course of socialist revolution. Also, the proletarian state is responsible for creating a new type of human being that is able to live autonomously without any legal constraints in the communist state where the state and law are extinct. This is possible by training people through powerful law enforcement.

Lenin recognized the necessity of strengthening state power and law even after the proletarian revolution, and transformed socialist law theory to justify this. In the proletarian autocratic state, law plays a leading role in all spheres as a powerful weapon and as a measure to

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3. Kyung Bae Min, "The Characteristics and Structure of Legal Systems in Transition Countries," *Unification Issues Research* no. 46 (2006), p. 222.

4. Dal Gon Choi & Young Ho Shin, *Introduction to North Korean Law* (Sechang Publications, 1998), p. 4

maintain the regime. Completion of communism would bring complete annihilation of the hereditary class and the eventual extinction of the state and law.

Third, Stalin developed a new theory to strengthen the role of state power and law until the socialist state becomes annihilated. Stalin said that the socialist autocratic state of the proletariat is the most powerful nation in human history, as a new type of state that distinguishes itself from the capitalist state as well as the anti-state of Lenin. Such a socialist state should protect the fruit of revolution from attacks by capitalist states in order to protect the interests of the proletariat and the new production relations created by the violent proletariat revolution, as a component of protective superstructure. Thus, the change of the economic infrastructure, the formation of the proletarian class consciousness, and the transformation into the new communist human being can be achieved through the state-led revolution from the top.<sup>5</sup>

Stalin argued for a single socialist state. That is, in a situation where the immediate world revolution by the proletariat is difficult to achieve, the socialist revolution in the Soviet Union should be completed first and foremost. He also argued that up to a certain level, social structures and laws—superstructures—lead the substructure, and at the next stage, the substructure develops by repeating the process of leading the superstructure. This idea was against the traditional Marx-Engels materialistic view of history.<sup>6</sup> The socialist state that Stalin advocated strengthened state power through law, and socialist law theory emphasized the repressive nature of the state.

Stalin's state view and the theory of law were reflected in the Stalin Constitution of 1936, and they criticized the theory of law denial that has been traditionally claimed in socialist law theory. Vyshinsky argued, "Why should we defend the law? It is because by protecting the law, the driving force of the political system and national control can be strengthened." He criticized the allegation that socialist law should be abolished as soon as possible, for it is putting bourgeois law

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5. *Ibid.*, p. 5; Gwang Hew Shin, *op. cit.*, p. 687.

6. Dal Gon Choi & Young Ho Shin, *op. cit.*, p. 7.

and socialist law on the same level.<sup>7</sup> Stalin positively emphasized the function of law in the socialist countries and recognized that law is not simply a reflection of the economic infrastructure but rather a creative function that can improve and develop the infrastructure. He pointed out that the socialist state is responsible for coordinating and planning social relations and economic productivity by law, and that law plays a role in deliberately modifying human ideologies and emotions.

### b. The Nature and Qualities of Socialist Law

A socialist state is based on the instrumentalist perspective of law, which sees law as a compulsive and oppressive means used by the ruling class on the subjugated class.<sup>8</sup> In the socialist state, law is a means to realize the political goal—construction of a communist society—of the communist party. Therefore, the communist party, which is subordinate to politics and dominates political power, guides law. In a socialist state, the positive law including the constitutional law is a mere materialization of the party norms such as the constitution, policies and instructions of the communist party. Thus, the doctrines and decisions of the communist party are practically superior to the constitution. The law in the socialist state is only a tool of political power, so factors such as the intrinsic value and ideology of the law, the uniqueness of the law, and legal stability are not acceptable. The law of a socialist country essentially has the following functions:

First, it serves as a tool to realize the proletarian dictatorship that suppresses the counterrevolutionary bourgeoisie, to protect the socialist system from the counterrevolutionary forces at home and abroad. That is, the law forms a protective superstructure. In other words, socialist law systematizes the organizational structure of all societies in order to keep the supremacy of the proletarian class, so compliance with law is required for this purpose. The rule of law to control political power is not allowed. In this respect, socialist law has a hierarchical and political

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7. *Ibid.*, p. 9; Gwang Hew Shin, *op. cit.*, pp. 690-691.

8. Do Kyun Kim, "Über die Rechtsbegriffs- und Rechtsstaatlichkeitslehre in Nordkorea," *Seoul National University Institute of Law*, vol. 46, no. 1 (2005), p. 453.

nature as a superstructure protecting socialism, and it is characterized by the fact that originality and stability of law cannot be recognized.<sup>9</sup>

Second, the socialist state socializes the means of production. It decides and enforces the production, distribution and use of all goods through a centralized economic plan. The law should have a strong force to establish, organize and maintain such socialist economic order. Laws in the socialist state play a role in transforming all peoples into human beings fit for the future communist society where the state and the law cease to exist. The socialist state teaches individuals about communist norms by enacting laws that include contents such as social sharing of property, duties before rights, and the whole before individuals. For this reason, the law in the socialist state is a "law as a teacher and a parent," and it serves as an ideology to voluntarily mobilize individuals for the construction of socialism by converting them through enlightenment and education into human beings suitable for socialism.

Socialist law scholars have explained in *Marxist State and the Law Theory* that socialist law adopts the following as basic principles in order to perform the above functions and roles as a tool of political power.

First, the proletariat is recognized as the sovereign authority, as a source of state power. It is the principle of people's sovereignty. It is actualized to ensure and prioritize the rights of working people, and is most fully realized in a mature socialist country.

Second, the socialist state operates according to the will of sovereign working people. This is fundamentally different from a bourgeois democracy where it means the exploitation of minority by majority as a democratic principle. In socialist law, democratic principles are realized not only in the political sphere but also in all areas of livelihood, including economic and social areas.

Third, in a mature socialist country, citizens' equality is guaranteed in all areas of economic, political, social and cultural spheres of life. This clearly shows the difference between socialist and bourgeois laws in that citizens' rights and obligations are inseparably linked. In other words, the wealth and rights are concentrated in the ruling class

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9. Dae Kyu Yoon, "Changes in Socialism and Socialist Legal Principles," *Law and Society*, vol. 6 (1992), p. 210.



while duties and burdens are concentrated in the subjugated class under bourgeois law; whereas, in socialism, the equality of citizens is shown not only in equality of social benefits but also in their responsibilities to society and the state.

Fourth, the equality of all races and peoples is internationally guaranteed and the right of self-determination is recognized, and internationalism is recognized as the basic principle. Thus, based on the universal values of mankind, it becomes the basis for guaranteeing the true prosperity of individuals by eliminating the framework of class egoism inherent in capitalism.

## **2. Characteristics of the North Korean Law**

### **a. Influence of Socialist Law**

North Korea, at the time of its establishment, was decisively influenced by the Soviet Union under the control of Stalin. Soviet legal theory was accepted in North Korean law, defining the nature and function of North Korean law. North Korea promoted the 1948 Constitution as the most universal and democratic constitution in the world, for it went through nationwide debate in its drafting and it succeeded the most democratic characteristics of the Stalin Constitution. North Korean law is based on the theory of socialist law and has the characteristics of a political and classical norm as a means of achieving the political goal of building a socialist state.

Kim Il Sung also proclaimed, "What is the law we ask for today? Today we live in a socialist economic system, and workers, peasants and other wider working people live under a people's regime that suppresses anti-revolutionary rebellion of landowners and capitalists in order to build socialism. It is therefore clear that our law should be a weapon to defend our socialist system and gains, and it should be a weapon of the proletarian dictatorship."<sup>10</sup>

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10. Il-Sung Kim, *To Carry Out Our Party's Judicial Policies*, A selection of Kim Il-sung's works, vol. 2 (Pyong-yang: Korean Workers' Party Publications, 1968), p. 142.

## b. The Juche Theory of Law and the Theory of Revolutionary Leader

The preamble to the North Korean Constitution states,

The Socialist Constitution of the Democratic People's Republic of Korea is a Juche socialist country that embodies the ideals and principles of the great Kim Il Sung and Kim Jong Il comrades. ... The Socialist Constitution of the Democratic People's Republic of Korea declares the Kim Il Sung-Kim Jong Il Constitution, which legalized the national constructions ideals and achievements of Juche by the great Kim Il Sung and Kim Jong Il.

Article 3 of the North Korean Constitution states that "The Democratic People's Republic of Korea takes the Juche idea as a guideline for action, which is a people-centered worldview and a revolutionary idea to realize the independence of the mass." Article 11 states that, "The Democratic People's Republic of Korea conducts all activities under the leadership of the Korean Workers' Party." The Covenant of the Korean Workers' Party states in the preface that

The Workers' Party of Korea is a Juche revolutionary party with the great idea of Kim Il Sung-Kim Jong Il as the sole guiding ideology. ... The Workers' Party of the DPRK adheres to, inherits and develops the revolutionary tradition of Juche accomplished by the great Kim Il Sung and Kim Jong Il, and adopts it to be the cornerstone of party construction and party activities.

The Juche idea is the highest legal principle and the fundamental rule of North Korea.

North Korean law is based on socialist law theory, but it also uses the Juche ideology of Kim Il Sung as the guiding ideology and its legal theory as the legal basis. The Juche ideology consists of the following as its fundamental principles: independence in politics; self-reliance in economy; and self-preservation in national defense as its fundamental principles. The legal theory of Juche is the idea of Juche systematized in the areas of jurisprudence, and it develops all legal arguments in terms of independence. Unlike socialist law theory, the essence of the

Juche law is characterized by emphasis on spiritual factors such as independence, creativity and consciousness of social people rather than socioeconomic factors. The legal theory of Juche is a North Korean legal theory which combines socialism realization and nationalist tradition. The worker's public self is identified as a subjective factor in the outbreak and development of all legal phenomena and it emphasizes that all laws should serve the working people.<sup>11</sup>

The legal theory of Juche justifies centralized individual dictatorship by combining with the theory of revolutionary leader that explains that the working masses, the master and key of the law, can carry out the communist revolutionary movement only if they receive the command of the excellent leader. In the Juche idea of North Korea, the leader is supreme over the working class party and the masses, creating the party's revolutionary tradition and guiding ideology, and is the only center that organizes the party and the people into one, as the supreme leader of the proletariat dictatorship.<sup>12</sup> The popular mass is the driving force of historical development, but its power does not manifest itself; it is revealed by an excellent leader who organizes the popular masses. North Korean law thus transforms socialist law theory by adopting the legal theory of Juche and the theory of the revolutionary leader and operates it in the North Korean way.

### c. Socialist Legal Life Theory

Law in North Korea is an indispensable means of realizing communism, as it is a weapon against the capitalist counter-revolutionary forces while maintaining the dictatorship system achieved through the

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11. Eun Jung Park, "Basic Principles of North Korean law and the Search for Unification Law Ideology," *North Korea Research*, no. 1 (1998), Seoul: Ewha Womans University Graduate School of North Korean Studies, pp. 84-115; Heung Lak Choi, "Dear Leader Kim Jong Il is a Great Ideological Theorist who Systemized the Juche Legal Theory," *Social Science*, no. 1 (1985), Pyongyang: Science and Encyclopedia Publications, pp. 48-49.
  12. Social Science Publications, *Philosophical Dictionary* (Pyongyang: Social Science Publications, 1985), p. 379.

proletarian revolution. Therefore, in order for North Korea—that claims to have accomplished the socialist revolution—to build a communist society, socialist legal compliance is demanded of the state institutions, organizations, and enterprises as well as citizens. They must faithfully comply with the revolutionary ideology of the leader, the policies of the Chosun Labor Party, and the national legislation that specifically implements them.

Socialist legal compliance is said to be an important means of realizing proletarian dictatorship, a strong weapon against the remaining capitalist ideology in people's consciousness, and a way to teach workers communistically and to construct socialism. Such socialist legal compliance is the purpose of the North Korean legal system as an indispensable means to properly manage and operate socialist society. Socialist compliance is also reflected in the North Korean Constitution. Article 18 and 82 respectively state that "Respect for law and strict enforcement is mandatory for all agencies, organizations and citizens. The state completes a socialist legal system and strengthens socialist legal life," and "Citizens must observe the state laws and socialist living standards, and must adhere to the honor and dignity of the people of the Democratic People's Republic of Korea."

The socialist legal life theory directly reflects and theorizes such socialist legal compliance with respect to civil lives. The theory of socialist legal life came into being when in 1977, in commemoration of the 5th anniversary of the promulgation of the North Korean Socialist Constitution, Kim Il Sung criticized the bureaucracy of North Korean society in the report of 'Let us Strengthen the People's Regime.' He had proposed for the leaders of the state and economic institutions to strengthen socialist judicial life as a way of engaging in anti-bureaucratic struggle.<sup>13</sup> In 1982, in 'Strengthening the Life of Socialist Justice,' he declared that strengthening the life of socialist justice was the lawful

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13. Guk Pyo Hong, "Strengthening socialist judicial life is an important task of the people's regime," in *Social Sciences* (Pyong-yang: Science and Encyclopedia Publications, 1981), p. 17.; Byung Ki Kim, "Understanding the North Korean Legal System," in *Understanding the North Korean System*, ed. System Integration Research (Myungin Munhwas, 2009), pp. 149-150.

requirement of revolutionary development, socialism, and communist construction. This means that all members of society work and live according to the laws and regulations established by the socialist state. It is a nationwide communal system where the working people following state legal order lead subjectively disciplined lives, in which people work in unison and realize joint action.<sup>14</sup>

The socialist legal life theory proposes three ways to strengthen this.<sup>15</sup> First, it is necessary to make good laws. That way it is possible to articulate the standards of conduct that conform to the collective nature of socialist society, unify the behavior of people, ensure group discipline and order, and control illegality in all areas. It is important to revise the law as the laws should be revised as much as the revolution is constantly developing to a higher level. Second, in order for the residents to observe these laws and to behave in compliance with the law, a revolutionary law-abiding spirit should be established and the ideological education and ideological struggle for the working masses should be strengthened. Third, the state should establish a system of guidance on legal life and instruct all members in a unified manner. The Socialist Legal Life Guidance Committee plays that role. The Socialist Legal Life Guidance Committee is a non-governmental organization that understands, directs and controls the legal life status of all the institutions, factories, organizations, and residents. Its main task is to establish a revolutionary legal compliance spirit for the whole society by legally controlling the leaders of state and economic organizations so that they do not abuse power.

#### d. The Nature and Characteristics of North Korean Law

The ideology and system of North Korean Law depend on social-

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14. Chang Sub Seo, *Legal Construction Experience* (Pyong-yang: Social Science Publications, 1984), p. 117.; Jong-Il Kim, "About Strengthening Socialist Legal Life," in *Collection of Jong-Il Kim's Writings*, vol. 7 (Pyong-yang: Korean Workers' Party Publications, 1982), p. 2.

15. Jong-Il Kim, *Ibid*, pp. 20-21.; Il-Sung Kim, *Collection of Il-Sung Kim's Writings*, vol. 6 (Pyong-yang: Korean Workers' Party Publications, 1982), p. 427.

ist ideology and state view, for both are based on the socialist legal theory. The nature of North Korean law can be examined through the nature and function of law in North Korea. Law in North Korea is a means of class struggle and socialist state administration, and is conceived as a weapon to defend the victories that have been won in the revolution. The mission of North Korean law is to realize the proletariat dictatorship and to actively contribute to the Juche socialization. Kim Il Sung also declared that "North Korean law is a weapon to defend the socialist system, to defend the proletariat dictatorship already established in North Korea."<sup>16</sup>

In North Korea, in principle, the privatization of the means of production is not allowed; so all economic activities are carried out according to the state plan and execution. All laws in North Korea are a powerful means of enforcing all state actions related to such economic activities. The law in North Korea has the function of transforming individuals into new communist humanoids, in order to achieve communism in which the state and law cease to exist. In other words, it is the ideology and purpose of the law to make people submit to a centralized ruling system, and to make them more fit for collectivism which values responsibilities over rights and the whole over individuals.

North Korean law is based on socialist law theory. At the same time, it has developed a unique legal theory such as the Juche legal theory and the socialist legal life theory with the following characteristics.

First, North Korean law acts as a means to fulfill the purpose of the state's political power, considering its political ideals and functions. Thus, North Korean law does not control or regulate political power, but is subordinated to the policies of the Chosun Labor Party dominated by Juche ideology. The Korean Workers' Party is a constitutional body that prescribes and supervises national policies and norms over all state powers, and directs and supervises the policy execution of state institutions and individuals. The nature of North Korean law and the status and functions of the Korean Workers' Party are also

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16. Il Sung Kim, "To promote and develop the socialist system in Korea," in *A selection of Kim Il-sung's works*, vol. 5, ed. Korean Workers' Party Publications (Pyong-yang: Korean Workers' Party Publications, 1972), p. 96.

reflected in the normative system of North Korean law.

The North Korean Constitution states in its preface that

the Democratic People's Republic of Korea and its people hold up the great Kim Il Sung and the Kim Jong Il comrades as the eternal leader of the Juche Chosun and advocate their ideals and achievements under the leadership of the Korean Workers' Party; we will complete the Juche revolutionary feat to the end.

Article 11 stipulates that "The Democratic People's Republic of Korea shall carry out all activities under the leadership of the Korean Workers' Party." The Korean Workers' Party Covenant also stipulates in the preface that "The Chosun Labor Party is a Juche revolutionary party that makes the great Kim Il Sung-Kim Jong Il the only guiding ideology."

Second, the highest norm in North Korea is Juche Ideology and the teachings of Kim Il Sung and Kim Jong Il. The codes, covenants and policy decisions of the Korean Workers' Party try to practice this function as the upper norms to all laws including the socialist constitution.<sup>17</sup> Because of such characteristics of North Korean law, the North Korean Constitution is not a control norm to guarantee individual rights and prevent state power abuse. The interpretation and application of all laws including the Constitution are restricted by the upper norms. It can be concluded that the constitutional norms and the rule of law recognized in constitutional democracy are not adopted, since all the state organs established by the Constitution are merely executive bodies enforcing national policies determined by the Korean Workers' Party.

As for the relationship between politics and law, Kim Il Sung said,

You can neither go out of politics to know the law, nor can you enforce the law. The law of our country is an important weapon to realize the policy of our country. Our state policy is our party policy ... The law is

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17. Ministry of Justice, *North Korean Legal System Outline (North Korean Legal System Data No. 1, Legal System Data, 157s, Ed.)* (Seoul: Seo-deung, 1991), p. 16.

an expression of politics, so it must be subject to politics, and it cannot be separated from it. So who today sets up a line for our state's revolution and all its policies? The answer is unquestionably our party.<sup>18</sup>

Third, North Korean law does not clearly distinguish individual rights from obligations. This is because North Korean law is based on totalitarianism and collectivism in accordance with socialist law theory.<sup>19</sup> That is, North Korean law understands reciprocal relations between not only individuals but also among individuals, society, and the state as having mutual organic relevance as a part and a whole. They are conceived not to have conflicting interests, but rather develop together in the same direction according to the laws of historical development. Therefore, on the assumption that individuals, society, and the state conflict with each other, it is difficult to assume the right of individuals to be infringed by the power of society or the state, and it is difficult to establish an obligation corresponding to rights.

Even if North Korean law provides a specific right, it should be understood from a functional point of view. Such right contributes to the purpose and interests of the whole; thus, it functions directly as an obligation in itself. After all, in North Korean law, only the state actually has rights because the whole or the nation prevails over individuals. The individual as a part will bear only the obligations corresponding to the rights of the state, and there is no room for the individual to assert their own rights.

Fourth, North Korean law has no distinction between public and private law, and all laws have a public nature.<sup>20</sup> North Korea, in accordance with the socialist law theory, does not recognize the privatization of the means of production, and all laws function as a means for effective policy enforcement. Thus a judicial system based on private autonomy is beyond controversy. North Korea does not recognize the private ownership of property as a rule, so the property ownership

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18. Il Sung Kim, *Kim Il Sung Selections* vol. 2 (Pyong-yang: Korean Workers' Party Publications, 1968), p. 144.

19. Ministry of Justice, *op. cit.*, p. 11.

20. Ministry of Justice, *op. cit.*, p.1.



institution of the private law system does not apply. Contracts between individuals and organizations also have meaning only as a means or procedure for enforcing the national economic plan. It is recognized that commerce through intermediate profits is unfair as it is not based on labor, and family law emphasizes social security through active involvement of the state as well.

About the enactment of civil law, North Korea declared as follows:

On February 1, 1958, the Government of the Republic made a decision on writing and preparation of civil law and civil procedure law. Drafting participants are putting wisdom and endeavor in, and are committed to reflect the base results that we have achieved under the wise leadership of our party after the liberation, based on the Marxist and Leninist legal theory and the advanced legislative experience of the Soviet Union.<sup>21</sup>

Therefore, in North Korean law, there is no room for private law that is governed by an independent court system, and civil and commercial laws also function as public laws governed by administrative legal principles.

### **III. Form and Effect of North Korean Law**

#### ***1. The Form of North Korean Law***

##### **a. The Juche Ideology**

North Korean law is ideologically based on Juche legal ideology and the theory of the revolutionary leader—Kim Il Sung’s teaching. The Korean Workers’ Party Code and Covenant, specifying the ideology and theory, are basis and limits for all North Korean laws. The ideologies, including the Juche ideology, form the basis of North Korea’s legal theory and serve as guidelines for enacting, interpreting, and

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21. Chang Sub Seo, “On the Civil Code System of the Republic,” Democratic Justice Act no. 5, May 25, 1959, p. 28.

enforcing the laws and regulations, and function as laws and regulations themselves, but do not exist in legal forms.

North Korea's civil law textbook declares that "Juche Ideology is the only guiding principle in the study of the Republican Civil Law." It also explains that

The Juche Ideology, founded by the great leader Kim Jong Il, is the great idea claiming that the master of revolution and construction are the people and the power to lead them also belongs to the people. It most correctly reflects the demands of the new era and the lawfulness of revolutionary development and the desire of the people. It is the most precise Marxist-Leninist ideology of our time that gives a clear answer to fundamental questions of revolution and construction, and it is a guideline for the study of the Republican Civil Law.<sup>22</sup>

Thus, in North Korea, Kim Il Sung and Kim Jong Il's teachings, which embody Juche ideology, are the guiding principle and the constitutional norm of law application.

## b. The Written Law

According to the North Korean Constitution, the forms of written law in North Korea consist of constitutional law, sector laws and regulations as domestic laws, and treaties as international law. Sector laws are divided into the general and important sector law, and treaties can be divided into general and important treaties. They differ in subject, procedure, and execution.

The North Korean Constitution does not directly prescribe the supreme normality of the Constitution, but indirectly recognizes it as the highest written law. The Supreme People's Assembly, the supreme sovereign authority, has the right to amend and supplement the Constitution (Article 91, Paragraph 1), and the amendment and supple-

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22. Kim Il Sung University Press, *Civil Law (I)* (Pyong-yang: Kim Il Sung University Publications, 1973), p. 5, quoted in Jong Go Choi, "North Korean Laws and Ideologies," *North Korean Laws and Legal Theories* (1988), Kyungnam University Far East Research Institute, p. 39.

mentation of the Constitution requires a two-thirds majority of the representatives of the Supreme People's Assembly (Article 97).

The North Korean Constitution distinguishes between the sector law and the important sector law. The Supreme People's Assembly may enact, amend or supplement the sector laws (Article 91, Paragraph 2) and approve the important sector law adopted by the Standing Committee of the Supreme People's Assembly during the recess of the Supreme People's Assembly (Article 91, Paragraph 3). The Standing Committee of the Supreme People's Assembly shall deliberate on and adopt new legislation, regulations and amendments and supplementary provisions of the current laws and regulations, which were raised during the adjournment of the Supreme People's Assembly. Among the sector laws adopted and implemented in this way, important sector laws shall be approved by the Supreme People's Assembly next time (Article 116, Paragraph 2). Legislation Law enacted in 2012 prescribes "The sector law means the basic legal form by which the supreme sovereign authorities control social relations according to constitutional law" (Article 2, Paragraph 2). Although the Supreme People's Assembly can make its own decisions on the important sector law, the Standing Committee of the Supreme People's Assembly cannot decide on its own, and the Supreme People's Assembly should approve their decision. However, there is no standard on which sector laws are considered as important sector law, and there is no provision for the effect of the general and important sector laws.

North Korea defines 'regulations' from the 1998 Constitution as a form of law. Article 116 of the Constitution states that

The Standing Committee of the Supreme People's Assembly has the following duties and powers to: 2. Deliberate and adopt amendments and supplementation of new sector laws and regulations, current laws and regulations during the recess of the Supreme People's Assembly, and... 4. Interpret the Constitution and current laws and regulations.

Article 125 states, "The Cabinet has the following duties and powers to: 2. Prescribe, amend or supplement regulations related to nation-

al administration based on the Constitution and sector law." Legislation Law prescribes that "Regulations mean the concrete legal form which materialize sector laws or control immature sector without sector law" (Article 2, Paragraph 3). The Cabinet has the power to enact regulations based on the Constitution and sector law.

Article 9 of the Kaesong Industrial Zone (KIZ) Act, enacted in 2002, stipulates that "economic activities in the KIZ shall be in accordance with the provisions of this Act and its norms for implementation." In Article 4 of the Mt. Kumgang Tourism District Act, it states that "tourism and other economic activities in the tourism district must comply with the provisions of this law and its performance." Accordingly, the "Establishment and Operation Regulations of Enterprises" was enacted. According to the North Korean Constitution and the Kaesong Industrial Zone Act, regulations are interpreted to be subordinate to the sectoral law as the written law of North Korea.

Legislation Law prescribes "The detailed rules mean the more minute legal form which materialize sector laws or regulations or control special sector in order to execute sector laws or regulations" (Article 2, Paragraph 4). The Local People's Assembly and its Committee in Province (a city under the direct control of the central government) have the power to enact the detailed rules (Article 40, 41).

In Article 22 of the Kaesong Industrial Zone Act, the central industrial zone guidance organ is entitled to issue the detailed rules for the enforcement of industrial zone regulations. The Mt. Kumgang International Tourism Special District Act, established in 2011, stipulates in Article 8 that "The development and management of international tourism special zones, tourism, and other economic activities shall be in accordance with the provisions of these laws and regulations," thus arranging rules as the form of written law as well. In addition, the law on special economic zones, such as the Rajin Economic and Trade Major Law revised in 2011, the Grand Prix of Gyeongpyeong and Gyeonghwa Island in 2011, and the Economic Development District Legislation enacted in 2013, provide bylaws as being subordinate to regulations. However, the North Korean Constitution stipulates only the Constitution, sector law, and the regulations as a form of domestic

written law. But Legislation Law stipulates ‘the detailed rules’ as one of general legal forms. Specially, Legislation Law prescribes “The Standing Committee of the Supreme People’s Assembly has the power to interpret and construct sector laws and the regulations, which has the same effect with the sector laws and the regulations” (Article 24).

The North Korean Constitution provides treaties as international law. The Cabinet may conclude a treaty with other countries (Article 125, Paragraph 11), and the Standing Committee of the Supreme People’s Assembly may ratify or abolish the treaty concluded by the Cabinet (Article 116, Paragraph 14). On the other hand, Article 103 of the North Korean Constitution bisects the right to ratify and abolish the treaty by stating that “The Chairman of the National Defense Commission of the Democratic People’s Republic of Korea has the following duties and authority to: 4. Ratify or abolish any important treaties with other countries.” However, there is no provision on the criteria and the effect of general and important treaties.

There are various views on whether or not decrees exist as a form of law in North Korea. Although decrees in South Korea encompass laws and ordinances, there is an understanding that laws in North Korea are conceived as legal documents that have the highest legal effect, being enacted and promulgated by the highest legislative body.<sup>23</sup> However, looking at the process of change in the North Korean Constitution, it is reasonable to understand decrees as a way of adopting laws, not as a form of law.

The Gwang-Myeong Encyclopedia published in North Korea states as follows:

The decree is the law adopted by the highest authority. It is divided into basic and common laws of the state. The basic laws of the state include the Constitution. Common laws include laws other than the Constitution:

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23. Ministry of Government Legislation, *North Korean Statutory Terminology Dictionary (I): Basic Law and Constitutional Law* (Seoul: Korea Legislation Research Service, 2002), p. 114.; Korea Legislation Research Institute, *Analysis of Legal Terms in North Korea (I): Constitution* (Seoul: Korea Legislation Research Institute, 1995), pp. 274-276.

criminal law, criminal procedure law, civil law, decrees on the people's economic plan, and decrees on the state budget. The laws of our republic are adopted only by the Supreme People's Assembly, the supreme legislative body, and have the highest legal validity among all laws and regulations. In our country, legislation is enacted through legislative proposal, deliberation, and approval. Interpretation of the decree is done by the Standing Committee of the Supreme People's Assembly. In some capitalist countries, the term 'decree' is used to refer to laws and ordinances, and in a broader sense, it refers to all legislative norms such as laws, orders, ordinances, and rules. In our country, only the law adopted by the Supreme People's Assembly is called the decree.<sup>24</sup>

The North Korean Constitution stipulates about decrees from the 1948 Constitution to the present Constitution in concept, but only until 1959 are decrees enacted in real, and are not to be found thereafter.<sup>25</sup> In particular, until the 1992 Constitution, Article 91 states, "The Supreme People's Assembly has the following powers to: 2. Enact or amend decrees," and Article 97 states "Supreme People's Assembly makes laws and decisions." Decrees were recognized as a form of legal adoption as well as a form of law. However, since the 1998 Constitution, only sector laws and regulations have been recognized as forms of law, and not the decrees. Therefore, according to the current North Korean constitution, decrees should be understood to mean a way of legal adoption, not a form of law.

Some view decisions stipulated by the North Korean Constitution to mean a norm that defines attitudes and behavioral directions of the state or residents.<sup>26</sup> However, a decision is a way to concretely imple-

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24. The Chosun Encyclopedia Compilation Committee, *The Chosun Encyclopedia* (Pyong-yang: Gwangmyung Encyclopedia Compliation Commitee, 2006).; Korea Legislation Research Institute, *Dictionary of North Korean legal terms* (Sejong: Korea Legislation Research Institute, 2017), pp. 324-325.

25. Wook Yoo, "North Korea's Legal System and How to Understand North Korean Law: Focusing on the Law Forms, Elements, Decisions, etc. in the North Korean Constitution," *Unification and Law*, vol. 6 (2011 May), Ministry of Justice, pp. 70-71.

26. Korea Legislation Research Institute, *Analysis of Legal Terms in North Korea (I): Constitution* (Seoul: Korea Legislation Research Institute, 1995), pp. 271-273.

ment the law, and should be understood to mean a way of adopting sector laws or regulations. According to Legislation Law, the Standing Committee of the Supreme People's Assembly and the Cabinet promulgate regulations in the form of 'decisions' (Article 23, 31).

### c. Common Law

North Korea, following the socialist law theory, does not recognize common law as a legal source. That is, the customs of the past and the social order based on them are opposed to the interests of the socialist revolution. In establishing a communist regime, North Korea saw all existing social order as being contrary to the interests of the revolution, and believed that only by defeating the existing social order, the socialist revolution could be accomplished. Thus, they denied common law as a legal source because the capitalist ruling class had used common law to oppress and exploit the workers, and because it legally fixated the Japanese colonial law and feudal customs.<sup>27</sup>

Since the establishment of the regime, North Korea has begun to work on enacting individual laws to establish the socialist revolution order and to annul all pre-existing laws and ordinances from the Japanese colonial period. In the process, however, no written law was enacted. Because the form and contents of the written law that was hastily enacted were unclear, other legal sources were needed to supplement it. Nevertheless, they did not recognize common law to meet the demands of the times to fulfill the socialist revolution.

### d. Case Law

The North Korean Constitution establishes a judicial system with the Central Court at the top; however, it does not recognize case law as a legal source, in accordance with socialist law theory. The North Korean court is not a judicial body that is independent of state institutions.

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27. Ministry of Justice, *Systematic Review of North Korean Law (I): Civil Relations Act*, (Seoul: Ministry of Justice, 1992), pp. 20-21.

Thus, it is not responsible for final legal interpretation. Since the Court is only a subordinate body to enforce national policies, it cannot provide a uniform standard of legal interpretation. However, there is controversy as to whether the directive of the Central Court can be a source of law.<sup>28</sup> In the former Soviet Union, the court recognized the court order of the Supreme Court as a legal source. In the former Soviet Union and other socialist countries, the Supreme Court issued a directive for the lower courts to adopt as a rule of law. Such directives, though not cases themselves, served as important guidelines for resolving legal disputes that could arise in the civil lives as well as in the courts. Thus, in the former Soviet Union, the Supreme Court of Justice recognized the directives of the Supreme Court to be a legal source, for such directives contain more than mere interpretations of the law, and many systems of civil law have been created by them.

In North Korea, the directive of the Central Court is not accepted as a source of law, for the task of the Court is to apply the law and not to enact it. In North Korea, the independence of ideology and the value of law are hardly recognized due their political and hierarchical qualities. Law is only a means of realizing party policies and there is little room for the court to stretch or reduce legal interpretations. In addition, unlike the former Soviet Union, the history of the court is so brief that it might have been difficult to admit its directives to be legal sources.<sup>29</sup> However, the North Korean court often makes judgments according to the democratic legal consciousness due to absence of the written law and such directives of the Central Court can serve as a practical court guideline.

#### e. Logic

From the process of establishing the regime, North Korea has modified its legal system in stages by liquidating the laws from the Japanese colonial era and enacting laws in accordance with socialist

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28. *Ibid.*, pp. 21-22.

29. Dal Gon Choi and Young Ho Shin, *op. cit.*, p. 93.



law theory. However, the written laws were not systematized formally, and their contents were unclear or contradictory. Due to the absence of the law, the legal life of the inhabitants was not regulated. In order to solve these problems, North Korea prepared standards for legal interpretation and application, which were expressed as 'legal consciousness,' 'democratic consciousness,' and 'democratic legal consciousness,' and were responsible for filling the defects and voids of the written law.<sup>30</sup> Such democratic legal consciousness means the totality of socialist ideologies and principles related to legal problems. It is acted as a means to reflect the policies of the Korean Workers Party in legal matters.

Socialist law theory recognized logic as one of the sources of law, considering the liquidity of law in terms of political ideology. Logic played an important role in cases such as in North Korea where there were many legal vacancies in the process of revising laws through the revolutionary process. Article 20 of the *Basic Principles on the Composition and Duties of the Judicial Branch, Courts and Prosecutors' Office of the People's Committee of the People's Republic of Korea*, promulgated in 1946, stipulates that "judges should judge on the basis of democratic legal sense and the interests of the Korean people," and declared that the democratic legal consciousness could become a source of law. The democratic law consciousness does not merely play a passive role supplementing the defamiation of the written law, but rather functions to prevent legal confusion and agitation until the new law is established after the nullification of an existing statute, and to carry out a stable socialist revolution. In the end, the democratic legal consciousness in North Korea means the totality of socialist ideologies and principles related to legal issues, and it is evaluated to function as a weapon to reflect the party's policies in concrete matters.

## **2. The Ways of Adoption of North Korean Law**

Regarding the written law, the North Korean Constitution distin-

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30. Ministry of Justice, *Ibid.*, p. 24; Dal Gon Choi and Young Ho Shin, *op. cit.*, p. 94.

guishes between a form of law and a method of adoption. In other words, there exist constitutional law, sector law, important sector law, regulation and detailed rule as forms of the written law, and there are decrees, ordinances, decisions and instructions as ways of adopting such written laws. First, the Constitution is amended and supplemented by the Supreme People's Assembly (Article 91, Paragraph 1) and amended and supplemented by a two-thirds majority of the representatives of the Supreme People's Assembly (Article 97). Therefore, the enactment, amendment and supplementation of the Constitution are carried out under the exclusive power of the Supreme People's Assembly, and the adoption of sector laws other than the Constitution is carried out in various ways according to the Constitutional institutions: the Supreme People's Assembly decides the decrees and makes decisions (Article 97); Chairman of the State Council gives orders (Article 104); the State Council makes decisions and instructions (Article 110); the Supreme People's Assembly Standing Committee issues orders, decisions, and instructions (Article 120); the Cabinet may make decisions and instructions (Article 129); Cabinet Committees and the State may issue instructions (Article 136). In addition, the provincial people's council issues decisions (Article 144), and the provincial people's committee can issue decisions and instructions (Article 150).

According to Legislation Law, the constitutional law and sector laws enacted by the Supreme People's Assembly may be promulgated in the form of 'decrees' (Article 16). The method of adopting sector law and major sector is decided by the decree of the Presidium of the Supreme People's Assembly, and the method of approval of the sector law is decided by the decree of the Supreme People's Assembly. Most of the sector laws enacted by North Korea since the 1998 Constitution were adopted by the Supreme People's Assembly Standing Committee. In North Korea's 2004 Code of Democratic People's Republic of Korea (for the people), there are 10 sector laws, including the Childcare Education Act, but these were all revised and supplemented by the decree of the Supreme People's Assembly Standing Committee. In addition, since the 1972 Constitution and prior to the 1998 Constitution, the decision of the Standing Committee of the Supreme People's

Assembly, not the decree of the Standing Committee of the Supreme People's Assembly, is used as a way to adopt sector law. The Supreme People's Assembly of the DPRK seems to adopt the law in the form of a sector or major sector law in the Supreme People's Assembly because the meeting is too short in duration to enact, amend or supplement the sector law. Therefore, most of the sector laws and major sector laws are formulated by the Standing Committee of the Supreme People's Assembly and convened during the adjournment of the Supreme People's Assembly. The important sector law is to be approved by the Supreme People's Assembly.

The Gwang-Myeong Encyclopedia published in North Korea states,

The ordinance is the legal document issued by the organ of the supreme state authority to carry out its duties. The Standing Committee of the Supreme People's Assembly, the supreme sovereign authority during the recess of the Supreme People's Assembly, adopts the decree. Since the adoption of the Socialist Constitution of the Democratic People's Republic of Korea on December 27, Juche year 61 (1972), the Central People's Committee issued an ordinance until the Socialist Constitution was amended and supplemented on September 5, Juche year 87 (1998). The ordinance is adopted in order to solve the important problems of social life which are raised both inside and outside the country, following the party's policies. The contents of the ordinance include the appointment and summons of diplomatic representatives, badges and medals, the enactment and award of honorary titles, the execution of ambassadors and special envoys, and the bringing in and fixing of administrative units and districts. Some ordinances have national character, and some are limited to a sector of the people's economy or individual state institutions, enterprises and social co-operative organizations, and citizens or certain regions. They are classified as such depending on the scope of their influence.<sup>31</sup>

According to Legislation Law, the sector laws enacted by the Standing Committee of the Supreme People's Assembly may be pro-

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31. The Chosun Encyclopedia Compilation Committee, *op. cit.*, 2006; Korea Legislation Research Institute, *op. cit.*, 2017, p. 676.

mulgated in the form of 'ordinances' (Article 23). The regulations enacted by the Standing Committee of the Supreme People's Assembly or the Cabinet Assembly may be promulgated in the form of 'decisions' (Article 23, 31). Among the forms of written law, North Korea adopts "rules" as a form of decision of the Standing Committee of the Supreme People's Assembly or as a decision of the Cabinet. All provisions except the 16 sub-regulations of the Kaesong Industrial Zone Act and the 10 sub-regulations of the Mt. Kungang Tourism District Act were adopted by the Cabinet. Sub-regulations of the Kaesong Industrial Zone Law and the Mt. Kungang Tourism District Act were adopted, amended and supplemented by ordinances of the Standing Committee of the Supreme People's Assembly. They are adopted by the decision of the Standing Committee of the Supreme People's Assembly, which is a higher institution than the Cabinet. This is because they had been enacted in special economic and tourism districts and established in accordance with the inter-Korean agreement on economic cooperation.

According to Legislation Law, detailed rules enacted by the Cabinet Committee or Council may be promulgated in the form of 'instructions' (Article 38). The detailed rules enacted by the central government Local People's Assembly and its Committee in Province (a city under the direct control of the central government) may be promulgated in the form of 'decisions' (Article 43).

North Korea has recently enacted laws on Special Economic Zones and laid down bylaws as subordinate norms to regulations. Kaesong Industrial Zone Act, Mt. Kungang Tourism District Act, Mt. Kungang International Special Tourism District Act, Rasun Economic Trade Zone Act, Hwanggumpyong Island and Wihwado Economic Zone Act and Economic Development District Act grant the right to make bylaws to central industrial zone guidance institution of Kaesong Industrial Area, central tourist district guidance institution, international special tourism district guidance institution, Rasun people's committee, North Pyeongan people's committee and so on, which are central guidance institutions. These regulations do not present any specific methods for adopting bylaws, and merely state "drawing up

of bylaws for the enforcement of industrial zone regulations,” and “drawing up of bylaws to enforce law and regulations.” In particular, the Rason Economic and Trade District Law, the Hwanggumpyong Island and Wihwado Economic District Law, and the Economic Development District Law prescribe rules as being subordinate to bylaws. In these Acts, rules as well as laws, regulations and bylaws are recognized as norms that are applied to special economic zones, and relevant administrative bodies should prepare the rules necessary for development and management.

### **3. Ranking the Force of the Written Law**

In North Korean law, the Juche ideology and the Chosun Labor Code and Covenant that specify the Juche ideology, have precedence over law, which is a means of practically realizing the ideology. The Constitution does not directly state the supreme normality of the Constitution amongst the forms of written law including constitutional law, sector laws and important sector laws, regulations, and bylaws. But, Legislation Law concretely prescribes the effect of constitutional law, sector laws, regulations, and detailed regulations. According to Legislation Law, constitutional law, sector laws, regulations, and detailed regulations have decreasing power in that order (Article 45, 46).

The amendment and supplementation of the Constitution is done only by the Supreme People’s Assembly, which is a supreme sovereign authority. Also, unlike any sector laws, it requires a special weighted quorum and a two-thirds majority of the representatives of the Supreme People’s Assembly. This shows how the Constitution is a superior norm with superior force over other laws.

As discussed above, the Supreme People’s Assembly can establish sector laws and important sector laws alone, but the Standing Committee of the Supreme People’s Assembly cannot decide on its own. It is required to obtain the approval of the Supreme People’s Assembly, demanding stronger democratic legitimacy. However, there exists no standard to distinguish important sector laws from general ones, and

there are no provisions on the effectiveness of general and important sector laws as well. Therefore, it cannot be concluded in haste that important sector laws have superiority over general sector laws. If the method of adoption of sector laws and major sector laws is different—decree of the Supreme People's Assembly or decision of the Standing Committee of the Supreme People's Assembly—the ranking of their powers may be controversial.

In the cases of sector laws or important sector laws, the ranking of their force may be controversial when there is a difference between the case where the adoption method is the ordinance of the Supreme People's Assembly and the case of the decision of the Supreme People's Assembly Standing Committee.

Considering the subjects and methods of adopting sector laws, the sector law adopted by the decree of Supreme People's Assembly may appear to have a superiority over that adopted by the decision of the Supreme People's Assembly Standing Committee. However, as discussed above, the session of the Supreme People's Assembly is so short that the Standing Committee of the Supreme People's Assembly exercises its powers on the occasion of its absence, and all sector laws adopted by the decree of the Supreme People's Assembly are passed to the Supreme People's Assembly Standing Committee for revision and supplement. Considering such factors, it can be concluded that the superiority of effect cannot be determined based on their adoption methods.

The ranking of the effectiveness between sector laws, regulations, bylaws, and rules can be inferred through the interpretation of special laws related to special economic zones such as the Constitution and the Economic Development District Act. The Constitution prescribes sector laws before regulations and stipulates in Article 125, Paragraph 2 that "The provisions related to state management shall be enacted, amended or supplemented based on the Constitution and sector laws." In addition, the adoption method of sector law is the decree of the Supreme People's Assembly or decision of the Standing Committee of the Supreme People's Assembly, and the manner of adopting the regulations is decided by the Cabinet. The Kaesong Industrial Zone Law

and the Mt. Kumgang Tourism District Act stipulate that "Economic activities should be in accordance with the provisions of this law and its enforcement." The Mt. Kumgang International Tourism Special Act and the Rason Economic and Trade Zone Act state, "...in accordance with the provisions of this Act, regulations and bylaws for the enforcement of this." The Economic Development District Act stipulates that "The enforcement regulations and bylaws in accordance with this law shall be applied." Hwanggumpyong Island and Wihwado Economic District Act state that "The regulations, bylaws, and rules for the enforcement of this Act shall apply."

It also states that the central guidance authority in the Special Economic Zone has the authority to make regulations, and that the management agency receiving such guidance has the authority to make bylaws and rules. In light of these regulations, the sector laws, regulations, bylaws, and rules of the sector are interpreted to have decreasing power in that order.

In North Korean law, it is possible to judge the rank of effect according to the superiority of the normative power. However, in cases other than the written laws such as the order of the chairman of the council, decrees, decisions, orders, decisions, and directives, the ranking of their mutual effect is still unclear.

The order of the constitutional organs in North Korea is not the form of written law as prescribed by the Constitution, but since it practically holds legal effect, its rank of effectiveness has a significant meaning. The rank of force of orders with legal effect is determined not by their names or forms but by the position of constitutional authorities that issues them. The law in North Korea functions as a means to realize the policies of the Chosun Labor Party according to the guiding ideology such as Juche Ideology and Songun Ideology. Therefore, the effect of the order depends on the status, duties, and powers of the state institutions prescribed by the Constitution. Legislation Law prescribes the same. The regulations enacted by the Standing Committee of the Supreme People's Assembly have a superior effect to those enacted by the Cabinet (Article 47). The regulations enacted by the Cabinet have a superior effect to those enacted by the central gov-

ernment Local People's Assembly and its Committee in Province (a city under the direct control of the central government) (Article 48). This is the same in the case of detailed regulations (Article 49, 50).

North Korea revised the 2009 Constitution and set up an independent chapter for the Chairman of the National Defense Commission. It stipulated the Chairman of the National Defense Commission as the best leader and chief commander, and strengthened its position and authority by emphasizing Songun ideology as the ruling ideology. In the 2012 Constitution, the National Defense Commission changed its name to the first chairman of the National Defense Commission. In the 2016 Constitution, the National Defense Commission changed its name to the State Council. Accordingly, the order of the powers of the Constitutional organs came to be listed in order of the Supreme People's Assembly, the Chairman of the State Council, the State Council, the Standing Committee of the Supreme People's Assembly, the Cabinet, and the Local People's Assembly. Their decrees, ordinances, orders, decisions and directives have superior effect over each other in the said order. In the end, in North Korea, the Juche ideology and the code of labor and the covenant, and the guidelines and policy decisions of the Chosun Labor Party with Kim Il Sung and Kim Jong Il directing at the top have the highest normative power over any written laws. As of written law, normative power is held foremost by the Constitutional ordinance, with guidelines, decision, and the written law having less power in that order.<sup>32</sup>

In general, there is a principle of superior law priority, principle of special law priority, and principle of new law precedence as the principle of legal interpretation that resolve contradictions and conflicts of laws, and it is necessary to examine whether these interpretation principles also apply to the cases of North Korean law. The North Korean Constitution states in Article 109 that

The National Defense Commission has the following duties and powers to: 3. Abolish the decisions and directives of the national authorities that are inconsistent with the orders of the Chairman of the State Council of

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32. Hyowon Lee, *op. cit.*, p. 24.



the Democratic People's Republic of Korea and the decisions of the State Council.

Article 116 states,

The Standing Committee of the Supreme People's Assembly has the following duties and powers to: 6. Abolish the decisions and directives of the national authorities that are inconsistent with the Constitution, the Supreme People's Assembly decrees and decisions, the DPRK Chairman's orders, the decisions and orders of the National Defense Commission and decrees, and decisions and directives of the Supreme People's Assembly. Also, to suspend wrong decisions by the local people's assembly."

As for the ranking of the effectiveness of North Korean law, constitutional law and the Legislation Law clearly stipulate this. In North Korea there is also a principle of superior law priority, principle of special law priority, and principle of new law precedence as the principle of legal interpretation that resolve contradictions and conflicts of laws. The Constitution is recognized as the highest norm. The principle of the higher is recognized because superior power is acknowledged in the order of the sector laws, regulations, and bylaws. The Legislation Law acknowledges a principle called the 'the special law priority principle of new law precedence' (Article 51). Specifically, in case there is contradiction and conflict between a new general norm and an old special norm, the authority has the power to make a decision about which norm may be applied (Article 54, 55).

North Korea enacted the Family Law based on the decision of the Standing Committee of the Supreme People's Assembly in 1990, and revised and supplemented it four times until 2009 based on the Constitution of the Presidium of the Supreme People's Assembly. Chapter 5 provides for inheritance. On the other hand, North Korea enacted the inheritance law under the ordinance of the Standing Committee of the Supreme People's Assembly in 2002 and stipulated it in detail throughout a total of 4 chapters and 57 articles. The previous family law consisted of 8 articles. While enacting the inheritance law, North

Korea has kept the existing family law in place, and amended and supplemented it without deleting the provisions of chapter 5 on inheritance.

## **IV. System and Classification of North Korean Law**

### ***1. Need for Systematization***

The difference between the political system and ideology of the two Koreas is reflected in the law of the two Koreas. Interpreting North Korean law from the point of view of the liberal democratic legal order—the basic principle of South Korean law—can lead to misinterpretation of the nature and function of North Korean law. Comparing the individual laws of North and South Korea without considering the overall structure and function of the law of North Korea has a risk of not only ascertaining the superiority of the South Korean law, but also failing to understand North Korean law accurately. Therefore, in order to understand North Korean law correctly, it is necessary to exclude the viewpoint of the South Korean legal system and grasp it from the perspective of the North Korean law itself. Based on this, individual laws should be classified and systemized in the framework of the overall legal structure, following the ideals and values of North Korean law. In short, it is necessary to systemize North Korean law in order to understand it accurately.

A precise understanding of North Korean law is a prerequisite for unification and subsequent integration of the two Koreas. A unified Korea should be based on a single legal value and ideology, and for this purpose, the legal integration of the two Koreas is essential. Various scenarios can be anticipated about the legal integration of North and South Korea according to the unification method, but the general standard of legal assimilation can be applied. Assimilation of law means heterogeneous laws changing equally under a single legal system.

Even in the case of North and South Korea, no matter what type of unification process is planned, the provisional application of North

Korean law for a certain period of time can be anticipated in order to achieve stable integration of the two Koreas. If the general principles of legal assimilation are applied to the case of South and North Korea, South Korean law should be revised to conform to the unification situation, and North Korean law shall be classified and revised. If North Korean law cannot be applied, new legislative action must also be needed to fill the gap. All of these tasks must be based on an accurate understanding of the North Korean legal system.

## **2. Criteria for Classification of North Korean Law**

In order to categorize and systematize laws, normative standards should first be established in order to distinguish the laws. However, it is difficult to propose a unified standard for uniformly distinguishing between the qualities and nature of law in various personal, social, and national domains. In the case of South Korea, individual laws and regulations are classified according to institutions, subjects, fields, and in alphabetical order, not according to a special system. The National Law Information Center of the Legislative Office divides them into 17 fields, the legal information system of the National Assembly into 44 fields, and the Legal Information Support Center of the Korea Legislation Research Institute divides them into 16 fields.<sup>33</sup> Law books also bind individual laws and regulations together into one based on the above classification. Such a classification system plainly lists various laws such as the Constitution, civil law, criminal law, environmental law, economic law, labor law, social security law, and tax law, and does not classify the special laws into subgroups. So it is difficult to say that they are systemized. However, this is inevitable to some extent because it is meant to enable a quick and accurate legal search by the users of the legal information system.

Unlike South Korean law, North Korean law does not distinguish between public and private laws. In North Korea, most administrative law is applied in the private sector, so the system of administrative law

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33. "The National Law Information center" <<http://www.law.go.kr>>; <<http://likms.assembly.go.kr/law>>; <<http://www.klri.re.kr>> (date accessed June 20, 2018).

is important. It is difficult to systematically classify administrative laws in South Korea as well. Administrative law areas are divided into administrative organization law, administrative action law, and administrative relief law. There is a view to systematize tax, economy, environment, labor, and social laws into separate legal areas.<sup>34</sup> This view systematizes the legal domain of dozens of administrative law subdivisions according to the administrative law classification model, and sets standards for academic research, not legal searches. What is fundamentally problematic in the systematization of South Korean law is how to clearly set the margin of administrative law. In the meantime, laws such as tax law and competitive law, which have traditionally been the subjects of administrative law, occupy the status of independent laws. In addition, it is unclear whether areas like environmental law, which is recognized as a subdivision of administrative law, belong to administrative law as well. The boundary between administrative and private law, such as civil law, is unclear as well and their qualities tend to be mixed.

In South Korea, various attempts have been made by state agencies or private research groups to organize and classify North Korean law. However, they do not provide any specific criteria for classification, and they classify them based on the South Korean legal system. Typically, the North Korean Legislative Information Center of Legislative Information Center classifies North Korean Law as follows: 1. Constitution, 2. Administration, 3. Judicial system, 4. Criminal law, 5. Civil and trade, 6. Finance and economy, 7. Diplomacy and commerce, 8. Industrial resources, 9. Land and transportation, 10. Agriculture, forestry and fisheries, 11. Education, Science and Technology, Culture and Publishing, 12. Health, 13. Environment, 14. Information and Communication, 15. Intellectual Property Rights, 16. Labor and Welfare, and 17. Special Zones and Economic Cooperation.

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34. Jong Go Choi, *Introduction to Korean Law* (Seoul: Pakyungsa, 2003).

### 3. Classification of North Korean Law

So far the views on the classification and system of North Korean law have basically modeled the classification and system of South Korean law. Despite differences in legal ideologies and values, the two Koreas share common qualities in terms of their functions as state administrative agencies. Also, it is reasonable to compare the laws of North and South Korea in relation with each other. In addition, a unified Korea, after achieving peaceful reunification, is expected to adopt South Korean law as its base, and South Korea law will be an important standard even if North Korea pursues open reform policy or system transformation. Therefore, it would be useful to classify and systemize North Korean law based on the systematization model of South Korean law. However, such systematization poses a risk of misinterpreting and misunderstanding the function and role of North Korean law. In addition, some opinions have failed to meet the goal of systemization of North Korean law, for they bind various individual administrative laws into a single item. Some viewpoints are unbalanced for they recognize the land and cooperative laws, which constitute a socialist planned economy, as separate areas from economic law.

In the past, North Korea has sorted laws into constitutional law, laws for strengthening state and economic institutions, laws for deepening ideological revolution, laws for deepening technological revolution, laws for deepening cultural revolution, and sector laws. Such classification of the law based on its political purpose and function makes it difficult to systematically understand North Korean law.<sup>35</sup> The DPRK Code of Law, which was first published in 2004 for the public, puts the Constitution first and lists the remaining 111 North Korean laws alphabetically, meaning they are not classified or systematized according to specific standards. North Korea published the DPRK Code of Law (2nd edition) in 2012 and published an additional edition in 2016. In it, the Constitution is listed first, followed by the systematic classification of laws by sectors: sovereignty, administration, criminal

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35. Guk Pyo Hong, *DPRK Lawmaking History*, (Pyong-yang: Scientific Encyclopedia Publications, 1986), pp. 224-287.

and civil, economy, trade, industry and land, infrastructure and transport, the land, transport and maritime affairs, people's service, construction, urban management, terrestrial environment protection, finance, insurance, science and technology, intellectual property, education, culture, sports, health, social welfare, and foreign economy. It is not clear what criteria North Korea followed to classify as above. However, examining such a classification is useful in understanding North Korea's viewpoint of legal systemization.

## **V. Conclusion**

North Korean law is based on socialist law theory, but its contents were changed according to Juche theory of law and the perspective of revolutionary leader. North Korean law differs from South Korean law in its ideology and system. North Korean law functions as a means to fulfill the purpose of the political power of the state, and Juche ideology and Kim Il Sung and Kim Jong Il's teachings are superior to the actual laws. The doctrine and codes of the Korean Workers' Party, especially, function as norms above the constitutional and other written laws. However, North Korea maintains the system of the written law, and its Constitution is known to have the authority. There are important sector laws and sectors law under the peak of constitution, and regulations, bylaws, and rules are systemized below.

The North Korean Constitution stipulates decrees and decisions that can be adopted by the Supreme People's Assembly. The decrees, decisions, and directives refer to the way in which laws such as sectoral laws or regulations are adopted, not the form of law themselves. On the other hand, the North Korean Constitution recognizes treaties as international law, and distinguishes between general and important treaties. In North Korea, common law and case law are not recognized as legal sources according to socialist law theory. However, the directive of the Central Court may serve as a guideline for judicial proceedings in practice. On the other hand, democratic legal sense is regarded as a holistic socialist ideology and principle related to legal problems,

and functions as a weapon to reflect the party's policies in concrete matters. In this scope, it can be partially recognized as a source of law.

In North Korean law, the Juche ideology and the Chosun Labor Code and its rules that embody such ideology have precedence over the law that practically realizes them. Among the forms of written law, the superior effect exists in the order of the Constitution, sector law and important sector law, regulation, bylaws, and rules. However, there are no regulations on the effectiveness of the general and important sector laws. On the other hand, effectiveness of laws and decisions—which are methods of adoption in North Korean law—are determined by the status of the Constitutional Ordinance which invokes them rather than their names or forms. In other words, law in North Korea functions as a means of realizing the policy of the Chosun Labor Party according to the guiding ideologies such as Juche and Songun ideologies. That is, their effects are determined according to the status, duties, and authority of the state organs as prescribed in the Constitution. In other words, the laws, ordinances, orders, decisions, and instructions of the Supreme People's Assembly, the Chairman of the State Council, the State Council, the Standing Committee of the Supreme People's Assembly, the Cabinet, and the Local People's Assembly have decreasing power in this order of state organs.

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