

The Asian Conception of the Juridical Person*

—A Korean Perspective—

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I. Introduction

A “juridical person” means a legal person rather than a natural person to which legal capacities are granted by the positive laws, so that it can enjoy rights and duties. When legal personality is conferred on an association of persons combined for a specific purpose, that is, when a corporation (*Verein*) is formed, or the property devoted to a specific purpose, that is, a foundation (*Stiftung*), these social entities begin to exist as a juridical person.⁽¹⁾

What is the reason to recognize and to facilitate the juridical person system? As for a corporation, it exists as an independent legal entity within social relationships, regardless of fluctuation of the number of its members. In other words, the representatives’ conduct is considered as that of the legal entity and the property possessed by it belongs not to its members but to the entity in the external relationships. In the internal relationships, it restricts the conduct of its members to a certain extent so as to maintain the uniformity of the purpose. Thereby, it is able to fulfill its own purpose which can not be achieved by a separate individual. By taking advantage of its integrated authority, the corporate entity contributes to the development of society.

As for a foundation, it exists as collected property under nonpersonal and noncommercial purposes, such as a school, or a hospital. It has its own capacity,

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(1) *Bopyulhak Sachon* (Dictionary of Legal Science), Bommunsa, Seoul, 1980, p.370.

regardless of fluctuation of the number of beneficiaries or change of its person-
nels. It should be noted that law may not look over a foundation as well as
a corporation. Legal recognition is necessary especially for a foundation in order
to develop the autonomy of property and the continuity of management. For
this purpose, a foundation has been invented in civil law systems and a trust
has been devised in common law systems.⁽²⁾

The Korean Civil Code provides basically for both a corporation and a
foundation.⁽³⁾ While according to the Civil Code, a juridical person shall be
engaged in commercial operation, the Commercial Code allows a juridical
person such as a joint stock company, a limited responsibility company, a
limited partnership and an unlimited partnership, to engage in commercial
activities.

One unique aspect of Korean legal practice is that a juridical person without
legal personality (*nichtrechtsfähiges Verein*) is recognized: the so-called quasi-
juridical person, such as a clan, a village or a church. These quasi-entities
have been incorporated into the legal system as if having capacities, and the
Civil Procedural Code grants suit capacity to them.⁽⁴⁾ These are not independ-
ent legal entities, so the problem of the ownership of property may take
place. This issue will be dealt with in Chapter IV. Through this article, I
will review several issues relating to the Korean attitudes toward a juridical
person. Above all, in Chapter II, theories on the nature of a juridical person
and the policy of a government will be discussed in general and from the
Korean point of view. In Chapter III, the historical development of the concep-
tion of a juridical person will be surveyed. Chapter IV deals with current
issues in Korean law. Finally, in Chapter V, I will suggest a desirable
conception of a juridical person.

As for me, as an Asian scholar, I feel obliged to understand and discuss a

(2) L. Miraglia, *Comparative Legal Philosophy*, tr. by John Lisle, The McMillan Co., 1921,
pp. 361ff.

(3) For details, Yunchik Kwak, *Minpop Chongchik* (General Principles of Civil Law). Bakyongsa,
Seoul, 1989, p. 203.

(4) Yunchik Kwak, *op. cit.*, p. 210.

juridical person, not only in the manner reexamining the Western theories, but also arguing the Asian cultural context.⁽⁵⁾ Since Korea received and incorporated the Western legal system, Korean jurists have developed a good understanding of it.⁽⁶⁾ To the extent understood, I will treat the juridical person theory and then introduce and report the situation of Asian countries including Korea.

II. *Theories of Juridical Person*

A. Nature of a Juridical Person

In the 19th century, the question whether or not a juridical person is represented as an independent legal entity was debated among many jurists. In sum, the legal fiction theory (hereinafter the fiction theory) was argued initially by K.F. von Savigny. This theory restricted the subject of rights and duties to an individual as a natural person. It was argued that a juridical person could not be recognized without evident acceptance by positive laws. This argument has been developed into the non-existence theory. Even fictional existence of a juridical person was negated by this theory, so it was argued that the genuine nature of a juridical person was not in a juridical person itself but in the individual or the property composing the entity.

These two theories have been criticized for several reasons. As for the fiction theory, jurists who were against it pointed out that even a natural person can acquire a legal capacity only by the provisions of positive laws. They argued that the major premise of the theory could not be sustained at all. On the other hand, though the non-existence theory stood on the same ground as the fiction theory, it had some validity. It tried to find out the nature of a juridical person from the individual or the property who/which was the component of

(5) For general perspectives on Asian law, Paul K. Ryu, "Field Theory" in the Study of Cultures: Its Application to Korean Culture, *Philosophy and Culture East and West*, Hawaii Univ., 1962, pp. 648~669; Pyongchoon Hahm, *Korean Jurisprudence, Politics and Culture*, Yonsei Univ. Press, 1986; Chongko Choi, The Asian Conception of Right and Duty, *Philosophy of Law and Social Philosophy East and West* (Festschrift for Prof. Ton-Kak Suh), Bommunsa, Seoul, 1990, pp. 369-379.

(6) Chongko Choi, Traditional Korean Law and its Modernization, *Transactions of Royal Asiatic Society, Korea Branch*, vol. 64, 1989, pp. 1-17.

it. However, this is not appropriate logic, since a legal personality is in reality conferred on a juridical person which exists in the society, both *de facto* and *de jure*.

Gierke, Michoud and Saleilles supported the real existence theory in which the substantial character of a juridical person was perceived. According to this theory, a juridical person is not created by legal fiction, but has the substance of a subject as an independent entity. Gierke asserted that a juridical person is a social organism and that it is an inherent subject of intentions and therefore it rightfully has a legal personality. It was maintained by Michoud and Saleilles that a juridical person is an appropriate legal organization capable of being the subject of rights and duties. While the organism theory confined its approach to sociological methodology, this theory promoted its approach up to the legal one by considering a juridical person as a legal organization.⁽⁷⁾

Now, in Korea, the organization theory of Michoud and the social value theory of Wakazma, a Japanese scholar, have obtained overwhelming support.⁽⁸⁾ According to the social value theory, a juridical person is a real entity deserving legal capacity, which performs its unique role of social value. Wakazma observed, "A juridical person performs an independent social operations and has the social value competent to be a subject of rights and duties, having the same legal status as a natural person."⁽⁹⁾

In spite of the great consensus, juridical persons under this theory have logical defects. Because the organization theory does not look upon a juridical person as a legal entity organized by law, it is similar to the fiction theory. For this reason, even though the social value theory has been criticized for its rigid criteria to define a 'value', it is the most reasonable and appropriate approach to analyze the nature of a juridical person. In conclusion, a juridical person is not a fictitious entity at all. It has its own social value, fulfills

(7) L. Miraglia, *op. cit.* pp. 361~381.

(8) Yunchik Kwak, *op. cit.*, pp. 196-197.

(9) Wakazma Sakae, cited from Y.C. Kwak, *op. cit.*, p. 196.

independent functions, and is organized systematically in order to contribute to its purpose. However, what is a social value needs to be discussed analytically.

B. The Juridical Person and Social Context

The attitudes of the government toward a juridical person fluctuated from time to time. To speak generally, in the era when the power of the supreme authority was absolute, the government was an adversary of a juridical person. By the 18th century, it relented somewhat due to social necessities of the mercantilism. In those ages, a legally-impersonated body was devised in the countries of imperialism and colonialism to promote commercial trade. Those were mere fictions and did not have a real capacity. They were agents of an individual or State.

The most advantageous aspect to deal with a juridical person in the same way as with a natural person can be observed in the field of liability for wrongful act. The essential nature of a juridical person permeates into the competence of a corporation for liability caused by fault or negligence. Where an organ of a corporation causes damages to other persons, the compensation for the damages should be imposed on the corporation rather than the organ according to the real existence theory. Regarding a legal capacity, the theory tends to extend to a reasonable range, while the fiction theory seeks to limit within the purpose of a juridical person. These results are attributed to the fact that the real existence theory emphasizes a juridical person's role and its contribution to a society. On account of this, the theory tries to grant an autonomous legal capacity to groups or associations which have not yet acquired a legal capacity.

III. Asian Conception of the Juridical Person

A. Historical Development

It is difficult to argue that throughout Korean history a juridical person in the real sense has existed. However, it is possible to maintain plausibly that

its equivalent has existed.⁽¹⁰⁾

Before 1894, the word 'juridical person' did not exist. But the equivalent showing the characteristics of a juridical person existed. In Chosun Dynasty (1392~1910), the Royal Family was the subject of property which was clearly separated from that of State, and had the qualification of a party in a law suit. In addition to the Royal Family, a Buddhist Temple, a Village, and a Clan could be evaluated as having the nature of a juridical person.⁽¹¹⁾

As for a village, it has been called 'Li(里), Dong(洞) or Chon(村)' which meant a local community. It has owned such property as forests, fields and reservoirs. It also possessed wedding or funeral regalia for the use of the village people. It constructed and managed a warehouse from which it acquired and accumulated profits that afterwards were granted to the village people on loan. According to customary law, the director or manager of the property was the chief ('Jang', 長) of the Village. The qualification for membership was given only if a person and his family entered a village and reserved until they left the village. Where a village needed to conclude a contract or conduct any other legal action, the chief of the village represented it and did the legal work on its behalf. In the event of a law suit, the chief and other important persons in the village convened, signed their names on a single written complaint, and after having consulted all the residents of the village, the chief brought and took part in the law suit on its behalf.⁽¹²⁾

In Shilla and Koryo Dynasties, when Buddhism flourished, Buddhist Temples gained and possessed a great deal of property. Even though they formed a certain entity of property, it is hard to find out the evidences of philanthropic activities in the western sense of a foundation from them.⁽¹³⁾ However, by Chosun Dynasty, because of the doctrine of the government that encouraged

(10) Byongho Park, Traditional Korean Society and Law, *Seoul Law Journal* vol.15, 1974. pp. 107-134.

(11) Government-General of Chosun (ed.), *Gwansop Chosa Bogoseo* (Investigations of Korean Customary Law), Seoul, 1921.

(12) Dieter Eikemeier, *Documents from Changjwari: A Further Approach to Analysis of Korean Villages*, Wiesbaden, 1980, pp.23-29.

(13) Heungshik Huh, *Koryo Bulgyosa* (History of Baddhism during Koryo-Period), Ilchogak, Seoul, 1986.

Confucianism and suppressed Buddhism, the construction of Temples was prohibited. Since the property of Temples was quite large, the government confiscated most of it. Nevertheless, the government allowed possession of donated property devoted by the faithful. The property of a Temple was distinctively differentiated from that of individual monks. It was managed by the Chief (Juji, 主持) of monks and its revenue was spent for expenses of the Temple. In case of a contract or other legal action, the Chief monk represented the Temple on behalf.⁽¹⁴⁾

In Chosun Dynasty, there were Seongkyunkwan(成均館), the national academy, and Sahak(四學), Four Academies, in Kyeongseong(Seoul today). In local areas, there were Hyangkyos(鄉校), local colleges. At these institutions, students learned and studied about Confucius, other famous scholars and their prominent publications. According to *Kyeongkukdaejeon*(經國大典, 1471), the major code of laws of Chosun Dynasty, a certain amount of fields and forests was put down as belonging to them. That property was designated as Hakjeon(學田), confucian scholars and Sarim(士林), an association of scholars, donated their personal property to Hyangkyo, and which was then registered as having an ownership in Yang-An(量案), a terrier. The Chief who was called Do-Yu-Sa(都有司) and elected among scholars by Sarim and approved by the government, represented the institution. Likewise, Seoweon(書院), a private institution of education, was recognized as a subject of property, which was established by secluded and highly qualified scholars. The institutions described above can be said to be equivalent to public schools or private schools that form a foundation today.

Compared to a modern concept of a juridical person, these Korean legal entities have the nature of a juridical person. The reasons are; (1) They were recognized as an independent entities regardless of the person or property composing it. (2) They enjoyed the subject status of its property. (3) They had the legal capacity for legal actions both in substantial and procedural matters thr-

(14) Chongko Choi, *Staat und Religion in Korea: Zur Grundlegung eines koreanischen Religionsrechts*, Freiburger Diss. 1979, S.64-70.

ough its representative, whose conducts were considered as acts of the entity.

Though there existed traditional entities equivalent to a juridical person in the past, they were understood and evaluated selectively by Japanese scholars like Ume Genziro(1860~1909) during the land census which was designed to occupy the land of such entities by Japanese colonialism.⁽¹⁵⁾ Therefore, they were not entirely described in official documents and have still remained as an association without legal personality(*Verein ohne Rechtsfähigkeit*) in current legal practices.

The unsophisticated conception of a juridical person can be traced up to the pre-historic age in Asia. In Koryo Dynasty of Korea, there existed 'Bo' (寶) and 'Gye' (契). In Japan, before the Meiji Restoration of 1868, there were 'Jo' and 'Joa' in which the independent will of their own functioned instead of that of members.

However, present conception of a juridical person was established pursuant to the incorporation of Western laws. The term 'company' as a kind of a juridical person was formed earlier than a 'juridical person', but a 'juridical person' was designated an 'invisible person' (Moohyeong-In, 無形人) even in 1885, which was used in the draft Civil Code drafted by G. Boissonade in Articles 514, 524 and 526. When the old Civil Code(1912) was executed, the term 'a juridical person' (Beop-In, 法人) was created. But it is not certain who devised this translated word.

In China, a person concerned with legal relationship was called 'Beop-Ga' (legalists, 法家) in Goja-Pyeon(告子篇), one of the works of Mencius. In 1891, a juridical person was considered as a person engaged in the profession of law, who was called 'Dae-Eon In(代言人)', an advocate. In 1986 when '*First Principle of Law*' authored by Henry T. Terry(1864-1936) was translated by a Japanese Scholar into Japanese, he designated a barrister and a solicitor as 'Beop-Sa(法士).' In Japan of early Meiji era, France was called 'Beop-lang-Seo(法郎西),' and a Frenchman was called a 'Beop In' (the pronunciation

(15) Chonghyu Chung, *A Comparative Study of Korean Civil Code*, Tokyo, 1989.

of which equals the Japanese translated word meaning a juridical person).

To review the Eastern practices, granting a legal personality to a certain entity could not be presented in the Eastern conception of law, so that the term of a juridical person was misunderstood. However, it is now used by common people in all Asian countries.

B. Current Issues

The problems in current laws like the Civil Code, the Commercial code, and the Criminal Code, will be analyzed in view of the procedure of establishment, general capacity, specific capacity, criminal liability. And then I will introduce the debates especially surrounding the doctrine of disregard of the corporate personality(法人格否認論).

1. *Establishment*

According to Civil Law, in order to establish a corporation or a foundation, the followings are required;

- (1) The purpose should not contain commercial intentions. It must be for scholaric, religious, charitable, artistic, social and any other noncommercial ones. As for the word 'noncommercial,' it is interpreted to mean not aiming at gains for founding persons. However, it is not necessarily required that the entity be devoted to the benefit of the public.
- (2) The Article should be set up, signed and sealed by the founders. In case of a foundation, a certain property should be devoted to it by the founder or founders.
- (3) The permission of the competent authority should be acquired. Where the purpose is plural, each permission from each authority concerned should be issued.
- (4) The registration of establishment should be done in the location of the head office. On registering, a juridical person is established from this time on.

2. *Legal Capacity*

- (1) General Capacity

According to Article 3 of Civil Code, "A person shall be the subject of rights and duties during his/her lifetime." In this provision, a person means a natural person only. As to a juridical person, Article 34 of Civil Code provides for its general capacity. That is, "A juridical person shall be the subject of rights and duties under the provision of law, within the extent of the purpose defined in the Article of association." There is a limitation to general capacity resulting from the nature of a juridical person; a juridical person shall not enjoy the rights inferred from the natural character of a genuine person. Thus, it cannot enjoy a right to life, a parental authority, a household authority and a right to freedom of body, etc. Regarding the right of succession, Civil Code restricts the successor to a natural person (Articles 1000~1004), and does not permit succession to a juridical person. There is another limitation to general capacity. It is concerned with the provision of Article 34. In sum, the question to what extent general capacity shall be confined by the purpose described in the Article of association is controversial. There are two contradictory interpretations of the clause 'within the extent of the purpose': (i) It shall be interpreted as within the degree demanded to achieve the purpose actively. (ii) It shall mean the broader range not violating the purpose passively. In deciding on the specific case, the courts have observed that the clause 'within the extent of the purpose' meant the degree demanded to achieve the purpose and the purpose enumerated in the Article of association.⁽¹⁶⁾ Despite this decision, in view of security of transactions, it will be more appropriate to consider Article 34 as a policy provision which prevents abuse of the organizations of a juridical person for another purpose beyond its genuine purpose. So the latter view seems to be desirable.

(2) Capacity for Specific Action

According to the fiction theory, it depends upon only the external agent to acquire actual rights and duties, for it recognizes the general capacity only. On the contrary, the jurists for the real existence theory argue that particular

(16) 46.2.8. 4278 Min-Sang 179, Decisions of the Supreme Court of Korea.

conduct of the organ of a juridical person be a juridical person's action in itself. The similar conclusions are drawn whichever theory is invoked. However, legal personality shall be conferred because a juridical person is considered as a social unit. Therefore, the affirmative opinion accepting the concept of a juridical person's capacity for specific action is seemed more plausible.

Even though we accept this concept, it is impossible for a non-corporal entity to act in reality. In fact, the actual conduct must be relied upon and realized by a natural person who is the representative organ of a juridical person. The representative organ of a juridical person, especially in case of a noncommercial one, is a director. A provisional director may be designated by the court in the event that a vacancy occurs on the board at the request of any person concerned or a public prosecutor. A special agent or liquidator may be designated in the same way as a temporary director where the interests between a juridical person and a director conflict(Art. 57~64).

The relationship between a juridical person and its organs is not an agent relationship but a much closer one, which is expressed as 'representation'. However, since it resembles agency in substance, it is provided that in regard to a representation of a juridical person, the provision for the agent shall be applied correspondingly(Art. 59). As to the scope of capacity for specific action, there is no explicit provision. Thus, it is considered as in the same extent as general capacity, so that the conduct of representative organs beyond the scope of it is not regarded as the conduct of a juridical person, but merely a personal one of the representative organs.

(3) Capacity for Liability for Wrongful Acts

According to Article 35 of Civil Code, a juridical person shall be liable for damages to another person, committed by a director or other representatives in their performance of their duty. The directors or representatives concerned shall not be exempted from their own liability for damages sustained thereby. The liability for wrongful acts of a juridical person requires the following elements: (i) There exist conducts of the representative organ like the director,

the provisional director, the special agent and the liquidator. (ii) The damages are required to be caused only in the performance of the representative's duty. (iii) There exist the general requirements of wrongful acts. That is; (a) The representative has the capacity for liability. (b) Intention or negligence exists. (c) The act done is illegal. (d) The damages are caused by the act done. When these requirements are met or satisfied, a juridical person shall make compensation for the damages to the victim. However, the individual liability of the organ concerned with the damages shall not be exempted. This result seems to be drawn from the legal fiction theory which does not recognize juridical person's acts. Nonetheless, it may be explained by the real existence theory, for the theory regards the representative's act not only as the juridical person's but also as that of an individual composing the organ, in view of respect for protection of the victims.

3. *Types of Juridical Person*

Civil Code provides only for noncommercial juridical persons. It provides for a corporation and a foundation for noncommercial purposes(Art. 32). According to Civil Code, commercial juridical person is regulated by Commercial Code (Art. 39). However, the concept of commercial foundation is not acknowledged because the term 'commercial' means 'beneficial' to its members.(It must be reminded that a foundation is in nature a collectivity of property.)

Commercial juridical person, especially a commercial corporation, is regulated by the Commercial Code in Part III which provides for companies. Therefore, in the context of Civil Code, the concept of commercial foundation is not recognized at all.

A partnership bears the character similar to a corporation. It is an independent entity regardless of its members. However, the individuality of members is displayed in a partnership, while unity comes from an incorporation. The problem whether a partnership is dealt with as a juridical person or not merely relies upon the legislative policy. Civil Code does not look upon a partnership as a juridical person, and it provides that a partnership shall become effective

when two or more persons have agreed to carry on a joint undertaking by making mutual contribution thereto(Art 703(1)). Thus, a partnership is not a juridical person but a contractual body. All actions are taken by the consent of all of the partners or by an agent authorized by them. The legal effect of such action shall be attributed to each partner. The assets of a partnership shall be owned by partners through partnership-ownership.

A particular partnership otherwise provided by law as a corporation is not a partnership but a juridical person. Under the Commercial Code, a general commercial partnership and a limited partnership are all juridical persons which are not true of U.S. and Germany.⁽¹⁷⁾

Since the establishment of a corporation is subject to the approval of the competent authority concerned, and where a founder does not want to be regulated and controlled by the administrative agents, the existence of an association which is not a juridical person, so-called quasi-juridical person, is unavoidable. In Civil Law, from Art. 275 to Art. 277, the form of the ownership of quasi-juridical person is stipulated as follows; (i) If property is owned as a collective body by the members of an association which is not a juridical person, the ownership thereof shall be collective ownership (*Gesamteigentum*, 總有). (ii) With regard to collective ownership, the Articles shall apply subject to Articles of Incorporation or other by-laws of an association. (iii) The administration and disposition of property in collective ownership shall be determined by resolution at general meetings of the members. (iv) Each member is entitled to the use of the property and to take the profits of it in collective ownership in accordance with the Articles of Incorporation or other by-laws. (v) The rights and duties of members concerning property in collective ownership shall be acquired or lost by acquiring or losing the membership thereof.⁽¹⁸⁾ Any other concrete provisions regarding a quasi-incorporation

(17) Dongyoun Chung, *Hoesapop*(Company Law), Seoul, 1986; Juchan Sonn, *Sangpop I*(Commercial Law I), Seoul, 1988.

(18) For detail, Chunghan Kim, *Minpop Chongchik*(General Principles of Civil Law), Seoul, 1975; It is known that Prof. Chunghan Kim emphasized the division of three types of collective ownership during the codification of Korean Civil Law (1947~1957).

does not exist except for those as to the ownership. The court held that a Clan, a Church, and a Village or Dong and Li were quasi-corporations which were collectively owned. It does not bear legal personality. However, the suit capacity of it is recognized under the Code of Civil Procedure in which Article 48 provides that an association or foundation which is not a juridical person, but which is provided with a representative or administrator may become a party of suit in its name. Thus, in *lege lata*, the provisions regarding a juridical person shall apply to it, except the provisions concerning the legal capacity.

4. Other Issues

(1) The Doctrine of Disregard of the Corporate Personality

A company is a juridical person according to Article 171 of the Commercial Code. Where a debtor establishes a company with a view to avoiding the compulsory execution from a creditor, and bears debts in the company's name to conceal his own property, especially in the case of a joint stock company, the fundamental premise of identity between the shareholders and the company shall be disregarded in order to relieve the creditors. This doctrine has been argued on various grounds, such as the agency theory, the instrumentality theory, and the identity theory. But there is no positive rule providing for this doctrine. However, the jurists in Korea seek to find grounds by using an analogy.⁽¹⁹⁾ Thus, they invoke Article 2. of the Civil Code or Article 171 (1) of the Commercial Code as the theoretical basis. The former provision is regarding Principle of Good Faith and the latter provides regarding Juridical Personality of a Company. According to the judgment of the court, this doctrine has not been accepted explicitly. But it was suggested implicitly that if a company was, merely a camouflage, the doctrine should be applied.⁽²⁰⁾

In the academic sphere of the commercial law in Korea, most scholars who studied in America advocate the doctrine of disregard of the corporate personality, while those who have studied in Germany manifest critical views against

(19) For example, Shik Choi, Dongyun Chung.

(20) Kisu Lee, Popin ui Bonjil(The essence of judicial person), *Festschrift for Prof. Hi-Chol Chung*, 1985, pp.79 ff.

it. The American conception of the doctrine of disregard of the corporate personality tends to ignore the present situation and the theory of a juridical person in Korea, because the partial disregard of the corporate personality is likely to be taken for the entire disregard of a juridical personality. It seems to be desirable to replace it with the German conception of *Durchgriffshaftung* and to maintain the juridical personality. Though I, as a reporter, has no responsibility and ability to evaluate the propriety of the two conceptions, I hope there will be further discussions and theories pertinent to the reality of a juridical person in Korea.

(2) Foreign Juridical Person

A foreign juridical person is not regulated in general by the Civil Code, but by the Commercial Code especially in regard to the foreign commercial corporation.⁽²¹⁾ Thus, the provisions from Article 614 to Article 621 shall be applied to a foreign company with priority. It should be treated as being equal to a national juridical person according to international law, such as treaty or a customary international law. It is to be noted that a company which establishes its principal office in the Republic of Korea or the chief object of which is to carry on business in the Republic of Korea shall, even though incorporated in a foreign country, comply with the same provisions as a company incorporated in the Republic of Korea.

(3) Capacity for Criminal Liability

A juridical person cannot commit a crime, since the Criminal Code confines the subject of crimes to a person of free will. However, it bears liability for supervision of its employees. If its employee commits a crime in the negligence of a juridical person, it shall become the object of punishment, which will be limited to a fine. The opinion of the court stands on the same point.

IV. Conclusion

I have discussed the Western theories of a juridical person in comparison

(21) Chanjin Kim(ed.), *Doing Business in Korea*, Seoul, 1985.

with the Asian counterparts and how they have been received and developed in the Asian countries. I also pointed out some problems in applying the theories to the current legal system.

In the West, since the theories of a juridical person came up in the historical context, the real existence theory which is the dominant argument, should be reviewed in the course of development of Western history.

For centuries, Asian countries have transformed and adopted the Western concept of a juridical person, mainly because they have not promoted and established the abstract ideas of their legal entities which, however, did exist in their own traditional forms as was the case of a juridical person in Asia. But, in view of Asian traditions, it may be suggested by the attempts to develop the theories that the organizations equivalent to a juridical person in the Western concept have contributed to the development of Asian countries and history in the same manner as a natural person has done.

As is widely known, the three Far East countries, that is, Korea, China and Japan, that received the continental law system are based upon the real existence theory argued in the civil law countries fundamentally, while the American theory of disregard of the corporate personality has been noticeably introduced with the progress of complicated para-structure of the society. In these circumstances, I think there should be further investigations and debates as to what attitude toward a juridical person will be more desirable and required from the Asian and the Western perspectives.