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## 主 論 文 の 要 旨

論文題目

LEGAL PROBLEMS OF LOCAL ADMINISTRATION SYSTEM IN CAMBODIA: SEEKING FOR A LOCAL AUTONOMY SYSTEM BY DECENTRALIZATION REFORM

(カンボジアにおける地方行政システムの法的問題点—地方分権改革を契機とする地方自治の探求—)

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## 論 文 内 容 の 要 旨

This research investigates the legal problems of local administration system in Cambodia by referring to Japan. The main aim of this study is to answer three main research questions. Firstly, related to the historical process; how the local administration system of Cambodia has been originally formed in the era of French influence, experienced changes, and institutionally turned during 20<sup>th</sup> Century? Secondly, related to the synchronic issues in Globalization era; what are the legal problems of decentralization in Cambodia? What are the possible lessons from Japan's decentralization reform? Lastly, related to the composition of historical process and synchronic issues; what model of local autonomy could be created by referring to the experiences in Japan?

In order to answer these research questions, this thesis consists of four chapters, and the introduction and the conclusion. Chapter I presents the historical legal development of local administration system in Cambodia, and its origin of formation and development at the commune level (in 1908) during the French influence era, experienced the change during

socialist era, and institutionally turned during the globalization era. Chapter II describes current local administration system with direct election at the commune level (this historical base was described in previous chapter) since 2002 and with indirect election at provincial and district level in 2009 to present. Chapter III describes the experience of effort for local autonomy and decentralization reform in Japan in order to find legal issues in Cambodia. Chapter IV analyzes the legal issues of local administration system in Cambodia by referring to the Japanese experience. Based on the analysis, legal issues and the current stage of Cambodian decentralization reform will be clear.

The outline of this study is as follows. In Cambodia, decentralization reform has been incrementally developed in the last 20 years or so, but the reform has been promoted by the policy without principles and clear rules. As a result, organic laws (enacted in 2001 and 2008) on administrative management at sub-national administration have been enacted inconsistently with each other. Moreover, there are difference and inconsistency in administrative practices at central ministries, so the local organs have been confused. In this sense, the purpose of this study is to find a solution to problems arising out of inconsistent decentralization policies.

Even if this study proposes the legal rules for the decentralization reform in Cambodia, it is an unrealistic discussion when trying to introduce legal rules from foreign countries that are far from the reality of Cambodia. Therefore, this study will start its Chapters I and Chapter II on the history and current status of Cambodia's local administration system. These Chapters are needed to reveal the characteristics of local administration system in Cambodia, where centralization culture and system were formed strongly in different social systems during 20<sup>th</sup> century. These Chapters also reveal the characteristic of being a mixture of three; ancient Cambodian, modern French influent

administration system and the socialist legal system.

When the current decentralization reform has been incrementally developed in the last 20 years, the historical nature of local administration has to appear in the system as it is, and as a result, the local administrative system becomes inconsistent. From centralization to decentralization, the Minister of Ministry of Interior and the head of National Committee for Sub-National Democratic Development have been playing a vital role of supervision in order to unify the disparities of each ministry and to guide the decentralization reform of each ministry. Here, the historical characteristic of the authority of the ancient royal system cannot be ignored, and the remnants of socialist type legality do not seem to be irrelevant. However, it is also true that the unit of commune, which was introduced under the influence of France, has a history of around 100 years.

In Cambodia where there is no legal system for securing local autonomy, it is necessary to refer to other countries in order to discover the legal issues of local administration system. Therefore, a comparative legal study is attempted in Chapter III to discover the legal issues of decentralization in Cambodia with comparison to Japan's. The reason is that, Japan, located in the same Asia region, was trying to transplant the legal concepts and systems of Western European countries in the mid-1800s. Asian countries share the common challenges of difficulties in realization of local autonomy, but Japan has had a relatively long history of the incremental developments of local autonomy. There are relevant issues being discussed in Japan under the Local Autonomy Law (enacted in 1947) and many times amendments especially one in 1999, which are useful and relevant to the Cambodia's context under the purpose of this study. In other words, in Japan, there are direct request demand systems stipulated in Article 74 of the Local Autonomy Law to embody local autonomy as autonomy of residents, and the issues of legal personality, affairs allocation,

involvement rules and dispute resolution to embody autonomy of entity.

As a result of the consideration up to Chapter III, the legal issues of Cambodian local administration are discussed in Chapter IV. The discussion is to sort out legal issues with the intention of connecting the reality of decentralization reform in the present time and exploring a “local autonomy” in Cambodia in the medium and long-run, and seeking a model of local autonomy system by decentralization based on the reflection of the Cambodia’s challenges and Japan’s experiences.

First, since the enactment of the organic law (2001), direct elections by residents commenced at commune level in 2002. It can be said that a kind of autonomy of residents has been started by referring to the concept of Japan’s local autonomy system.

Secondly, if residents can exercise multiple voting rights in the sense of exercising the right to vote at the national election level and at the same time exercising the right to vote at the commune election level, the local system of commune will be either a local entity or a local organ (the “organ” is used in Article 1 of The National Government Organization Act in Japan as the “Administrative Organ(s) of the central government”.) of the central government. The distinction theory of entity (corporation) and organ of the central government is possible when referring to the legal concepts in Japan.

Thirdly, if the commune has different legal personalities, an important question arises; why central government organs at higher level can treat the communes as local organs of the central government? We can distinguish two problems of “affair” and “involvement” when we refer to the Chapter III. If communes have different personalities from the central government, the central organs cannot supervise them as organs of the central government. Given this issue, Japan’s involvement theory becomes a possible answer to the question.

Fourth, including the above issues, it appears the importance of general law in order

to constrain the arbitrariness of involvements under different ministries. For these reasons, there is strong needs of a unified rule or common rules for the involvements under each ministry.

Of course, what has been described above is the logical structure, and various conditions must be met in order to get this logic to be realized. Rapid reform will only fail. If the issues are to be described in relation to the historical background described in Chapter I, the issue is to ensure the effective supervision by the Ministry of Interior toward the administration of each ministry. Legalizing the recommendations made by the Ministry of Interior to each ministry and the legislation of a general form of legal norms will be the basis of the legal developments for local autonomy system in Cambodia.

For the time being, it will be difficult to even stipulate the statutory principle of involvements to guarantee the commune's autonomy in a general law form. Because there is no administrative law that requires the legal basis for administrative activities that violate the freedom of the citizens in Cambodia, it is difficult to develop legal basis of involvements to local administration for guaranteeing the freedom of local entities. This is not just a matter of local autonomy law only which can control the involvements of the central government that violate the freedom of local administration in Cambodia. It also depends on conditions of developments of administrative law norm in Cambodia. For the time being, efforts to increase the legality of the supervision by the Ministry of Interior would be organizational and procedural problem in Cambodia.

In short, this study aims to analyze the legal problems of local administration system in Cambodia and to seek for a model of local autonomy through decentralization reform from the experiences of Japan and Cambodia. The author expects that this work can contribute to the legal development of local autonomy in long-run.