

## Research on solution for protecting victim privacy of crime deposit with depository

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### [Abstract]

As depository system for negotiation or reimbursement to the victim in criminal case is reflected to consideration for diminishing punishment and hence, it is very important in the process. According to the current law, one needs to fill out victim's personal information such as name, address, and ID number for processing depository. However, if the victim is sexual violence victim, all the personal information is covered up becoming anonymous. Therefore, it becomes difficult for the accused person to get necessary information. Such covering up action is to prevent further second damage that may be caused such as threatening for the negotiation whereas victim has no willingness to forgive the accused. However, even if the accused person regrets his/her crime and make reimbursement to the victim, as they have no personal information on the victim it becomes impossible for them to make the depository. If we apply ESCROW system here it will allow victims to avoid any direct contact with the accused person as well as preventing any privacy disclosure. Also, for the accuse person, they can show how much they regret by making depository within their capability.

▶ **Key words:** Crime Deposit with Depository, Solution for Protecting Victim Privacy, Escrow. System, Crime Victim Protection Law, Alternative Dispute Resolution

### [요 약]

형사사건에 있어서 피해자와의 합의는 물론 피해보상을 위하여 공탁부분은 양형자료에 반영되기 때문에 상당히 중요하다. 현행법상 공탁을 하려면 피공탁자의 이름과 주소, 주민등록번호 등을 기재해야 한다. 그런데 피공탁자가 성범죄 피해자 등인 경우 사건기록에서 개인정보가 모두 익명처리되기 때문에 가해자 측은 어려움을 겪는다. 물론 이는 피해자가 가해자와의 합의를 의사가 전혀 없는데도 인적사항을 파악하여 합의를 부치거나 위협하는 등 가해자로부터 2차 피해를 방어하기 위한 조치이지만 가해자가 자신의 범죄를 뉘우치고 피해자에게 보상하려고 해도 피해자의 인적사항을 몰라 공탁하지 못하는 경우가 생긴다. 에스크로 제도를 활용하면 피해자의 입장에서는 가해자와 직접 접촉을 피하고 개인정보 유출을 막으면서도 실질적인 피해회복을 받을 수 있어서 좋고 가해자의 입장에서는 능력이 닿는 한도에서 잘못에 대해 속죄하는 모습을 보여줄 수 있어서 좋은 제도라고 생각한다.

▶ **주제어:** 형사변제공탁, 피해자 개인정보보호방안, 에스크로제도, 범죄피해자보호법, 대체적분쟁해결제도

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## I. Introduction

The police deposit with depository system is implemented for those assailant who tried to make negotiation with the victim but case didn't work out well, however still wishes to show that he/she is trying hard to help victim recover from the damage. This is playing an important role for judge to consider either mitigate the punishment or stay of execution. However, one should have personal information of the victim for deposit with depository. According to its regulation Article 20, Clause 2-5, it is required for the person requiring deposit with depository to fill out personal information of the victim but for police deposit with depository, this regulation is actually making it impossible. This is because it is very rare for the victim to provide personal information to assailant who has no willingness for negotiation. In some Court, although one obtains victim's ID number they are requesting even resident registration copy, giving a lot more strong requirement. As this is the case, this system has a high barrier and is being gradually invalidated [1]. For those overburden request from the Court which goes against purpose and aim of the deposit with depository should be revised and to promote its original purpose, conditions should be reduced or there should be a way to receive personal information. Therefore, this research looks into how to protect personal information of the victim in relation to police deposit with depository.

## II. Police Deposit with Depository and Privacy Issue

The definition of deposit with depository is in any criminal case, if victim requires too much reimbursement or settlement money, assailant makes depository for settlement or reimbursement to have judge consider when weight the offense.

Regardless whether this payment is actually made or not, it is considered as received and plays an important role in weighing the offense.

This term is not an official legal term but a term commonly used in crim cases. From legal perspective, this is making reimbursement in accordance to Civil Law Article 750 to be depository in accordance to Article 487. This law states that the liable person can make depository without knowing information on the creditor but it is practice that it is rejected due to not knowing detailed information of the creditor. In most cases, the Court orders to supplement personal information section of the creditor including the address, etc.

However, in criminal cases it is almost impossible to get personal information of the victim. Such information is all covered up even after the prosecution and it is not allowed for view during the investigation period. Even if one asks for review, this is rejected due to privacy issue and it is also impossible to have official claim for information disclose to be approved.

That is, unless the victim himself discloses the information, it is impossible to proceed with deposit with depository in criminal cases. It is also not easy for assailant to ask the victim to disclose personal information.

For criminal cases, it is vital to make personal information confidential, especially for sexual violence, strict control of privacy is required not to have personal information disclosed to the public or any leakage of personal information on the victim.

Still, some of victim's personal information is disclosed to the public and because of this illegal disclosure, they are suffering from psychological damage from unwanted contact of assailant asking for negotiation and forgiveness. Moreover, they are exposed to the second damage such as threatening or revenge.

For the accused person to reduced one's punishment, victim's personal information such as ID number is required. The reason for not knowing

this information is because investigation agency collects in all the personal information when filing out statement but due to privacy regulation and protection, they are not suppose to disclose any information including the ID number [2].

Furthermore, personal information disclosure and leakage may not only happen for this deposit with depository. If victim is under age, they are asked to have legal guardian's certificates to be attached to the statement. If depositor fails to get these documents, they are asked to have them ready by a recommended date and here, there is a possibility of personal information disclosure.

In case of criminal case, personal information violation can happen and there is a possibility of victim being exposed to the second crime. Hence, this may result in a separate metal damage to the victim, different from the damage caused by the first crime.

### **III. Solution for Protecting Victim's Personal Information in Deposit with Depository**

#### **1. Protection with involvement of participants and depositor**

##### **1.1 Criminal trial participants requesting for the depository on behalf of the accused**

This solution is if victim of depositor wishes to have deposit with depository, on be half of the depositor, criminal trial participants review the crime history and get victim's personal information to file on behalf of the accused. The problem here is that one needs cooperation at police and prosecutor stage other than the Court. Therefore, in this case, there should be a new regulation stating that the person in charge of criminal case has the responsibility to provide personal information of the victim to the depositor.

In more details, they fill out depository form which has Court, prosecution office, and police

office number, case number, department in charge, name and position of the person in charge, telephone number, and fax number. Then this document is sent to the depository place via fax.

To have more convenient depository process for participants and investigators, there needs a special regulation which allows the actual Court dealing with the depository case to process such steps. Then in depository office, they fill out victim's name and ID number by searching on the system to complete the application. The problem here is that depository related regulation should be revised so that the Court can search for the information for administrative purpose.

Then the deposit officer sends out received application with account number to the person in charge so that the depositor makes deposit and original copy is mailed to the deposit office.

Although victim's personal information is filled out in the application form, those documents to be sent to depositor shall exclude all the personal information of the victim. Also when this information history is viewed or copied, victim's personal information must be confidential.

##### **1.2 Deposit officer completing the case by direct searching of victim's personal information**

Different from the above solution which divides pre-investigation and judgment process this solution allows depositor, the accused to apply for depository without the personal information of the victim and for this information, it is filled out directly by the Court or investigation agency.

The depositor fills out application with information such as Court in charge for the criminal case, prosecutor office, crime number, and name of the victim.

Afterwards, make place for filling out Court in charge of the criminal case, prosecutor office, police office, name of the case, number, responsible department, name and position of the responsible person, contact number, and fax in the application form.

Then the deposit office sends out fax for document authenticity inquiry under the name of responsible Court, prosecutor, or police to receive personal information of the victim such as name, ID number, and address. The problem of this solution is same as above, regulation should be revised to allow person in charge of criminal case to provide victim's personal information to the deposit officer.

Based on the information provided by the person in charge, the deposit officer then search for personal information such as name, ID, and address on the system and complete the application by entering all the information in the deposit system. However, the same problem occurs here that regulation stating that the Court can search and view information for administrative purpose should be included in depository related laws.

The completed application form is sent to the depositor along with the account number for deposit making.

The process and restriction on issuing and viewing of application form by the victim is the same as previously stated improvement.

### 1.3 Conclusion

The above suggested two solutions have advantage of harmoniously reflecting privacy protection of the victims and securing assailant's defense from pre-prosecution stage but on the other hand, legislation for securing their efficacy and effectiveness is also required. If legislation for securing their effectiveness is obtained by having detailed research and review on those two solutions, this will help with smooth problem solving of both protecting assailant's defense right as well as victim's privacy issue.

## 2. Protection based on Court Deposit System

### 2.1 Definition of Court Deposit System

The Court deposit means cash except revenue and expenditure which is kept in the Court by the following reasons: civil case advance payment, deposit for purchase application, selling price,

contract deposit for annual expenditure execution, security for a bid, deposit for defect repair, ban on provision attachment to public officer salary bond, or cost for execution of rights by financial related class action.

In case of any expenditure of Court deposit, responsible person, officer or expenditure person gives out expenditure order to the person requesting expenditure and this person gives out this order to the person in charge to receive the money.

### 2.2 Protection Solution

As deposit with depository system aims to have damage reimbursement for criminal case victims, this solution is to utilize above stated Court deposit system into the criminal case. With this solution, if Court makes judgment of guilt, in any criminal case or domestic violence cases, this will not only allow victim to request for reimbursement but will also allow them to request collection at the same time.

Similar to civil deposit in civil judgment, the accused person is asked to make deposit as known as police deposit under Court order while criminal case is still in process. This order does not specify the victim but asks the accused person to make deposit and submit certificate. Once criminal court receives the certificate they specify the victim and makes expenditure order so that they can receive the deposit which equals the depository.

### 2.3 Problem and Conclusion

The biggest advantage of applying Court deposit system to improve victim privacy issue is that it is based on the previous system but this also requires review from various perspectives. If such system is applied, one should review that the deposit made by the accused person can be used as deposit for negotiation for damage reimbursement with the victim in accordance to Civil Law Article 487 or not. Also, the major disadvantage is that this cannot include deposit to be made in pre-prosecution process.

If special regulation is made for only criminal deposit case instead of including overall deposit

with depository system, this may lead to the abuse of easy negotiation with the victim without sincere effort and reflection. Hence, review on this abuse perspective is also required.

In reality, the accused person will only try hard to make deposit during the judgment so that one can have diminished punishment but once the case closes, the person will be negligent of reimbursement. Therefore, it is better for the victim to receive a certain portion of deposit before the judgment closes than getting reimbursement through civil action. For the victim, although they want the accused person to have a strict punishment once crime happens but after a certain time, transferring damage to the financial reimbursement will help all, make deposit will be beneficial for both parties. However, this system may make the accused person to make deposit too easily that it might seem to only consider assailant's defense side only, which may result in going against protection of victim's right.

### **3. Protection Solution using Alternative Dispute Resolution (ADR)**

#### **3.1 Concept of ADR**

What causes lawsuit today is not all the problems happening in society but a part of them like conflict.

Therefore, lawsuit is the very last solution you can have for solving a problem and literally, this solves the problem based on regulations. As this is the case, most social conflicts are negotiated by independent dispute resolution such as reconciliation or adjustment.

As global growth is being advanced, people's life is becoming more complicated and complex, leading to active exchange as well as increase in lawsuit. There are many issues of lawsuit being prolonged and problems related to its cost.

As this is the case, people started to pursue easy and simple problem solving methods which means instead of lawsuit, people go after independent problem solving [3].

ADR has become very popular as an alternative to supplement defect in traditional judicial system since late 1960s in America [4].

This independent problem solving has become an alternative solution for traditional lawsuit and is called as Alternative Dispute Resolution (ADR) [5].

#### **3.2 Protection Solution**

By applying such alternative arbitration system it will help reach negotiation between the two parties and for depository, by installing depository arbitration adjustment committee, agent for negotiation can be designated to prevent any further second crime by protecting victim from the accused person.

The reason for the accused person to use this depository system is because negotiation failed but in Korea, it is required to have personal information of the victim under this system. It is impossible for them to have such information from the Court or investigation agency and thus, unless illegal personal information disclose, it is impossible to apply for depository. Also, there is a possibility of risk exposure to the second crime and victim protection right from illegal disclosure.

Therefore, in terms of unnegotiated criminal case, the accused person as well as victim shall designate negotiation agent and also court or investigator designate agent to make them responsible for the whole process, from applying to expenditure.

Likewise, this solution tries to make fundamental access block to victim's personal information to secure their right for protection.

#### **3.3 Problem and Conclusion**

Different from ADR regulating fundamental law as well as arbitration law in different countries, in case of Korea, except arbitration law, each law regulates all the details on installation of arbitration committee and its operation. This means we do not have fundamental law which can control ADR itself [6].

Korea has installed police settlement money arbitration committee to operate those urgent ongoing systems but in other countries, they started to adopt various systems to control not even the fundamental law but also urgent arbitration systems as well. In 2006 US arbitration committee-international arbitration resolution center regulation was first adopted and followed by this, Finland in year 2010, Singapore in 2011, Australia in 2012, Switzerland in 2013, and Hong Kong in 2014, as well as Japan and UK.

For urgent arbitration system it may take a bit of time to form arbitral tribunal. During this period, it may be difficult to request one's right so this system helps the person to temporarily but urgently prevent damage of important evidence by making quick decision on issues [7].

Likewise, it may seem urging to improve depository system by using ADR but for the adoption of urgent arbitration system and better privacy protection in the future, this research suggest negotiation agency system for deposit with depository.

#### 4. Protection by using Escrow System

##### 4.1 The concept of Escrow System

In legal term, this means 'conditional bill of transfer.' That is, a certain bill is donated to the third party and if conditions are satisfied, this is transferred to the other party. This is commonly used in real estate transaction. ESCROW system was first adopted in the US in year 1997 and in case of Korea, banks and payment agencies provided such service to the public. Even the government has implemented policy making this compulsory for preventing any damage in e-commerce as well as consumer protection. As a result, for those over 50000 Korean Won transaction e-commerce, ESCROW system is required by law. In one hand, Fair Trade Commission has required online shopping malls to register ESCROW system along with revision of electronic commerce law in August 2012. When

opening an online shopping mall if no ESCROW registration certificate is submitted, companies cannot make official telemarketing business. Other than this, this system is also used for trading or capital trading between the countries [8].

When buying and selling house, instead of buyer giving money to the seller directly but make deposit to the third party called ESCROW and provide the given bond to the buyer, ESCROW completes its contract with the buyer and pays the money to the bond consumer. Here is why ESCROW system has been discussed in cases of online fraud problems. Although consumers paid to the designated account number but they either receive no goods or get something wasted or wrong goods. One solution to such problem is ESCROW. If this system is adopted, consumers first pay to the company instead of making remittance to the account number provided by the seller. Also, to make a contract for ESCROW system, one's identity is verified, which will help reduce online trading fraud.

##### 4.2 Protection Solution

If any independent or official organization like Court or prosecutor plays the role of ESCROW company, issues related to deposit with depository can be solved.

The accused person apply for depository with the case number and ESCROW company can either directly own this number or substitute this case to the Court after being designated by the accused person. Therefore, the accused person can received ESCROW certificate with case number instead of document filled out with victim's personal information and submit this to the investigation agency of the Court.

The reason for pointing out court or investigation agency for ESCROW service is because privacy of the victim shall be protected and confidential. If the third independent party tries to process such service, special legislation on privacy protection is required which will be another burden for all.

#### IV. Privacy Policy System for Criminal Case Victims in America

In judgment stage, the first thing is prohibition on provision of victim's personal information. First of all, if the Courts determines that the accused person may harm the victim, they order the accused person's lawyer not to let him/her know victim's personal information.

The next step is history sealing order. There are cases where Court cannot expect the lawyer to keep the confidential information, in this case, judge can order history sealing of the records in accordance to Federal and State law.

In such case, both accused person and lawyer cannot have any information on the victim such as name, contact number, etc so if they wish to see the victim, they need to first ask for agreement of the prosecutor as well as approval from the Court.

This sealing ordered record cannot be viewed even by the Court person in charge of the case as well as judge. Therefore, this helps prevent any disclose of personal information, statement, and witness examination record, causing no issues with protection right of the accused.

Third is to ordering to use the name from the time of accusation. Some states regulate to use the name except the family name during the whole process if the victim requests to do so.

Lastly, when completing sentencing, most judges only indicate the initials of the name of the sexual violence victims without the family name [9].

Different from property crime, in case of violence crime whether the accused person tried to make damage reimbursement to the victim or not is not considered at all when weighting the offense in the US. If consider this it means to categorizing the assailant based on their money power and treating them differently, which goes against the sense of justice.

Looking into victim privacy protection system in the US, it is required to have further research on supplementing and improving legislation which

excludes consideration of deposit into diminishing crime for sexual violence [10].

#### V. Conclusion

As depository system for negotiation or reimbursement to the victim in criminal case is reflected to consideration for diminishing punishment and hence, it is very important in the process. According to the current law, one needs to fill out victim's personal information such as name, address, and ID number for processing depository. However, if the victim is sexual violence victim, all the personal information is covered up becoming anonymous. Therefore, it becomes difficult for the accused person to get necessary information. Such covering up action is to prevent further second damage that may be caused such as threatening for the negotiation whereas victim has no willingness to forgive the accused. However, even if the accused person regrets his/her crime and make reimbursement to the victim, as they have no personal information on the victim it becomes impossible for them to make the depository.

If we apply ESCROW system here it will allow victims to avoid any direct contact with the accused person as well as preventing any privacy disclosure. Also, for the accuse person, they can show how much they regret by making depository within their capability.

Already prosecutor office is operating crime adjustment system in accordance to crime victim protection law to assist actual recovery. Even the Court is utilizing temporary reimbursement order system to recover any financial damage.

Then, there is no reason for prosecutor or Court not being able to process crime depository service. Some people may worry that if it becomes easy to make depository no accused person will try to make sincere negotiation with the victim. However, this depository is treated differently from the agreement

and also, depending on the legal organizations, the amount of depository or agreement is considered in regards to punishment diminish.

Some people may also feel uncomfortable spending tax on making a new system which is for the convenience of the accused people. This deposit with depository system is actually helpful for victims as well. Especially for sexual violence victims, they do not wish to try even the agreement from the bad experience, hence, it can be very helpful for them as well. If still not comfortable with this system, like ESCROW system, making charges for depository can be an option.

From my personal opinion, deposit with depository is part of solution for protecting and supporting crime victims in extent. Then if some regulations on "crime victim protection law" is supplemented, especially crime adjustment part in Article 6, this will be ready for implementation right away. I personally think that improving inconvenience is the innovation.

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