법제교류 연구 12-21-①-1

An Evaluative Analysis of Korean Legislative Development in Relation with Economic Growth

Environmental Policy and Law

Lee Jun Seo

한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

법제교류 연구 12-21-①-1

An Evaluative Analysis of Korean Legislative Development in Relation with Economic Growth

- Environmental Policy and Law -

Lee Jun Seo

한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

An Evaluative Analysis of Korean Legislative Development in Relation with Economic Growth

- Environmental Policy and Law -

Researcher : Lee, Jun-Seo(Research Fellow)

July 4th, 2012

한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

Abstract

Ⅰ. Background and objectives

□ This paper attempts to present suggestions on legislative development that took place during the process of Korean economic growth as it can be applied to developing or regime-switching countries by reviewing and analyzing legislative development processes by segment in relation with the economic growth in Korea.

□ It is expected that the analysis and evaluation of the development processes of the Korean environmental legislation will present certain suggestions to some developing countries that intend to deploy systems for balanced development and environmental preservation when considering the future development of their environmental laws and legislation.

Ⅱ. Main contents

□ Chapter 2 attempts to analyze the relationship between economic growth and the development of environmental legislation in Korea. It explains that environmental legislation has developed from pollution regulations to overall environmental legislation and from singular to plural law principles. However, it reaffirms

that legislative development has not been parallel but a product of the times that reflect the contemporary situation surrounding environmental issues, the degree of perception of environmental issues, the government's philosophical view on environmental issues, political determination toward impending environmental issues, and policy driving forces.

□ Chapter 3 reviews and attempts an evaluation of the development processes of the Framework Act on Environmental Policy. It is a law that functions as a rudimentary statute over the environmental area. It needs be analyzed as it links the Constitution and environmental statutes to specifically realize citizens' rights for a clean environment and duties for preserving the environment as provided under the Constitution, coordinates and consolidates individual statutes related to the environment, and present the basic philosophy, ideals and directions of the government's environmental policies.

□ Further, the Framework Act on Environmental Policy is a very significant statute in the development processes of the Korean environmental legislations that progressed from the Pollution Prevention Act to the Environment Conservation Act and then to the Framework Act on Environmental Policy. Therefore, our review of the Korean environmental statutes should examine how the statutes have developed and how effectively they function.

□ Chapter 4 presents suggestions based on the development processes of Korean environmental legislation. First, it performs a sweeping evaluation of the environmental law based on the aforementioned analysis of the development processes of Korean environmental legislation. It also presents problems and tasks for developing the environmental legislation in the future, including its features, such as a plural statute principle, diversified control systems, frequent amendments, complex statutory structure, blanks in regulations, and internationality of the law.

Ⅲ. Expected effects

□ We expect that the analysis and evaluation of the development processes of the Korean environmental legislation presented in this paper can offer desirable suggestions by letting certain developing countries that are seeking to deploy a system for a balanced development and preservation to examine both merits and demerits of the Korean system when considering the future development of their environmental legislation.

Key words : legislative exchange, economic growth, legislative development, Korean environmental law or legislation, Framework Act on Environmental Policy

Contents

Chapter 1. Introduction

Section 1. Research objectives

Having achieved a compressive economic growth for only 40 years beginning in the 1960s, Korea is considered to have achieved the truly amazing feat of becoming one of the world's top 10 economic superpowers.[1] Thus, many Asian countries seemingly have a strong desire to see if they can also apply the so-called Korean development model to their own situation. Such desire appears to have further increased particularly since Korea, recognized as 'an aiding country' rather than 'an aided country' in 2009,[2] became the 24th member state of the Development Assistance Committee (DAC), which is subordinate to the Organization for Economic Cooperation and Development (OECD).

However, we should not carelessly emphasize or admire the performance of the Korean economic growth based on such overseas sentiments. From an environmental perspective, various environmental issues are hidden behind the Korean economic growth, including air, water and soil contamination, an increase of living and industrial wastes, and noise. These environmental issues that started to outbreak during the last 20 to 30 years because of

---

1) As Korea achieved a rapid economic growth by 7.6% on an annual average for the past 60 years, its per-capita GNP that remained at US$ 69 in 1953 exceeded US$ 20,000 in 2010. Jo Yun-je, Park Chang-gwi, and Gang Jong-gu, *Korean economic growth and changes in social indicators, Finance and Economy Research*, (Jan. 2012), page 1, Economic Research Institute of Bank of Korea

2) For details, see p. 8 and later of Lee Jun-seo, *A Study on the Model Legislation for the Assistance for Legal Reform - Economic Development and the Changes of the Legislation on Small and Medium Enterprises*, Korea Legislation Research Institute, 2011.

growth-oriented policies largely correspond to the universal flow of modern environmental issues in countries where industrialization was achieved. Such issues include urbanization appearing after rapid industrialization, shortage of basic environmental facilities, insufficient understanding of the environment and ecosystem, destruction of ecosystem, a decrease of biological diversity, excess of environmental capacities due to various development projects, and thoughtless use or development of resources.

Meanwhile, the environmental issues tend to appear as a result of contaminated living conditions surrounding human beings, such as deterioration of air and water quality, contamination of soil and underground water, and outbreak of various environment-related diseases, as well as simple mutilation or destruction of the natural environment. Korea also continued legislative efforts to resolve such environmental issues. The natural environment as well as living conditions were included in targets subject to the environmental law as the earlier passive attitude that was maintained from the beginning stage of the economic growth was extended to include such new active concepts as 'environmental pollution' and 'environmental mutilation.' The former passive attitude focused on protection of human life and health from unavoidable or incidental 'pollution' that was generated along with the growth.

The Constitution was amended to include new provisions, "All citizens shall have the right to live in a healthy and agreeable environment. The State and the citizens shall endeavor to protect the environment". The Framework Act on Environmental Policy introduced many new concepts, declarations or principles widely used in the international community, including Sustainable Development, a Preventive and Precautionary Principle, and a Polluter Pays Principle.

In addition, the Korean government presented environmental standards that are to be attained with efforts for improving the environment, introduced an environmental impact assessment system that plays the role of controlling thoughtless development products, preemptive regulations through licensing or permission, and also economic or financial incentives, such as dues or imposts, while strengthening autonomy through certification. These can be assessed to attest that Korean environmental law[3] has made achievements both quantitatively and qualitatively.

Such achievements in 'legislative development' may be viewed as development in policies and institutions that were achieved in parallel with the economic growth in Korea. They may also be viewed from another viewpoint as an outcome of self-help efforts to address bi-effects or problems that occurred along with the rapid economic growth.

Therefore, it would not be desirable for us to merely list relevant historical data or to emphasize the superiority of the policies or institutions

3) "Environmental law" or "Environment-related law" is used to indicate 'statutes related to the environment,' which is the object of this study. The difference of the terms seems to be insignificant as both represent statutes related to the environment. However, as many of the statutes for which departments or ministries other than the Ministry of Environment contain environment-related provisions, if it is named 'environment-related law,' it will have a very wide domain that includes the scope of these terms. For example, environment-related law includes the Framework Act on the National Land, the National Land Planning and Utilization Act, the Marine Environment Management Act, the Compensation for Oil Pollution Damage Guarantee Act, the Act on the Control, etc. of Manufacture of Specific Substances for the Protection of the Ozone Layer, the Framework Act on Energy, the Atomic Energy Act, the Nuclear Damage Compensation Act, the Act on Special Measures for Designation and Management of Development Restriction Zones, the Act on Antarctic Activities and the Protection of Antarctic Environment, the Act on the Promotion of the Conversion into Environment-friendly Industrial Structure, and the Industrial Cluster Development and Factory Establishment Act. Therefore, we are going to use the term 'environmental law' hereunder believing that it is the most compact and accurate term that represents the scope of this study though it is more conclusive than the other terms.

that have developed so far, in introducing the economic growth and development of policies, systems and legislation in Korea[4] to the developing countries that are interested in Korean economic growth. Instead, it would be a proposal designed to prevent other countries that seek the Korean development experiences from committing the same errors as those Korea committed and for us to present the trial and errors experienced so far, including complementary or corrective measures to resolve such trial and errors in a relatively objective manner, in addition to the affirmative aspect of the Korean legislative efforts that contributed to the development of policies and institutions.

Based on this background information, this study attempts to analyze the Korean legislative efforts concerning how Korea resolved the environmental issues that occurred during the economic growth processes. This author intends to examine the environmental law in this study in order to present how Korea resolved environmental issues that took place along with industrialization and economic growth, following his 2011 study of Korean legislation on small and medium-sized businesses. In so doing, the author believes that he can present suggestions to developing countries on balanced growth and development.

---

4) This is a continuation study of 'A Study on the Model Legislation for the Assistance for Legal Reform' of 2011. Korea is now recognized to be 'an aiding country' rather than 'an aided country' as of 2009 having become the 24th member state of the Development Assistance Committee (DAC), which is subordinate to the Organization for Economic Cooperation and Development (OECD). Korea is believed to be a country that has achieved economic growth and democracy in Asia in the shortest period. We skip explanations about the considerably high demand among other Asian countries for information on the Korean-style development model. For details, see page 18 and later of Lee Jun-seo, *A Study on the Model Legislation for the Assistance for Legal Reform - Economic Development and the Changes of the Legislation on Small and Medium Enterprises*, Korea Legislation Research Institute, 2011.

We expect that the analysis and evaluation of the development processes of the Korean environmental legislation presented in this paper can derive desirable suggestions for letting certain developing countries that are seeking to deploy a system for balanced development and preservation to examine both the merits and demerits of the Korean system when considering the future development of their environmental legislation. Yet, the author kept in mind that the conclusion of this study should present in the Korean case as reference information "worthwhile to refer to" rather than in a manner asserting "the Korean example must be followed". In addition, the author intended to provide opportunities for the readers to assess the feasibility or possibility of selecting identical or similar policies or legislations by analyzing the features of the Korean environmental law, and merits and demerits of the key legislations, but not to provide an ambitious clear-cut multi-sided assessment. Though this study is mainly designed to provide reference information to some of the developing countries, the author also intends to induce our own contemplation for recalling the history of the environmental law so far.[5)]

Section 2. Research scope

Environmental law can be largely divided into environment remedy and regulation laws. The remedies of environmental damages may be divided into those under the public and private laws. The public law remedies include administrative contestation, state reparation, compensation for loss,

5) See page 18 and later of Lee Jun-seo, *A Study on the Model Legislation for the Assistance for Legal Reform - Economic Development and the Changes of the Legislation on Small and Medium Enterprises*, Korea Legislation Research Institute, 2011.

and mediation of environmental disputes whereas the private law remedies include claims or injunction for liquidated damages. Administrative contestations and other public law remedies are handled in the realm of the Administrative Litigation Act.[6] Claims for liquidated damages or other private law remedies are handled in the realm of the Civil Act.[7] Therefore, the environmental law seldom functions as direct remedies for environmental pollution or mutilation.

The Framework Act on Environmental Policy (Article 31) and the Soil Environment Conservation Act (Article 10-3) are the representative environmental statutes that contain provisions for remedies. It would be safe to say that the Korean environmental laws are generally statutes designed for regulations. The environmental statutes are divided based on the physical phenomena where air, soil, water and other media are contaminated.[8] The majority of the statutes adopt administrative regulations as their premise. Therefore, some scholars largely classify environmental laws in the realm of administrative law.

---

6) The majority of the cases of public-law remedy for environmental damages are lawsuits that request for the "cancellation or revision of illegal dispositions by an administrative agency" among appellate administrative "lawsuits filed for a decision on administrative agency dispositions or nonfeasance." In particular, problems that are believed to be difficult but are the most frequently raised include disposability raised in lawsuits seeking revocation and a complainant's standing to sue

7) "In particular, the Civil Act provisions apply when the environment-related law does not have provisions on remedy of damages caused by environmental contamination. Concepts that are treated significantly include real right claims (Article 205, 206 and 214), prohibition of interference in living (Article 217), and illegal acts (Article 750). Kim Hong-Kyun, *Environmental Law*, Hongmoonsa, page 18-19.

8) For example, these acts are the Clean Air Conservation Act, designed to regulate air contamination, the Water Quality and Ecosystem Conservation Act, designed to regulate water quality, the Soil Environment Conservation Act, designed to regulate soil contamination, the Noise and Vibration Regulation Act, designed to regulate noise and vibration, the Marine Environment Management Act, designed to regulate marine contamination, and the Wastes Control Act designed to control or regulate wastes.

Meanwhile, environmental laws can be divided into domestic and international environmental laws depending on their jurisdiction. A consensus was recently formed that environmental issues can no longer be resolved through efforts of one state only but that global joint efforts are required for their resolution. With such a background, many international agreements, conventions, and declarations have been concluded or adopted and a new legal domain called the International Environmental Law has been created.[9] In particular, noteworthy international agreements were concluded one after another since the United Nations Conference on the Human Environment (UNCHE) was held in Stockholm, Sweden in 1972. At present, environment-related international agreements or conventions reach 220.[10] Key international agreements include the United Nations Framework Convention on Climate Change[11], Convention on Biological Diversity[12], Convention on Wetlands of International Importance Especially As Waterfowl Habitat (Ramsar Convention)[13], Basel Convention on the

9) Sources of international environmental law include treaties, international customs, general principles of law, precedents and theories. Treaties are particularly important.

10) Korea is currently a member to 47 environmental conventions. *2008 Environmental White Paper* (footnote 7) page 656.

11) United Nations Framework Convention on Climate Change (UNFCCC), 31 I. L. M. 849 (1992). This convention includes a declaration that recommends the advanced countries listed in Annex I that are responsible for global warmth to reduce their greenhouse gas emission to a 1990 level by 2000.

12) Convention on Biological Diversity, 31 I. L. M. 818 (1992). The Convention on Biological Diversity provides for the recognition of sovereign rights and access to genetic resources, technology transfer and control of genetically modified organisms (GMOs) by the member states to preserve biological diversity for sustainable use.

13) Convention on Wetland of International Importance Especially as Waterfowl Habitat (Ramsar Convention), 11 I. L. M. 963 (1976). The above convention provides for the concluding states designate and register with the Secretariat of at least one domestic wetland of international importance when they join the convention in order to preserve wetland significant economically, culturally, scientifically and leisurely among habitats that have functions of controlling river systems and maintaining animals and plants.

Control of Transboundary Movements of Hazardous Wastes and Their Disposal[14], Vienna or Montreal Convention for the Protection of the Ozone Layer[15], United Nations Convention to Combat Desertification[16], Protocol on Environmental Protection to the Antarctic Treaty[17], and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.[18]

To summarize, the environmental law requires a comprehensive approach together with other laws, including administrative laws, as it handles public law regulations, civil and administrative contestation laws in connection with issues related to the remedy of damages caused by environmental pollution, criminal laws in connection with punishment of environmental crimes, and international public and private laws to handle international environmental issues.[19] We are going to review domestic laws

14) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 28 I. L. M. 657 (1989). The Basel Convention provides relatively detailed provisions for procedures (PIC) and responsibilities of exporting or importing countries in connection with trans-boundary movements for 47 hazardous wastes subject to regulation, including mercury and cadmium.

15) Vienna Convention for the Protection of the Ozone Layer, 26 I. L. M. 1529 (1987); Montreal Protocol on Substances that Deplete the Ozone Layer, 26 I. L. M. 1550 (1987). The Vienna Convention provides that the member states shall endeavor to regulate production or use of substances that deplete the ozone layer while the Montreal Protocol provides that the member states shall gradually prohibit production or consumption of 95 substances, including CFC and halon, by designating them as substances that deplete the ozone layer.

16) Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 33 I. L. M. 1328(1994).

17) Protocol on Environmental Protection to the Antarctic Treaty, 30 I. L. M. 1461 (1991).

18) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 12 I. L. M. 1085 (1973). This convention categorizes wild fauna and flora subject to regulation into Annex I, II and III depending on their degree of endangered extinction to introduce government authorities' permit of their export or import.

19) Kim Hong-kyun, *Environmental Law*, Hongmoonsa, P. 20.

surrounding the environmental regulatory laws for studying the development processes of the Korean environmental law as summarized in Table 1:

<Table 1> Scope of Research

	Environmental Regulation Laws	Environmental Remedy Laws
Domestic environmental laws	○	×
International environmental laws	×	×

When analyzing the key statutes in addition to their historical flow, it is important to review the development processes of the environmental law. However, this study is physically limited in its capabilities of analyzing nearly all 50 related statutes one by one.[20] It is not necessary to examine all of them to understand the development of the environmental law. We are going to treat the Framework Act on Environmental Policy that can represent the development of the environmental laws under a separate chapter following the overview of the development of the environmental laws.

20) Of course, the environmental law includes statutes related to the natural and living environment in contents for which the other ministries or departments are responsible as well as those enforced by the Ministry of Environment. In this study, however, we examine those for which the Ministry of Environment is responsible, for convenience of discussion. As of June 2011, the Ministry of Environment was responsible for a total of 49 environmental statutes. Ministry of Environment, *2011 Environmental White Paper*, page 724-725.

Section 3. Research methods

A chronological review of the relevant statutes would the easiest, most valid method under the premise that the Korean environmental law has steadily developed in both quantity and quality. Such a method may include a division of periods in yearly units such as the 1970s, 1980s and 1990s for evaluating the quantitative and qualitative aspects of the legislative development by comparing related legislations while examining key policies and laws that were enforced during these given periods.

However, the development does not show a regular consistent flow based on economic growth or periodic changes nor does it have a gradual development pattern. Because of the characteristics of the Korean government, represented by the powerful authority exercised by the president, administrations enacted statutes with differing characteristics, or government policies or legislations revealed changes entirely different from existing directions. Therefore, in order to define the periods of the legislative development stages, we need to consider the keynote of the relevant policies and the contents of key statutes during those times as well as the macro flow of economic growth. Therefore, we divide the periodic stages of the development of the environmental law based on the historical changes of key laws that some scholars previously presented as well as the chronological development considered in relation with the economic growth. As mentioned earlier, as nearly all policies show distinct characteristics by administration, the keynote of the economic policies and growth stages of each administration tend to correspond with the development stages of the environmental law to a certain degree if we divide the periods based on key changes in the environmental law.

Research concerning support to legislation exchange, which is a background of this study, has focused on establishing the definition of projects for supporting legislation exchange through a basic study on foreign official development assistances (ODA) and projects for supporting the streamlining of legal systems. Since then, research has been performed in a consecutive flow as related to the legal system of countries subject to ODA (recipient countries) and ODA related legislation of major countries. In 2011, research started to develop specific methods that can be utilized for Korean projects for supporting legislation exchange based on existing research outcome. It is because at this time, it is necessary to conduct more advanced research activities that can present an analysis and assessment of the development processes of the Korean legislation that the developing or regime-switching countries intend to use as example model while surveying the demand for information on the Korean economic growth.

This study employs a historical review of the legislation by period based on its purpose of introducing and analyzing the development processes of legislations by segment under the topic of the Korean economic growth and legislative development. We will add an analytical approach of the specific structure and contents of the statutes that belong to areas which cannot be described by the chronological flow, that need be examined in particular as they constitute a turning point in the development stages, or that need be specially emphasized separate from the periodic flow. The main direction of legislation analysis should be to survey the institutional development included in the legislations. However, we intend to include a critical review of enactments or amendments that were not needed in the overall development flow of the environmental legislation and introduced institutions that had little significance.

Chapter 2. Korean economic growth and development of environmental legislation

Section 1. Korean economic growth and environmental pollution issues

Strictly speaking, economic growth and democracy in Korea were achieved by the consecutive outcome of the preceding industrialization led by Park Chung-hee and the following democratization led by Kim Young-sam and Kim Dae-jung.[21] Legislative development started actively when economic growth policies were introduced by the Korean government that adopted a government-led economic growth as a top-priority policy task of the government. For example, when some government-led plans replaced functions of the market to a certain extent, including distribution and mobilization of resources, control of imports and encouragement of exports, and price control by the government, various acts were enacted to promote or foster industries, to nationalize or communize resources and commercial banks, and to control market entry under the government-led economic growth policies.[22] The preceding industrialization and following democratization in Korea have been evaluated in a very diverse ways. In fact, the early intervention by the government provided a foundation for the intensive economic growth as a result.

However, the legislation that justified the government intervention was streamlined to reduce government regulation gradually as the industrial structure advanced and the market was opened when the economy

21) Son Hae-yong, *Rewritten Economics Textbook*, Joongang Books, 2011, page 16.
22) Kim Du-ol, History of Economic Laws in Korea From Liberation to Present, Haenam Publishing Co., 2011, page 5.

reached a certain growth track. Certain government organs or provisions that were presented to pursue growth only were abolished. It is assessed that Korea was able to advance its economic growth and democracy further with such rectification or by streamlining its legislation to meet social changes, including enhancement of market autonomy and abolishment of regulations.[23] Then, we can deduce that the development of policies targeted at economic growth and social development, deployment of administrative organs that implemented or executed the policies, and legislative measures that provided grounds for permitting or limiting administrative actions induced their development in a complementary fashion to a certain extent through checks and balances.

The situation where such economic development through industrialization was regarded to prevail over political democracy was applied intact to environmental segments. Being pushed away by economic efficiency whereby maximum production was pursued with minimum resources, problems of contamination whose cause could hardly be clarified have been easily overcome. Such attitude structured a dichotomous viewpoint of economic growth versus environmental preservation in determining policies designed to resolve damages caused by contamination while removing causes of environmental issues.

Environmental issues remained at the level of pursuing solutions of conflicts between the inflictor and the victim of environmental pollution before a universal perception of damages to the natural environment spread among the general public. Institutional approaches were considered for more a fundamental resolution of environmental issues as people were

23) Kim Du-ol, History of Economic Laws in Korea From Liberation to Present, Haenam Publishing Co., 2011, page 5.

exposed to damages in potential or indirect manners, if not already exposed to contaminating acts that hurt their body or health immediately or directly.

However, the framework of economic growth versus environmental preservation was maintained intact while policy decisions were made and institutional devices were prepared to resolve such environmental issues. In other words, those who put economic growth ahead of the environment emphasize that improvement in living quality and welfare is given as a kind of fruit that are provided only when economic growth is realized. On the other hand, those who put stress on environmental preservation argue that a harmonious development that is not reflected in GDP or GNP representing growth measurements should be pursued in order to really improve our living quality as economic growth that is measured by the total amount of value added and is nothing but a means to enhance human happiness. It appears the confrontation between the two sides has found a type of compromise since the concept of 'sustainable development' was presented in 1980.[24)]

The Korean environmental law also changed according to international trends as the concept of sustainable development was accepted widely across the world. Our analysis of the development processes of the Korean environmental law reveals that the earlier passive statutes that were originally enacted for only preventing pollution, a bi-product of the initial economic growth, now presents preventive measures for a balanced growth

24) The two words 'sustainable' and 'development' were coined in 1980 IUCN Report for the first time. Ved P. Nanda & George Pring, International Environmental Law & Policy for the 21st Century, 24 (Transnational Publishers, Inc. 2003). ASEAN Agreement on the Conservation of Nature and Natural Resources of 1984 is the first treaty that used the term 'sustainable development.'

and development as the government has switched its stance to actively resolve diverse problems that appear when the economic growth continues.

Since the Korean government intensively developed heavy and chemical industries in the 1970s, they took a very high ratio out of the total industries. As heavy and chemical industries tend to accompany water and air contamination, the Korean government policies for promoting heavy and chemical industries and export sales became the very direct cause of environmental pollution. However, the government later continued its efforts to rectify a misled motive or argument that environmental pollution and mutilation are inevitable from economic growth by presenting various [environmentally friendly] policies, institutions and legislation.[25)]

Section 2. Analysis of the development processes of the Korean environmental legislation

1. Preface

The Korean environmental law started with the Pollution Prevention Act that was enacted in 1963. However, as the act perceived environmental issues to be 'pollution' related issues, it differed greatly from the contemporary environmental law that emphasizes the aspect of 'health and hygiene.'[26)] Therefore, some scholars view that this act can hardly be treated as the real starting point of the environmental law in its true sense.

---

25) Market failure is often cited as a cause for environmental problems. The elements of externality and public goods are emphasized for reasons that cause market failure. For details, see Lee Jeong-jeon, *Environmental Economics*, Pakyoungsa, 2004, page 24 and later.

26) Kim Hong-kyun, *Environmental Law*, Hongmoonsa, page 12.

According to them, the true history of Korean environmental law started with the Environment Conservation Act that was enacted in 1977.[27] The Korean environmental law entered a full-fledged or mature stage when the Framework Act on Environmental Policy and many other individual acts related to the environment were enacted in 1990 and thereafter.[28]

However, the Pollution Prevention Act included regulatory elements inherent in environmental laws, such as pollutant discharge permit standards and systems for licensing facilities discharging pollutants. Further, as we cannot neglect the interrelationship between the Pollution Prevention Act and the Environment Conservation Act, this study treats the former as the beginning of the Korean environmental law.

To summarize the history of the Korean environmental legislation, it developed from a law controlling pollutions to a law regulating the environment and went from being a singular to a plural statute principle.[29] However, legislative development has not been parallel. Like the development of other laws, the environmental law has to be a product of the times which reflects the contemporary situation surrounding environmental issues, the degree of perception of environmental issues, the government's philosophical view of environmental issues, political determination toward impending environmental issues, and policy driving forces.

Based on this concept, the environmental law largely developed through the below-listed three periods: First, there is the period from the 1960s

---

27) Lee Sang-don and Lee Chang-hwan, *Environmental Law*, Yijin Publishing Co., 2003, page 87.

28) The history of the Korean environmental law is only 30 years old when the Environment Conservation Act is treated as the start of its history. Kim Hong-kyun, *Environmental Law*, Hongmoonsa, page 11.

29) Kim Hong-kyun, *Environmental Law*, Hongmoonsa, page 11.

to the mid 1970s when the Pollution Prevention Act was the center of the environmental law. Second, there is the period from the mid 1970s to the early 1990s when the Environment Conservation Act was the center of the environmental law. In these periods, it was a singular statute era as there was only one environmental statute. Third, there is the period from the 1990s to the present when the Framework Act on Environmental Policy was enacted. This study examines this period by further dividing it into 'the period with six environmental statutes,' 'the period when the laws were divided,' and 'the period of internationalization.'

2. Analysis of the development processes of the environmental legislation

(1) Era of Pollution Prevention Act(1963~1977)

Significant changes in Korean economic order can be found in the Constitution of the Third Republic that was enacted in 1962. The Third Republic Constitution declared a capitalist market economy system and Article 5 of the Nation Founding Constitution that stressed public welfare was deleted. The Third Republic Constitution introduced a new provision under Article 111 allowing government intervention, corresponding to Article 119 of the current Constitution, which read, "The economic order of the Republic of Korea shall be based on respect for the freedom and creative initiative of individuals for economic growth." (Paragraph 1) "The state may regulate and coordinate economic affairs within a necessary extent to realize a social justice that satisfies the basic needs for living for all the people and to ensure a balanced growth of the national economy." (Paragraph 2) This provision provided the Constitutional basis for the

government-led economic growth policies. The environmental issues were raised for the first time along with the important changes in the national economic order when the Third Republic administrations in 1960s actively promoted economic development by formulating the first Economic Development Five-Year Plan.

In the early 1960s, the Third Republic administration had implemented growth policies around light manufacturing industries based on Korea's comparative advantage after participating in the international division of work order in East Asia. The administration started active promotion of heavy and chemical industries as the US government increased financial expenditure from the end of the 1960s due to the prolonged Vietnam War, protectionism emerging due to a prolonged business recession, and a crisis that was felt in the national security.[30)]

With such a background, the Third Republic government enacted the Pollution Prevention Act (Law No. 1436) in 1963 in order to "enhance the public health by preventing health and hygienic damages caused by air or river contamination, noise or vibration" that occurs together with economic development. The Act provided for pollution prevention zones (Article 3) and pollution safety standards (Article 4) to regulate 'pollution' caused by smoke or exhaust, dust, odor, gas, factory, commercial or residential waste water, noise and vibrations, imposed duties for preventing pollution, including reporting and inspection by business operators inside the pollution prevention zones (Article 5), and for business operators liable to take actions for pollution prevention to control matters related to the same by appointing a pollution prevention manager (Paragraph 1 of

30) Lee Jun-seo, *A Study on the Model Legislation for the Assistance for Legal Reform - Economic Development and the Changes of the Legislation on Small and Medium Enterprises*, Korea Legislation Research Institute, 2011, page 16.

Article 9). Another feature of the Act was a provision designed to have a pollution prevention review committee organized of five officials from relevant government ministries as an advisory organ to the Minister of Health and Social Affairs who was responsible for the Act's enforcement (Article 12).

However, the Act had a limitation in that it restricted damages attributable to environmental problems to 'health or hygienic' hazards that the Minister of Health and Social Affairs was responsible for as it recognized the complex environmental problems simply as problems of 'pollution', a bi-product of industrial activities. In other words, the Act, which was a pollution-related statute focused on the passive posteriori regulation of pollution itself without considering the overall environmental issues. It further limited the targets to regulate only 'three major pollutions' of air and water quality, noise and vibration. The Act had only 21 articles and the statutory contents were insufficient. Further, the statute was not properly enforced as its enforcement decree and rules were enacted only in July 1969 and budget actions were not taken to operate organs devoted to pollution administration or to enforce the Act. Most of all, the effectiveness of the Act was weakened or almost voided by the social atmosphere in those days when the top priority was assigned to economic development.[31)]

The Pollution Prevention Act, which had been created in name only, was reviewed with introspection as pollution problems caused later along with the economic development aroused the attention of the people. Such introspection led to an amendment to the Act in 1971. The amended Act included provisions on the setup of discharge permission standards (Article 3)

31) Kim Hong-kyun, *Environmental Law*, Hongmoonsa, page 12.

and introduced systems for approving installation of discharging facilities (Article 4) and systems for ordering removal of facilities (Article 7). The discharge permission standards provide the original model of discharge permission standards that are provided under the current Clean Air Conservation Act, Water Quality and Ecosystem Conservation Act, and Noise and Vibration Control Act, and Malodor Prevention Act.

In addition, the Act provided for the installation of an Pollution Prevention Association to carry out research on the prevention of pollution and to develop related technologies (Article 17), for a government subsidy payment to go to the Association (subparagraph 2 of Article 18), and for the appointment of members of dispute mediation committees to be organized in Seoul, Busan and other metropolitan areas and provinces with those who represented public interests and those who were equipped with abundant learning, knowledge and experiences related to industries or public health (Article 20) to mediate matters concerning compensation for damages caused by pollution. The Act so provided a lead for fair resolution of disputes arising in connection with environmental issues together with technological efforts for preventing environmental problems.

(2) Era of Environment Conservation Act(1977~1990)

1) First half

The Third Republic government enacted the Environment Conservation Act to replace the Pollution Prevention Act while abolishing the latter on 31 December 1977. This measure is believed to be based on reflective considerations that the existing Pollution Prevention Act could hardly address environmental problems that were inevitably caused by the rapid

concentration of people in metropolitan areas, intensive economic development and economic growth. In other words, the government could not actively and effectively address environmental problems that were gradually diversified and spread to wider areas with only the existing Pollution Prevention Act that had focused on a passive regulation of pollutions.

The Environment Conservation Act divided environment into the "natural environment" and "living environment" required for the protection of properties with close relations on daily life and the growth of animals and plants. (subparagraph 1 of Article 2) It separately regulated contamination by "specified substances hazardous" that are defined (under subparagraph 11 of Article 2)[32] as substances that are feared to cause hazards directly or indirectly to human health, properties or the growth of farm or fishing products in addition to substances that cause contamination of air, water quality and soil.[33] However, it excluded the application of the act to the contamination and prevention of the environment by radioactive substances[34] defined under the Atomic Energy Act (Article 3) and classified

32) Specific hazardous substances include cadmium and its compounds, cyanide compounds, organic phosphorous compounds, lead and its compounds, hexavalent chrome compounds, arsenic and its compounds, mercury and its compounds, PCB, and copper and its compounds. (Article 5 of Enforcement Rules of the Environment Conservation Act)

33) The Act prohibits acts of dumping specific hazardous substances or industrial wastes (Article 37) or provides for water quality standards of water that inflow into farmland or for adding or removing surface soil in order to prevent contamination of farmland in specific measure areas by specific hazardous substances (Article 41). It also provides that the landowners' or farmers' cultivation of agricultural or fisheries produce may be restricted in contaminated areas if soil or water in special measure areas is contaminated by specific hazardous substances (Paragraph 1 of Article 42). It also has provisions for compensating damages caused by restriction of cultivation of agricultural or fisheries produce (Paragraph 2 of Article 24).

34) "Radioactive substances" refer to nuclear fuel, spent nuclear fuel, radioactive isotope or substances generated by fission (subparagraph 5 of Article 2 of the Atomic Energy Act).

the problem of the general living environment separate from environmental pollution by energy sources. It appears that authorities were reluctant to handle environmental pollution by radioactive materials under this act. Such a passive attitude of the Environment Conservation Act showed that it was somewhat insufficient to play a comprehensive role to resolve the environmental problems.

Meanwhile, the Act had such newly inserted provisions as a setup of environmental standards (Article 4), advance consultation on development plans that would affect environmental preservation (Article 5), routine measurement of contamination of the environment (Article 6), designation of a special measure zone (Article 7), total volume regulation of air and water contamination (Paragraph 2 of Article 26, Paragraph 2 of Article 36), business operators' expense responsibility necessary to prevent environmental pollution (Article 43) and those related to industrial waste treatment. Further, the existing penal provisions of two or less years of imprisonment and a 200,000 to 2,000,000 won fine were enhanced to three or less years of imprisonment and a 15,000,000 won or less fine (Article 66 and later) by efforts to enhance the effectiveness of the statute.

The Act was amended five more times so as to have more developed provisions. By the 1980 amendment, the existing provision on advance consultation developed into provisions for an environmental impact assessment and consultation (Article 5). A new provision was also inserted to provide for a liability without fault for damages on life and body, which reads, "The business operator shall compensate for damages caused on human life or body by contaminating substances generated at his business establishment" (Article 60). By the 1981 amendment, a new

provision was inserted to provide for a system for imposing discharge dues (Article 19-2), strengthening economical incentives to business operators who discharge contaminating substances in excess of the discharge permission standards.

The provisions for the environmental impact assessment system, system for regulating total volume of contaminating substances, system for imposing dues on discharge, system for imposing business operators liability to pay expenses for the prevention of environmental pollution, and system of liability without fault for damages to human life and body were original model provisions that enabled the Korean environmental law to develop in a more active and diversified manner. The Act is estimated to have opened a new horizon for the environmental law as it was designed to address overall environmental problems actively and comprehensively, including expense sharing, dispute mediation, and damage compensation as well as air, noise, vibration and water quality when compared with the Pollution Prevention Act, which took a passive stance to only pollutants, such as air and water contamination.[35)]

Other noteworthy environment-related statutes include the "Marine Pollution Prevention Act," which was enacted to preserve the marine environment by removing contaminating substances from the sea while regulating oil or wastes discharged by vessels or marine facilities (enacted in December 1977; renamed into the "Marine Environment Control Act" in January 2007) and the "Act on Treatment of Synthetic Resin Wastes," which was enacted in December 1979 to reuse used resources and to contribute to

35) Therefore, it may be assessed that "the Korean environmental law has developed by becoming independent or being separated from the Pollution Prevention Act, namely, a police statute for pollution prevention." Hong Jun-hyeong, *Environmental Law*, Pakyoungsa, 2001, page 5 and 56.

preservation of the natural environment by providing for the collection and treatment of synthetic resin wastes and expense sharing.

2) Latter Half

The policies putting priority on heavy and chemical industries promoted by the Third Republic government faced a turning point due to oil crises on two occasions in the 1970s, the world economic recession, slowdown of foreign trade, trade pressure on Korea, and changes in small business policies of the advanced countries. In accordance with such trends, the Fifth Republic government discontinued the existing policies for industrial protection and newly promoted industrial policies placing a top priority on economic restructuring to enhance business competitiveness while actively opening import markets based on the reciprocity principle.[36)]

The Fifth Republic Constitution enacted in 1980 had newly inserted articles on regulation and mediation of the negative effects of a monopoly or oligarchy (Paragraph 3 of Article 120) and on consumer protection (Article 125). It also exceptionally admitted a lease and entrusted the management of farmland (Paragraph 1 of Article 122). It also provided that "[the state] shall respect the economic freedom and creativity of individuals" (Paragraph 1 of Article 120). However, it also made it clear that the state may regulate and coordinate the economy "within the extent necessary for realizing social justice that satisfies the basic needs for livelihood and for developing the national economy" (Paragraph 2 of Article 120).

36) Lee Jun-seo, *A Study on the Model Legislation for the Assistance for Legal Reform - Economic Development and the Changes of the Legislation on Small and Medium Enterprises*, Korea Legislation Research Institute, page 17.

Summarizing the history and Article 120 of the Fifth Republic Constitution, it permitted state intervention in the economy to a large extent though the Korean economic order was to be based on the capitalist market economy.[37] However, it is believed that the Constitution has mixed economy elements as it has room for the state to regulate or coordinate the economy.

Meanwhile, a particularly noteworthy amendment to Article 33 of the Constitution in 1980 in connection with the environment was that it accommodated the right to an environment for the first time by providing, "All citizens shall have the right to live in a healthy and agreeable environment. The State and all citizens shall endeavor to preserve the environment." It was a really epoch-making event in that the Constitution included a provision specifying rights on the environment in those days when we consider that few countries have specified environmental rights in their constitution even at the present.[38] At that time, there was no provision to reserve the contents and exercise of environmental rights to the statutes (Current Constitution Article 35 Paragraph 2). Through an overall amendment in 1987, a provision was newly inserted and still remains valid today, reading, "The substance of the right to the environment shall be determined by the Act."

---

37) Kim Du-ol, *History of Economic Laws in Korea From Liberation to Present,* Haenam Publishing Co., 2011, page 8.

38) Examples of constitutions that declare duties for environmental protection include the constitution of Greece (Article 24), China (Article 26), India (Article 48A and 49), Iran (Article 50), Switzerland (Article 24-7), and Thailand (Article 56) while examples of constitutions that specify rights to the environment include that of Korea (Paragraph 2 of Article 35), Indonesia (Paragraph 1 of Article 28H), Mongol (Paragraph 2 of Article 16), Spain (Article 45), and Portugal (Article 66). Jeong Jong-seop, *Principles of Constitution Theories*, Pakyoungsa, 2006, page 678.

In addition, there were some other changes in 1980s – the Act on Environmental Pollution Prevention Service Groups was enacted in May 1983 to found environmental pollution prevention service groups help perform environmental pollution prevention services efficiently and the Wastes Control Act was enacted in December 1986 to keep natural and living environments clean by properly treating wastes.

Unlike the Pollution Prevention Act that was designed to enhance public health only, the Environment Conservation Act included regulations on damages to natural environments[39] as well and guaranteed environmental right to future generations as well as the present citizens.[40] It is acknowledged that the legislation direction of the environmental law advanced by a substantial extent. Yet, the Act was quite limited, as it remained to function as passively preserving the environment by regulating very limited targets with only 70 provisions. It was insufficient to fundamentally address diverse, gradually increasing environmental problems while it could hardly prevent hazards to the environment or fully guarantee environment rights to future generations as advocated under its slogan.

39) This Act provides that the environment includes the natural environment (subparagraph 1 of Article 2) and specifically prohibits acts of mutilating the natural environment in public waters or forests or destroying facilities installed for preserving the natural environment (Article 37).

40) Article 1 of this Act specifies its purpose by providing, "to enable all present and future people to live in a healthy and pleasant environment by properly preserving natural or living environments."

(3) Era of Framework Act on Environmental Policy(in 1990 and after)

1) First half: Era of Six Environment Acts

More people realized that the Environment Conservation Act could not effectively address environmental problems that were more intensified, diversified and complicated day after day as the Act regulated such heterogeneous areas as air, water quality, noise and vibration together. In addition, the necessity was raised that the Act should clearly present the basic ideals and directions of government policies for preserving the environment in order to practically ensure environmental rights specified in the Constitution while the government policies for preserving the environment could be steadily promoted under an systematic coordination by the entire government or state by establishing a reasonable structure among the environment statutes.[41] Such perception of the situation resulted in a consensus that it was inevitable to enact a framework act with a basic law nature and separate statutes to provide for measures against differing contamination areas.

On 1 August 1990, six environment acts were finally enacted – the Framework Act on Environmental Policy, Clean Air Conservation Act, Water Quality Preservation Act, Noise and Vibration Regulation Act, Toxic Chemicals Control Act, and Environmental Dispute Adjustment Act. This means the Korean environmental law switched from a singular statute of the previous Environment Conservation Act into a plural statute system.[42]

41) Kim Hong-kyun, Environmental Law, Hongmoonsa, page 14.

42) In January 1990, the Environmental Protection Agency was upgraded to the Environmental Protection Service headed by a government minister. The founding of the Environmental

<Table 2> Environment Conservation Act(1989) vs. Framework Act on Environmental Policy(1990)

Environment Conservation Act	Framework Act on Environmental Policy
Chapter 1. General Provisions	Chapter 1. General Provisions
Chapter 2. Discharge and preventive facilities	Chapter 2. Development of environmental preservation plans etc. Section 1. Environmental standards Section 2. Basic policies Section 3. Preservation of the natural environment Section 4. Environmental impact assessment Section 5. Dispute mediation and damage compensation
Chapter 3. Air quality preservation	
Chapter 4. Regulation of noise, vibration etc.	
Chapter 5. Preservation of water or soil quality	
Chapter 6. Sharing expenses	
Chapter 7. Preventive facility operation service	
Chapter 8. (Treatment of industrial wastes) deleted	Chapter 3. Legislative or financial measures
Chapter 9. Dispute mediation and damage compensation	Chapter 4. Environmental Preservation Committee, Environmental Preservation Advisory Committee, and Environmental Preservation Association
Chapter Supplementary rules	
Chapter Penal provisions	Chapter 5. Supplementary rules

Protection Service was highly significant, as a government department was newly born to perform environment-related administrative services independently. In late 1994, the Environmental Protection Service was promoted to the Ministry of Environment through governmental reorganization.

The initial version of the Framework Act on Environmental Policy showed a look of 'selection and concentration,' supplementing required matters while excluding unnecessary parts from its predecessor, the Environment Conservation Act. For example, Chapter 3 Air Preservation, Chapter 4 Regulation of Noise and Vibration, Chapter 5 Preservation of Water and Soil related provisions of the Environment Conservation Act was split into the Clean Air Conservation Act, Noise and Vibration Regulation Act and Water Quality Environment Conservation Act, respectively. Provisions related to discharge and preventive facilities under Chapter 2 were transferred to the Air and Water Quality Standards for Permitting Discharge and Installation of Discharge Facilities.

The initial version of the Framework Act on Environmental Policy featured more declaratory provisions over the previous Environment Conservation Act because of its nature of being a 'Framework Act'.[43] Such declaratory provisions included a provision on basic ideals (Article 2)[44] in addition to a provision on its objectives, a provision on liabilities of the state, local autonomous governments, and business operators (Article 4 and 5), and a provision on basic principles for preservation of the natural environment (Article 25). On the other hand, some of the substantive provi-

43) Basic or framework acts sometimes refer to those that simply have "basic or framework acts" in their name only. But, the basic or framework act refer to statutes that provides for basic statutory or legal principles or guiding rules on social affairs or basics, principles, standards etc. for institutions or policies in a given statute-regulated area. Lee Jun-seo, *A Systematic Improvement of the Framework Act on Environmental Policy*, Korea Legislation Research Institute, 2009, page 17.

44) The basic ideals declared by the Act include the "creation of a pleasant environment", "harmony and balance between human beings and the environment", "preferential consideration of environment preservation when planning all acts of using the environment", and "having the benefits inherited by future generations as well as having the current people widely enjoy the benefits."

sions of the Environment Conservation Act were converted into a declaratory format. Such provisions included the provision on dues payable by those who provide a cause (Article 44 of the Environment Conservation Act), which was converted into a principle declaring that liabilities of those who provide a cause to pay dues (Article 7 of the Framework Act on Environmental Policy), and the provision concerning applications for mediation of a dispute (Article 53 of the Environment Conservation Act), which was converted into a declaratory provision that "… necessary actions shall be taken to have the dispute settled in a speedy and fair manner' (Article 29 of the Framework Act on Environmental Policy).

The key functions of the Framework Act include (i) presentation of basic ideals, (ii) presentation of directions of policies and legislations, and (iii) connection with individual statutes.[45] The Framework Act on Environmental Policy declares the basic ideals, duties of the relevant entities, and principles of the environmental law. It presents the basic direction of the policies and legislations, and specifies a comprehensive long-term comprehensive plans for environmental preservation. The Framework Act is linked to the Toxic Chemicals Control Act and the Environmental Dispute Adjustment Act with such provisions as those reading, "The government shall take actions to properly control harmful chemical substances in order to prevent environmental pollution and health hazards by harmful chemical substances" (Article 21) and "The government shall take actions to have disputes settled speedily and fairly when any disputes arise in connection with environmental pollution" (Article 29). The initial version of the Framework Act on Environmental Policy had a look of playing its main function as a framework act.

45) Lee Jun-seo, *A Systematic Improvement of the Framework Act on Environmental Policy*, Korea Legislation Research Institute, page 22-23.

In the early 1990s, in addition to these 'six environmental laws,' many environmental statutes were enacted, including the Act on Treatment of Waste Water, Night Soil and Animal Wastes enacted in March 1991 which was designed to ensure proper treatment of waste water, human and animal feces, the Act on Special Measures for the Control of Environmental Offenses enacted in May 1991 which was designed to punish acts contaminating or destroying the environment (later amended into the Act on Special Measures for the Control of Environmental Offenses), the Natural Environment Conservation Act enacted in December 1991 which was designed to preserve ecosystem and prevent human mutilation of the natural environment and extinction of wild animals and plants, the Environment Improvement Expenses Liability Act enacted in December 1991 which was designed to develop measures for improving the environment and effectively raise the necessary funds, and the Act on the Promotion of Saving and Recycling of Resources enacted in December 1991 which was designed to efficiently use resources while properly treating wastes by promoting the recycling of resources. Rio Earth Charter, adopted by United Nations Conference on the Environment and Development (UNCED) in 1992,[46] caused the Korean environment law to significantly expand its domain.

In addition, Korea was equipped with statutes concerning major media, including air and water quality, noise and vibration, the natural environment, potable water and soil in the first half of the era of the Framework Act on

46) This Conference was attended by 30,000 persons or so, including summit leaders from 103 countries, government representatives from 176 countries, International Governmental Organizations (IGOs), and NGOs. Report of the United Nations Conference on the Environment and Development, U.N. Document A/CONF.151/26, Vols. I-IV (1992), V (1993).

Environmental Policy by enacting the Act on Environmental Impact Assessment[47] in June 1993 to assess or review the impact of business operations on the environment, the Promotion of Installation of Waste Disposal Facilities and Assistance, etc. to Adjacent Areas Act in January 1995 to facilitate the installation of waste disposal facilities and to enhance welfare in surrounding areas, the Management of Drinking Water Act in January 1995 to properly control potable water to ensure sanitary management, and the Soil Environment Conservation Act in January 1995 to properly control or preserve soil by purifying contaminated soil while preventing hazards by contaminated soil to public health and the environment.

2) Mid Term: Era of division of environmental law

In the mid term, the environmental law division was further accelerated. In this period, legislative actions were taken for the living and natural environment in addition to such key media as air and water quality, noise and vibration, and potable water and soil by enacting the Act on Control of Air Quality for Underground Living Spaces in December 1996 to properly control or preserve air quality of underground living spaces (later amended into the Indoor Air Quality Control In Public Use Facilities, etc. Act), the Special Act on the Preservation of the Ecosystem in Island Areas Including Dokdo Island in December 1997 to preserve the biological diversity and beautiful landscape of Dokdo Island and other island areas, and the Wetland Conservation Act in February 1999 to

47) This Act was enacted by taking over provisions on environmental impact assessments that were originally included in the Framework Act on Environmental Policy. It was amended into the Act on Assessment of Impact on Environment, Transportation and Disasters in 1999 and into the Environmental Impact Assessment Act.

efficiently preserve or control the wetlands. Meanwhile, Korea started legislation of statutes containing support and promotion elements, breaking from the regulation-only direction that had been followed up to that time, by enacting the Act on Improvement of Water Quality and Support for Residents of the Riverhead of the Han River System in February 1999 to improve the water quality of the Han River System and to efficiently implement projects to support the residents.

In addition, the Ministry of Environment took over services that had previously belonged to other ministries according to governmental reorganization. In 1994, the Ministry of Environment took over water and sewage services from the Ministry of Construction and potable water control services from the Ministry of Public Health and Social Affairs. In 1998, the Ministry of Environment further took over national park administration services from the Ministry of Interior. In 1999, the Ministry of Environment also took over services that had previously belonged to the Forest Administration under the Wild Animal Protection and Hunting Act.

The division of statutes was further accelerated from that time on. The so-called 'Four River System Acts' were enacted to supply clean water to the residents by improving water quality of the Nakdonggang, Yeongsangang, Geumgang, and Hangang Rivers systems, which included the Act on Water Management and Resident Support in the the Nakdong River Basin (enacted in January 2002), the Act on Water Management and Resident Support in the Yeongsan and Seomjin River Basins (enacted in January 2002), and the Act on Water Management and Resident Support in the Geum River Basin (enacted in January 2002), in addition to the Act on the Management of Water Quality and Support for Residents of the Riverhead of the Han River System.

In December 2003, three new acts were enacted – the Special Act on the Improvement of Air Quality in Seoul Metropolitan Area, designed to promote measures for improving the atmospheric environment in the Seoul area, the Act on Promotion of Reuse of Construction Wastes, designed to efficiently dispose of and reuse construction wastes, and the Baekdudaegan Protection Act, designed to prevent mutilation of the mountains belonging to the Great Ridge.

Meanwhile, some existing acts were consolidated with current acts. In January 2000, the Act on Water Quality Control of Lakes and Marshes was merged with the Water Quality Environmental Conservation Act (amended into the Water Quality and Ecosystem Conservation Act) to constitute a new chapter of the latter (Chapter 5 Preservation of Water Quality of Lakes and Marshes). In February 2004, a new act titled Act on Protection of Wild Animals and Plants was enacted to consolidate and systemize the provisions related to wild animals and plants that had been covered by the previous Natural Environment Conservation Act and the Wild Animal Protection and Hunting Act, in order to systematically protect and control wild animals and plants and their habitat.

In addition, so many other statutes were enacted in this period that it could be said there was 'a flood of environmental acts'[48], including the Malodor Prevention Act (enacted in February 2004), designed to prevent malodor generated by business activities, and the Act on the Management and Use of Livestock Excreta (enacted in September 2006, the Act on Treatment of Waste Water, Night Soil and Animal Wastes was repealed).

48) Kim Hong-kyun, *Environmental Law*, Hongmoonsa, page 15.

3) Latter Half: Era of International Environmental Law

The latter half of the period features the enactment or amendment of acts for internationalizing the environmental law. From the mid 2000s, Korea internationalized its environmental law more remarkably though the Act on Trans-boundary Movement of Hazardous Wastes and their Disposal, which was enacted as early as in December 1992, to enforce the Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal.

The National Trust, 'private-sector activities dedicated to preserving cultural or environmental treasures,' which started in the UK in 1985, has been carried on in over 30 countries across the world, including the UK, USA, Canada, the Netherlands, Australia, Japan, Taiwan and India under private-sector initiatives or private-government joint ventures. In March 2006, Korea enacted the Act on the National Trust of Cultural Heritage and Natural Environment Assets.

Further, in order to enforce the Stockholm Convention on Persistent Organic Pollutants that was concluded in May 2001 in order to regulate Persistent Organic Pollutants (POPs) internationally, the Persistent Organic Pollutants Control Act was enacted in January 2007 to enforce the Convention in Korea by providing for matters necessary for control or management of persistent organic pollutants, such as dioxin, provided under the Convention.

In addition, the Act on the Resource Circulation of Electrical and Electronic Equipment and Vehicles that introduced the concepts and policies of Recycling of Resources, Sustainable Development, and Environmental Health that were used internationally was enacted in April 2007, the

Framework Act on Sustainable Development was enacted in April 2008 (amended into the Sustainable Development Act when the Framework Act on Low Carbon, Green Growth was enacted in January 2010), and the Environmental Education Promotion Act and Environmental Health Act in March 2008.

The division of the environmental law that was rapidly implemented in over 10 years to efficiently manage contamination media became so severe so as to cause problems of excessive growth of the environmental law, complexity of statutes, and lack of systems among statutes. The excessive division may make an integrated control of contamination more difficult or degrade efficiency by attributing or expanding contamination to other contaminations rather than fundamentally decreasing or removing contamination or mutilation of the environment. Now, a new task has emerged that integrates and coordinates similar environmental statutes.

Section 3. Analysis of current environmental legislation systems

The system of the existing environmental law is comprised of several discrete statutes such as the Marine Contamination Prevention Act and the Wastes Control Act with the Environment Conservation Act as a backbone.[49] The legislation methods of the environmental law can gen-

49) They are the Marine Pollution Prevention Act enacted in December 1977 to preserve the marine environment by removing contaminating substances from the seas while regulating oil or wastes discharged into oceans by vessels or maritime facilities (replaced by the Marine Environment Control Act in January 2007), the Act on Services for Treatment of Synthetic Resin Wastes enacted in December 1979 for contributing to the reuse of abandoned resources and preservation of the natural environment by providing for collection, treatment and cost sharing of synthetic resin wastes, and the Act on Environmental Pollution Prevention Service Groups enacted in May 1983 to

erally be divided into three theories – (i) the singular statute theory that inclusively provides for all issues related to the environment under one statute, (ii) the plural statute theory that enacts multiple statutes by type of contamination and target of regulation, and (iii) the eclecticism that enacts a single statute but prepares discrete statutes for matters that cannot be included in the single statue by drawing upon the above two theories.

Most of the advanced countries have adopted the plural statute theory. It would be reasonable to conclude that these countries have enacted multiple discrete statutes as they regulated visible types of contamination of the environment from time to time by legislating statutes as they experienced environmental pollution from early days rather than enacting many different discrete environmental statutes at one time. On the other hand, developing countries tend to enact a single statute as they experience many different types of environmental pollution at one time as a result of state-led industrialization. Korea's experiences belong to this category. However, it is difficult for the single statute system to actively and flexibly address environmental issues that become more severe day after day.

As shown in Figure 1, the current system of the Korean environmental law consists of the Constitution, the supreme law, the Framework Act on Environmental Policy that acts as a basic law, and the discrete environmental statutes that feature measures against individual contamination

---

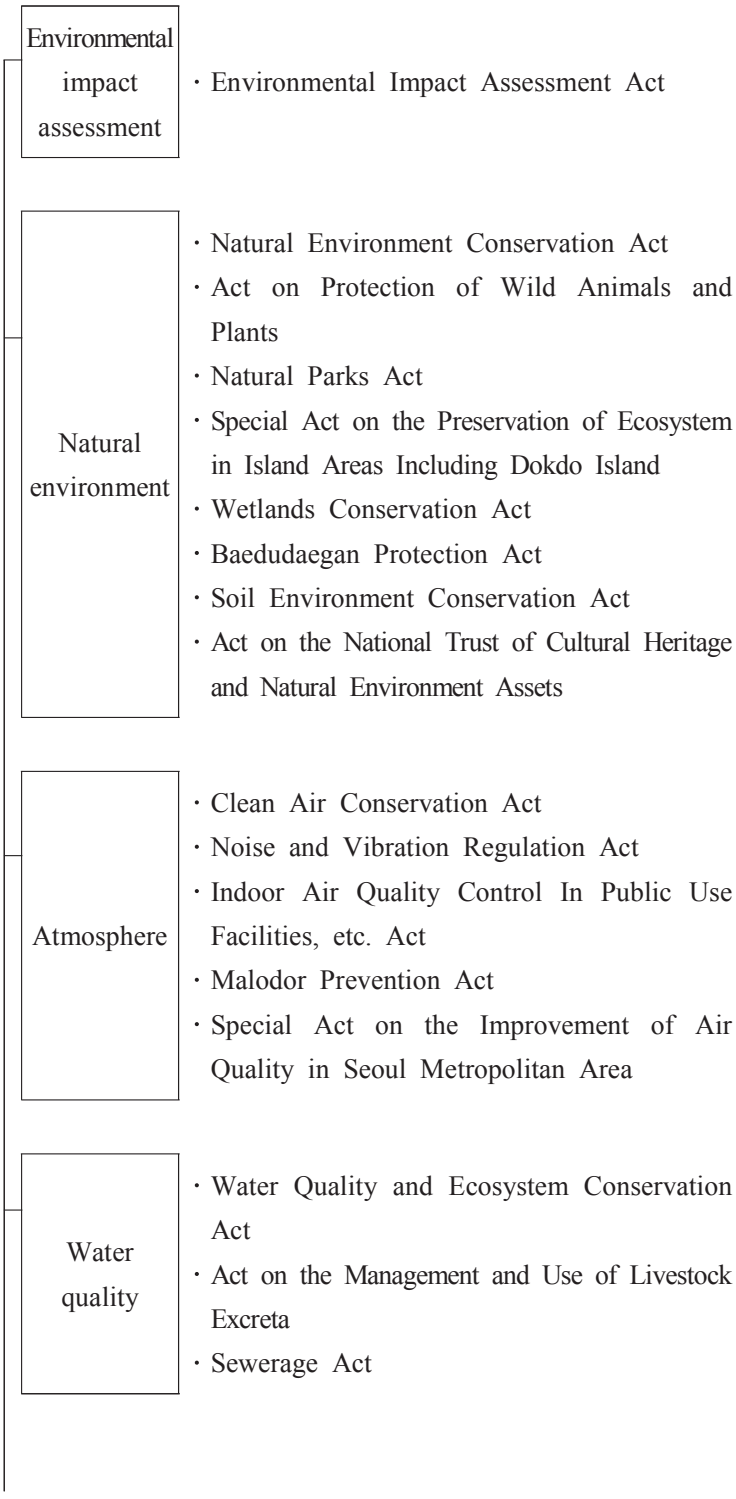
efficiently perform services for preventing environmental contamination by organizing Service Groups for Preventing Environmental Contamination. The Act on Cleaning Filth or Night Soil when the Wastes Control Act that had been enacted in 1986 went into force in July 1987.

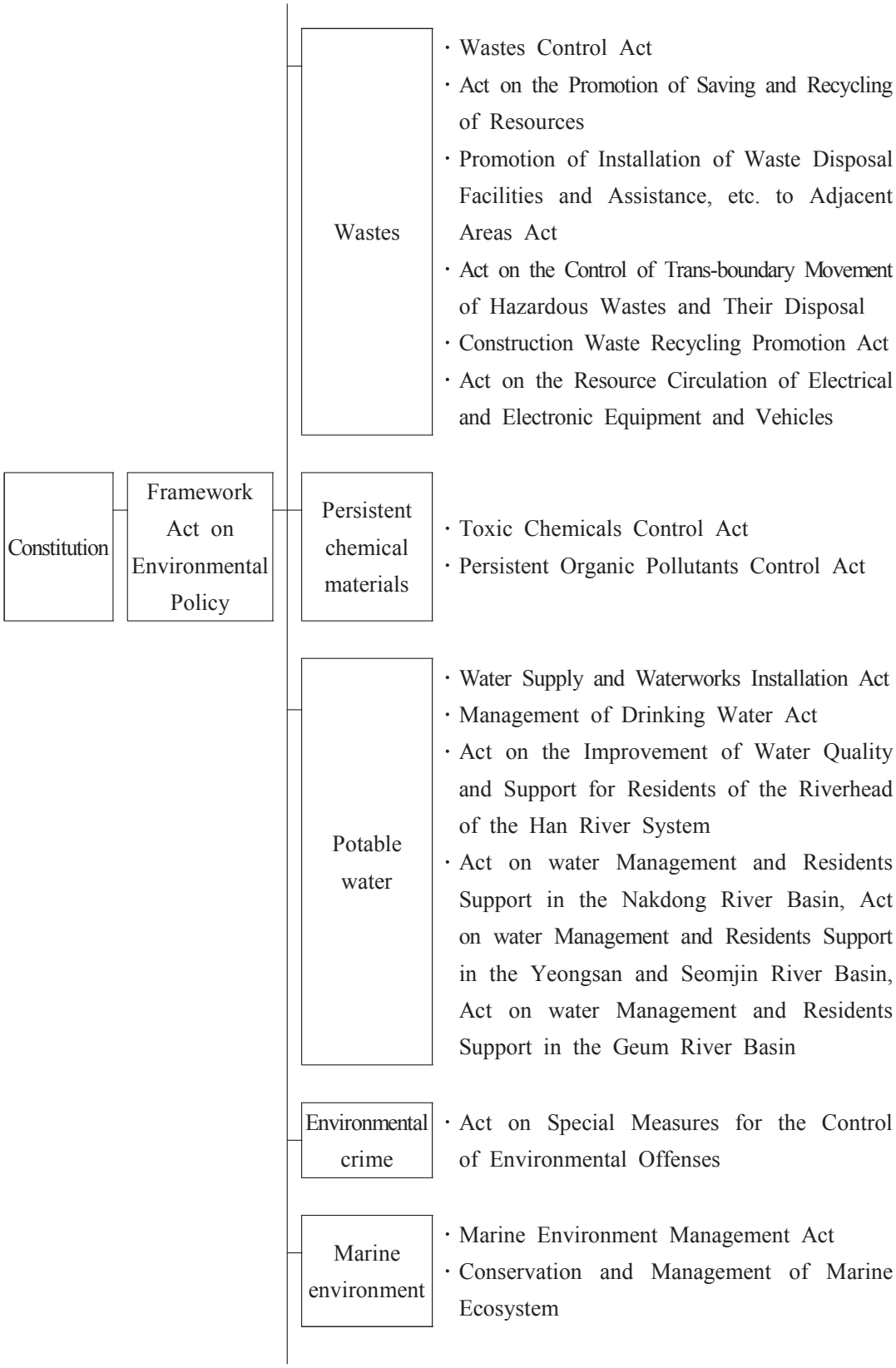
media. As examined earlier, the Korean environmental law has adopted the plural statute system as it consists of multiple discrete statutes designed to regulate multiple media, such as the natural environment, air and water quality, wastes, soil, and persistent chemical materials, potable water and marine environments, or to implement systems for assessing environmental impacts or settling environmental disputes, rather than those of a single statute like the previous Environment Conservation Act.

The main merit of the plural statute system is that it can speedily and effectively address diverse types of environmental pollution depending on pollutants where it is difficult for the citizens to access or understand the law or it may be inefficient in preserving the environment or improving policies if the law consists of too many different statutes.

Over the past 20 to 30 years, the Korean environmental law has become very broad quantitatively. It has repeatedly undergone consolidation and separation to streamline the legal system in a greater framework, responding to requests for integrated control of pollutant sources, and to reflect or accommodate new issues. It now shows a transitional look.

<Figure 1> Current System of Environmental Law




Constitution
Framework Act on Environmental Policy
Wastes
· Wastes Control Act
· Act on the Promotion of Saving and Recycling of Resources
· Promotion of Installation of Waste Disposal Facilities and Assistance, etc. to Adjacent Areas Act
· Act on the Control of Trans-boundary Movement of Hazardous Wastes and Their Disposal
· Construction Waste Recycling Promotion Act
· Act on the Resource Circulation of Electrical and Electronic Equipment and Vehicles
Persistent chemical materials
· Toxic Chemicals Control Act
· Persistent Organic Pollutants Control Act
Potable water
· Water Supply and Waterworks Installation Act
· Management of Drinking Water Act
· Act on the Improvement of Water Quality and Support for Residents of the Riverhead of the Han River System
· Act on water Management and Residents Support in the Nakdong River Basin, Act on water Management and Residents Support in the Yeongsan and Seomjin River Basin, Act on water Management and Residents Support in the Geum River Basin
Environmental crime
· Act on Special Measures for the Control of Environmental Offenses
Marine environment
· Marine Environment Management Act
· Conservation and Management of Marine Ecosystem


Damage dispute settlement
· Environmental Dispute Adjustment Act
Others
· Framework Act on Sustainable Development
· Development of and Support for Environmental Technology Act
· Environmental Health Act
· Environment Improvement Expenses Liability Act
· Act on Encouragement of Purchase of Environment-friendly Products
· Environmental Education Promotion Act
· Act on Special Accounts for Environmental Improvement
· Environmental Control Corporation Act
· Act on Korea Environmental Resource Corporation
· Act on Installation and Operation of Sudokwon Landfill Site Management Corporation

Chapter 3. Development processes and evaluation of Framework Act on Environmental Policy

Section 1. Legislation background and contents of Framework Act on Environmental Policy

1. Legislation background

Playing a fundamental role in environmental areas,[50] the Framework Act on Environmental Policy is perceived to have a position of the constitutional law of the environmental laws or is thought of as the mother supervising all of the discrete environmental statutes.[51] This Act connects the Constitution and discrete environmental statutes to specifically realize the right to the environment and the duties to preservation of the environment provided under the Constitution, functions to coordinate or integrate discrete environmental statutes, and presents the basic philosophy, ideals and direction of the environmental policies of the state. Further, the Framework Act on Environmental Policy is a very significant statute in the development processes of the Korean environmental legislations that progressed from the Pollution Prevention Act to the Environment Conservation Act and then to the Framework Act on Environmental Policy. Therefore, our review of the Korean environmental statutes should examine

50) For details concerning the position and role of this Act as a framework statute, see Lee Jun-seo, *A Systematic Improvement of the Framework Act on Environmental Policy,* Korea Legislation Research Institute, 2009, page 17-22.

51) Kim Hong-kyun, *Environmental Law*, Hongmoonsa, 2012, page 68.

how the statutes have developed and how effective they function.

In the case of Korea, as the single statute on Environmental Preservation regulated a variety of different contamination phenomena, including air and water quality and noise and vibration, it not only caused a rigidity in its operation but also made it difficult to prepare specific timely measures against each of the contamination targets. Thus, some people argued that it was necessary to divide the environmental preservation law into multiple acts and to enact a Framework Act on Environmental Policy to specify environmental rights while establishing basic directions and ideals for environmental policies. Recognizing the need to more actively address rapidly growing environmental problems, the government started a full-scale reorganization of the environmental law system in 1987. After collecting, revising, and supplementing opinions from various circles in nearly three years, it reshuffled the entire legislative system by legislating the Framework Act on Environmental Policy and various discrete statutes while repealing the Environment Conservation Act in August 1990. In other words, the Environment Conservation Act was entirely reorganized into the Framework Act on Environmental Policy, Clean Air Conservation Act, Water Quality Environmental Conservation Act, Noise and Vibration Regulation Act, and Act on Settlement of Disputes Related to Damages Caused by Environmental Pollution. In March 1991, the Act on Treatment of Waste Water, Night Soil and Animal Wastes was enacted and promulgated. In May 1991, the Special Act on Punishment of Environmental Offenses was enacted and promulgated. Further, the Addenda to the Environment Conservation Act provided that the provisions on preservation of the natural environment and on sharing expenses for programs for preventing environmental pollution under the Environment Conservation

Act should remain valid until a separate legislation was made. On 31 December 1991, the Natural Environment Conservation Act on measures for preserving the natural environment and the Environment Improvement Expenses Liability Act on sharing expenses for treating environmental pollution and dues payable by those who cause pollution were enacted and promulgated.[52)]

2. Key contents

The Framework Act on Environmental Policy enacted in 1990 consisted of a total of five chapters, 41 articles and addenda.

Chapter 1 (General Provisions) provides provisions on the purpose (Article 1), fundamental ideals (Article 2), definitions (Article 3), obligation of state and local governments (Article 4), obligation of business operator (Article 5), rights and duties of people (Article 6), principle of liability of persons causing pollution (Article 7), report to the National Assembly (Article 8), and prevention of environmental pollution by radioactive materials (Article 9).

Chapter 2 (Establishment, etc. of Environmental Preservation Plan) consists of five sections – Section 1 (Environmental standards) has provisions on the establishment and maintenance of environmental standards (Article 10 to 11), Section 2 (Fundamental policy) has provisions on the development and implementation of long-term comprehensive plans for environmental preservation (Article 12 to 14), a survey of environmental pollution (Article 15), provision of knowledge and information concerning environmental

52) Jeon Byeong-seong, *Development of Korean environmental law and enactment of Framework Act on Environmental Policy*, Environmental Law Research, Vol. 14, Korea Environmental Law Society, (1992. 09), page 85-88.

preservation (Article 16), international cooperation (Article 17), promotion of environmental science and technologies (Article 18), installation and management of environmental preservation facilities (Article 19), regulation of discharge (Article 20), control harmful chemical (Article 21), development of special comprehensive measures (Article 22), and control of environment by affected zone (Article 23). Section 3 (Preservation of the natural environment) declares efforts of the state and the citizens for preserving the natural environment (Article 24) and basic principles of natural environmental preservation (Article 25). Section 4 (Prior examination of environmental nature, etc.) has provisions on preparation, review and follow-up of an environmental impact assessment report (Article 26 to 28) while Section 5 (Mediation of dispute and relief of damage) has provisions on mediation of dispute (Article 29), relief of damage (Article 30), absolute liability for sufferings by environmental pollution (Article 31).

Chapter 3 (Legislative and financial measures) has provisions on legislative measures, etc. (Article 32), financial support, etc. to local governments (Article 33), financial support to business operators (Article 34), and financial support for research, study and technological development (Article 35). Chapter 4 (Environmental policy committee) provides for an Environmental Preservation Committee (Article 36), Environmental Preservation Advisory Committee (Article 37), and Environmental Preservation Association (Article 38). Chapter 5 (Supplementary Provisions) provides for environmental monitors (Article 39), an Environmental Technological Supervision Group (Article 40) and delegation and entrustment of authority (Article 41).

Section 2. Changes and development of the Framework Act on Environmental Policy

1. 1st amendment: 1999

In December 1999, the Framework Act on Environmental Policy was amended for the first time in order to revise or supplement deficiencies caused by enactment or amendment of relevant statutes while inserting new provisions as the domestic and overseas conditions changed rapidly in connection with environmental policies, including emergence of global environmental problems and implementation of local autonomy. The Framework Act on Environmental Policy amended under Law No. 6097 on 31 December 1999 introduced the advance prevention principle requiring the central and local autonomous governments to make priority efforts to reduce pollutants at their source and for business operators to reduce discharge of environmental pollutants by using raw materials that cause less environmental pollution (Article 7-2). The amendment also repealed the provision that the city or province governments should obtain approval from the Minister of Environment when they set up separate regional environmental standards.

The Act was amended with the intent that the governments should set up and promote five-year mid-term plans and yearly implementation plans as specific action programs that would act as part of the long-term comprehensive plans for environmental preservation. The provisions concerning mid-term comprehensive plans for environmental improvement were repealed under the Environment Improvement Expenses Liability Act

(Article 14-2) to ensure uniformity of environmental plans. The Act was further amended to provide that the city mayors and provincial governors were required to set up and implement regional environmental preservation plans in order to enhance environmental administration efforts by local autonomous governments (Article 26) as well as a ground provision for designating and supporting exemplary local autonomous governments that performed outstanding environmental preservation services in order to promote an environmentally friendly administration by the local autonomous governments (Paragraph 2of Article 33).

2. 2nd amendment: 2002

In December 2002, the Framework Act on Environmental Policy was amended again to ensure harmony between the environment and progress for sustainable development, to switch the keynote of environmental policies to circulating use of resources and advance prevention, and to solidify a foundation for environmental preservation at state and local levels by improving environmental preservation plans at the central and local government levels. The Framework Act on Environmental Policy amended and promulgated under Law No. 6846 on 30 December 2002 had the following key contents:

First, citizens were required to strive to preserve national land and the natural environment as well as reduce environmental pollution and mutilation caused by daily living (Article 6) while business operators were required to make advance preventive efforts to minimize impact on the environment, ranging from the design stage to use and condemnation of products (Article 7-2). On the other hand, the government is required to develop

methods enabling use of policies by inclusively considering the environment and economy (Article 7-3) and to prepare policies necessary for promoting the recycling of resources, including conservation and reuse of resources and energy (Article 7-4).

The long-term comprehensive plans for environmental preservation was renamed into the Comprehensive National Environmental Plan, which was to be a basic plan for environmental preservation by the state which would include natural environmental preservation, preservation of national land, atmospheric environment, water quality, and management of wastes (Article 12 to 14). The municipal governments at city, county, or district levels were obliged to set up environmental [preservation] plans to balance development and preservation while preventing environmental pollution and mutilation at a regional level (Article 14-4).

To minimize environmental pollution or mutilation by development, they were required to consider environmental plans when making development plans or implementing development projects (Article 14-5) and to develop and supply environmentally friendly planning techniques (Article 15-2). It was further specified that the central and local governments make environmentally friendly efforts in areas of transportation, energy, agriculture and fishery operations that significantly affect the environment (Article 21-5).

The government was also required to notify in advance when it intends to set up or change discharge permission standards to that the business operators may prepare themselves for such changes (Article 20-2).

The governments were also required to assess the risk of science and technologies in order to minimize environmental pollution that could damage

the ecosystem or human health (Article 21-3) and to prepare measures for environmental diseases (Article 21-4).

The governments were also required to supplement means for controlling or supervising performances in order to enhance validity of the system for advance review of environmental safety and also to implement environmental impact assessments in developing and implementing plans or projects that may have a significant impact on the environment (Article 25 to 28).

3. 3rd amendment: 2005

The existing Framework Act on Environmental Policy had introduced a system for an advanced review of environmental safety to maintain adequate environmental standards and to preserve the natural environment. But, many problems were raised, including cases where large-scale development projects were discontinued after it was determined that social conflicts caused the environmental issues. The Framework Act on Environmental Policy was amended again in order to improve or supplement certain deficiencies that appeared during operation of the existing systems by requiring collection of opinions from the residents at the stage of advance environmental safety review of administrative plans for ensuring the efficient implementation of development projects and harmony with preservation of the environment.

The Framework Act on Environmental Policy, amended and promulgated as Law No. 7561 on 31 May 2005, provided that regional development projects or administrative plans that require preservation and are subject to environmental impact assessment should be designated as targets for

an advance review of environmental safety (subparagraph 7 of Article 3 and Article 25-2). The amendment improved the system for the advance review of environmental safety by having comments by residents, relevant experts, environment and non-government organizations, and other stake-holders reflected on a report on an advance review of environmental safety prepared for administrative plans (Article 25-5). The amendment also provided that the relevant administrative department head should request the consulted department head for re-consultation by re-preparing a report of an advance review of environmental safety if the former intends to change administrative plans or development projects after having received consultation opinions from the latter on such review (Article 26-2). The amendment also reinforced the follow-up management of an advance review of environmental safety by providing that the consulted department head may request the relevant department head to order an original state recovery or revoke a project license in addition to a project stop order for development projects that are implemented before the advance review of environmental safety is completed (Paragraph 2 of Article 27). The amendment also provided that the Minister of Environment could prepare and supply environmental safety assessment maps that display grades of land based on environmental values in order to ensure efficient preservation and environmentally friendly use of the national land (Paragraph 2 of Article 15-2).

4. 4th amendment: 2007

The Framework Act on Environmental Policy, amended and promulgated as Law No. 8471 on 17 May 2007, was also designed to improve the

system for an advance review of environmental safety. At the time, the relevant administrative department head was supposed to consult with the Minister of Environment or the relevant local environmental agency head to perform the advance review of environmental safety. The relevant administrative department head was prohibited from permitting any development projects before having received the consultative comments. Yet, cases were discovered where development projects were implemented before the consultation procedure was completed. Therefore, in order to ensure effectiveness of the consultation for the advance review of environmental safety, the amendment provided penal provisions for business operators who start construction work for projects subject to an advance review of environmental safety, before the consultation procedure is completed (Paragraph 2 of Article 27, Article 42 and Article 42).

5. 5th amendment: 2010

The amendment (Law No. 10032) on 4 February 2010 was very slight. The Environmental Preservation Advisory Committee was renamed into the Environmental Policy Committee under a plan to streamline government committees. The Environmental Policy Committee was commissioned to perform the key functions of the five committees that were dissolved – Advisory committee on policies for control of livestock feces, Committee for promotion of purchase of environmentally friendly goods, Committee for control of persistent organic chemical materials, Committee for review and development of environmental tests and inspection, and Committee for review of environmental safety and reusability of products.

6. 6th amendment: 2011

The Framework Act on Environmental Policy was wholly amended for the first time on 21 July 2011 (Law No. 10893). As mentioned at the beginning of this section, the system for an advance review of environmental safety previously provided under the Act was transferred to the Environmental Impact Assessment Act under the new name "strategic assessment of the environmental impact." The provisions under the repealed Act on Special Accounts for Environmental Improvement concerning the installation and operation of the Act on Special Accounts for Environmental Improvement was taken over by the Framework Act on Environmental Policy. By doing so, the Act was amended relatively extensively. The newly amended Framework Act on Environmental Policy is scheduled to be enforced on 22 July 2012 and its key contents are as follows:

First, the government is required to collect comments from citizens and relevant experts by holding a public hearing when the government intends to develop or change the national comprehensive environmental plan, the mid-term comprehensive environmental preservation plan, and the municipal or provincial plan for environmental preservation. The government agencies are also required to enhance transparency of the national comprehensive environmental plan and other plans by publishing newly developed or revised environmental plans on their website (Article 14 and Article 17 to 20).

Second, access to or inspections on business establishments are performed as provided under discrete statutes in order to check if the facilities discharging pollutants are legitimately operated and maintained.

However, problems were indicated as business establishments that have multiple discharging facilities of different types are subject to duplicate access to and inspection under individual discrete statutes as provided. Therefore, the Minister of Environment or municipal government heads may consolidate access to or inspection of business establishments that have two or more facilities discharging pollutants causing environmental pollution (Paragraph 2 of Article 30).

Third, the government previously announced violation of environment-related statutes by business operators. As problems were indicated that such announcement had no legal grounds, the Act was amended to enable the government to announce related facts if a business operator is found to have violated environment-related statutes. The Act was also amended to provide that the government should not announce such relevant information that is feared to seriously infringe the legitimate interests of the business operator (Paragraph 3of Article 30).

Fourth, the provision on absolute liability [without fault] for damages caused by environmental pollution was significantly amended. This will be explained later.

7. 7th amendment: 2012

The Framework Act on Environmental Policy, amended and promulgated as Law No. 11268 on 1 February 2012, added to its basic ideals that the central and local governments should consider content that help maintain fairness or equity in the use of goods or services between regions, social layers or groups (Paragraph 2 of Article 2). As the repeal of the Act on the Special Account for Environmental Improvement was feared to

disable the stable maintenance of revenue for the Special Account for Environmental Improvement, the Addenda to the Framework Act on Environmental Policy of 2011 provided a transitional measure in which 15% of the transportation, energy and environment taxes should be transferred from the general fiscal account to the Special Account for Environmental Improvement until 31 December 2012 to help maintain the revenue in a stable manner.

Section 3. Analysis of development processes of the Framework Act on Environmental Policy

1. Expansion of control targets

The Pollution Prevention Act of 1963 provided several devices for preventing hazards to health and hygiene by defining 'pollution' to include "exhaust emission, dust, malodor and gas that pollutes air, waste water from factory, business establishments and residential sewage that pollute rivers by chemical, physical and biological elements, and noise and vibration (Paragraph 1 of Article 2). The Pollution Prevention Act took an allopathic, local and micro approach focusing on passive and ex-post regulation of damages per se, targeting the pollution or health or hygiene aspects of air or water contamination, noise or vibration without understanding the concept of the 'environment.'

Through an amendment in 1971, the Pollution Prevention Act introduced the concept of a 'living environment' for the first time. In other words, the amended Act defined 'pollution' as "hazards that affect public health or damages to the living environment" generated by air and water conta-

mination, noise or vibration (subparagraph 1 of Article 2) and also defined the 'living environment' as "properties, animals, plants and their habitat environment that are closely related to the life of the people" (subparagraph 2 of Article 2).

And, the concept of 'pollution' disappeared from the environmental law when the Environment Conservation Act was enacted. The Environment Conservation Act expanded its recognition scope to the 'natural environment' by moving ahead one step further from the Pollution Prevention Act that only recognized the 'living environment.' In other words, the Environment Conservation Act enacted in 1977 defined the 'environment' as the "natural (state) environment" and the "living environment that is required for protection of properties with close relations with daily life and the growth of animals and plants" (subparagraph 1 of Article 2).

The Framework Act on Environmental Policy of 1990 specified its ultimate purpose of 'Environmental Preservation' with a core concept of protecting the environment from contamination, improving contaminated environments and maintaining and generating pleasant environments while actively defining the concept of 'environmental pollution,' advancing one step further from recognizing an 'environment' that consists of the 'living environment' and 'natural environment'. In other words, as provided by the current Act, it defined 'environment' so as to include natural and living environments (subparagraph 1 of Article 3), the 'natural environment' as a 'natural state including all living things on grounds, under grounds, and on surfaces (including ocean) and non-biological things that surround them (subparagraph 2 of Article 3), and the 'living environment' as the "environment related to the daily life of human beings, including air, water, wastes, noise, vibration and malodor" (subparagraph 3 of Article 3). It

also defined ‘environmental pollution’ as a “state that hurts health or the environment, including air, water, soil, or radioactive contamination, noise, vibration or malodor that is generated by business or other human activities” (subparagraph 4 of Article 3).

The first amendment (1999) specified that an ‘ecosystem is included in the concept of a ‘natural environment’ (subparagraph 2 of Article 3) and added ‘daylight’ as an example of a ‘living environment’ (subparagraph 3 of Article 3). It is noteworthy that it newly added the concept ‘environmental mutilation.’ According to the Act, ‘environmental mutilation’ meant the “reckless catching of wild animals or plants, destruction of their habitat, harassment of their ecosystem, and a state that causes serious damage to the original functions of a natural environment, including damages to a natural landscape” (subparagraph 4-2 of Article 3). The concept of ‘environmental preservation’ was also expanded from protection of the environment from environmental pollution to environmental protection caused by environmental pollution or mutilation (subparagraph 5 of Article 3). According to this, we can understand that the environment is contaminated by elements that adversely affect (hurt) the human body or living environment while the environment is mutilated by elements that adversely affect the natural environment.

The second amendment (2002) specified that a natural landscape as well as an ecosystem is included in the concept of a ‘natural environment’ (subparagraph 2 of Article 3) and added ‘daylight’ as an example of ‘environment anticipation’ (subparagraph 3 of Article 3). And, it added ‘loss of surface soil’ as a cause of ‘environment mutilation (subparagraph 4 of Article 3), which is still maintained.

It can be affirmed that the central concept has switched from ‘pollution’ to ‘environmental pollution’ and ‘environmental mutilation’ while the statute switched from ‘the Pollution Prevention Act’ to ‘the Environment Conservation Act’ and then to ‘the Framework Act on Environmental Policy.’ The Framework Act on Environmental Policy that adopted ‘environmental pollution’ and ‘environmental mutilation’ as its core concepts has widened its targets to overall environmental problems including the natural environment. It has extended its attention to prevention of environmental pollution and mutilation, use, control and preservation of the environment. Such an approach attempting to address environmental issues actively and inclusively in a macro view should be a grand switch in legislation as it is focusing on a level entirely different from the previous pollution statute.[53)]

As the law introduced the concept of ‘environmental mutilation,’ which focused on damages to the natural environment, including ecosystems, by moving one step ahead from ‘pollution,’ which focused on hazards to the

53) Gu Yeon-chang, *Environmental Law Theories*, Bobmunsa (1993) page 51-52; Park Gyun-seong and Ham Tae-seong, *Environmental Law*, Pakyoungsa (2004) page 21; Kim Hong-Kyun, note 3, page 6-7. The concept of ‘pollution’ that was believed to have disappeared emerged again as the Pollution Prevention Act was abolished. ‘Light pollution’ is that. The Act on Prevention of Light Pollution by Artificial Illumination enacted on 1 February this year and to be enforced from 2 February next year defines ‘light pollution (by artificial illumination) is ‘the state an excessive light or light leaking out of the illuminated area due to inappropriate use of artificial illumination that interferes with the healthy, pleasant life of the people or causes damages to the environment’ (subparagraph 1 of Article 2). However, as mentioned earlier, pollution is a concept that mainly focuses on damages to public health and hygiene. The concept of ‘light pollution’ is too limited to embrace damages to an ecosystem though it may embrace damages to human health. Therefore, though the term “light pollution” is commonly used, a term other than ‘pollution’ should have been more desirable in accommodating it as a legal concept. For your reference, “light pollution” is used in the UK, America and other English-speaking countries while “light damages” (光害) is used in Japan.

environment and health and 'environmental pollution,' which focused on damages to human health and living environment, it can be said that the Korean environmental law is developing in a direction of adding preservationism gradually while maintaining "economic utilitarianism" and "human-centered conservationism" as its basic ideals.[54] Though prevention of 'environmental mutilation' can, of course, be understood from the perspective of economic utilitarianism and human-centered conservationism, meaning a long-term securing of economic use for human beings, it can be understood that legislation has added the preservationism to a certain extent based on the recognition of value of maintaining the natural ecosystem itself.[55]

---

54) The English term 'preservation' is often translated into '保存主義' while 'conservationism' is translated into '保全主義.' These translations are not wrong. In Korea, however, the concept of 'conservationism' (保全) is interpreted as a concept that includes improvement, maintenance and generation in addition to simple preservation. (Jo Hong-sik, Song Sang-hyeon, and Noh Sang-hwa, *Study on Streamlining the Korean Environmental Law System I*, Korea Environmental Policy Assessment Research Institute (1997), page 28). The Framework Act on Environment Policies adopts 'environmental preservation' as its basic ideal (Article 2) and defines it is "acts to maintain or develop the state of a pleasant environment while protecting the environment from contamination or mutilation and improving contaminated or mutilated environments (subparagraph 6 of Article 3)." In Korea, preservation is perceived to be a more environment-oriented concept that conservation. Meanwhile, 'preservationism' implies an idea that we should protect nature because of its own values while 'conservationism' connotes that we should properly protect or manage nature so that human beings can use it well. In other words, 'preservationism' is a more environment-oriented idea than 'conservationism.' It would cause confusion if we nonetheless translate the former into 'conservationism' while the latter into 'preservationism.' Therefore, it would be better for understanding the concepts if we translate the former into 'an ecosystem centered doctrine' and the latter into a 'human being centered doctrine.'

55) Park Jong-won, *Changes and Development of Framework Act on Environmental Policy*, Collection of Workshop Data, Korea Legislation Research Institute (2012. 05. 21.), page 85-86.

2. Changes in basic ideals and principles

There have been many changes in connection with basic ideals and principles as well. Though the Pollution Prevention Act and the Environment Conservation Act took prevention of pollutions and preservation of the environment as their basic ideals, they did not have any specific provisions of their basic ideals. Further, they did not have any provisions on such basic principles of the environmental law such as the polluter pays principle.

As the Framework Act on Environmental Policy was enacted, the basic ideals and principles emerged as legal provisions. The Framework Act on Environmental Policy enacted in 1990 declared in its Article 2, “Considering the qualitative enhancement of the environment, creation of a pleasant environment through its preservation, and maintaining harmony and balance between human beings and the environment through such efforts are indispensable elements to the enjoyment of public health and cultural life, preservation of the national land, and the permanent development of the state, it is the basic ideals of this Act that the central and local autonomous governments, business operators, and citizens shall enable the future generations to inherit a preserved environment while enabling the current generation to widely enjoy its benefits by endeavoring to maintain and create an environment in a good condition and considering environmental preservation with a priority whenever performing any acts using the environment” (Article 2). The Act is understood to have accommodated the principle of Environmentally Sound and Sustainable Development (ESSD) as it emphasizes “equity inside generations" by enabling the current

people to 'widely' enjoy the benefits and "equity between generations" by enabling the 'future generations' to inherit the benefits [of a clean environment]. It also declared the Polluter-Pays Principle (PPP) by providing in Article 7, the Polluter's Liability for Paying Expenses, "As a rule, those who have caused environmental pollution by their act or business activities shall bear the expenses required to prevent contamination, recover polluted environment or remedy damages."

The first amendment (1999) added the expression "shall make joint efforts to prevent environmental risks to the globe" to the basic ideals (Article 2). It is understood that it accommodated Preventive or Precautionary Principles in connection with prevention of environmental risks and the Cooperation Principle in connection with joint efforts. And, the title of Article 7 was revised into 'Polluter Pays Principle' and it provided, "As a rule, those who have caused environmental pollution or mutilation by their act or business activities shall bear the expenses required to prevent contamination or mutilation, recover the polluted or mutilated environment, or remedy damages caused by such environmental pollution and mutilation." Rather than maintaining the previous principle of expense attrition, the Act expanded to the principle of substantial liability attrition, including liabilities for preventing or recovering environmental pollution.

Further, by newly inserting Article 7-2 (Prior Prevention of environmental pollution, etc.), the Act more actively accommodated the preemptive prevention principle by having the central and municipal governments make priority efforts for controlling contamination by preemptive prevention and made business operators take actions to prevent environmental pollution. Meanwhile, many Korean scholars understand Article 8 of the

Framework Act on Environmental Policy reflects the principle of preemptive or precautionary care and tend to use the two principles together.[56] However, these two contents do not match each other perfectly.[57]

The precautionary principle is understood to be a more stringent version of the preemptive prevention principle. Generally, the preemptive prevention principle refers to liabilities to prevent environmental damages that consist of elements such as scientifically specified cause-and-effect relationship, predictability, and due diligence duties. Its typical example is Stockholm Declaration Principle 21 that reads, "States have … the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other … areas beyond the limits of national jurisdiction."[58] Specifically speaking, it is understood that the preemptive prevention principle requires avoiding predictable and scientifically proven risks whereas the precautionary principle requires avoiding risks even if there exist no sufficient scientific base supporting their existence. Therefore, the threshold of risks subject to regulation is more loosened under the precautionary principle than under the preemptive prevention principle.[59]

---

56) Jo Hyeon-gwon, *Environmental Law*, Legal Culture Institute (2006), page 148-149; Hong Jun-hyeong, Notes 15, page 101-102, Jo Hong-sik, *Risk Law: Environmental Law as Risk Management System*, Seoul National University Law Journal, Vol. 43 Issue No. 4, SNU Law Research Institute (2002), page 72.

57) According to Rio Declaration Principle 15 that is assessed to be the generally-accepted definition of a precautionary principle in international environmental law, the precautionary principle is defined to refer that "lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation in cases of threats of serious or irreversible damages." United Nations Conference on Environment and Development, 31 I.L.M. 874 (1992).

58) The origin starting point of the precautionary principle is generally found in *Trail Smelter Case.*

59) Mitigation of the risk criteria mentioned here refers to a certain act is that much easily assessed as an act to create 'risk' that should be avoided by lowering the degree of scientific proof or predictability that is required.

Gündling also explains by saying, “actions are required even if the risk is not yet clear, or remains under a possible or even lower stage” by understanding the precautionary action is “a more stringent form of the preventive environmental policy” based on the said position.[60] In addition, many other scholars indicate the continuity between the preemptive and the precautionary principles from the viewpoint that the burden to prove cause-to-effect relations between activities and damages is mitigated or the required due diligence duty gets more stringent if the risk is significant.[61] From such viewpoints, in connection with differences between the preemptive and the precautionary principles, the latter is described to be an extension of the preemptive prevention principle by a situation of scientific uncertainty. It is further explained that the preemptive prevention principle is applied to preemptive preventive actions taken under a situation of scientific certainty whereas the precautionary principle is applied to preemptive preventive actions taken under situation of scientific uncertainty.[62] Mean-

60) Lothar Gündling, *The Status in International Law of the Principle of Precautionary* Action, in David Freestone & Ton Ijlstra (eds.), The North Sea: Perspectives on Regional Environmental Co-operation, Graham & Trotman/Martinus Nijhoff (1990), p. 26.

61) Günther Handl, *Environmental Security and Global Change: The Challenge to International Law*, in Winfried Lang, Hanspeter Neuhold & Karl Zemanek (eds.), Environmental Protection and International Law, Graham & Trotman/Martinus Nijhoff (1991), p. 77; P. W. Birnie & A. E. Boyle, International Law and the Environment, Oxford University Press (2002), p. 117; David Freestone & Ellen Hey, Origins and Development of the Precautionary Principle, in David Freestone & Ellen Hey (eds.), The Precautionary Principle and International Law, Kluwer Law International (1996), p. 13; André Nollkaemper, The Precautionary Principle in International Environmental Law: What's New Under the Sun?, 22(3) Marine Pollution Bulletin 107 (1991), pp. 107-110; Ved P. Nanda & George (Rock) Pring, International Environmental Law for the 21st Century, Transnational Publishers (2003), p. 59.

62) James Cameron & Juli Abouchar, *The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protection of the Global Environment*, 14 B.C. Int'l & Comp. L. Rev. 1 (1991), p. 51.

while, Freestone and Hey explain that the precautionary principle of the weakest type is close to conventional duties to prevent based on predictability whereas the precautionary principle of the strongest type requires that safety should be proven in advance.[63)]

When we consider the differences between precautionary care and the preemptive prevention principles, it is clear that Article 7-2 of the Framework Act on Environmental Policy reflects the preemptive prevention principle but it is unclear if it also reflects the precautionary principle that requires regulation of environmental risks under circumstances with scientific uncertainty. Of course, depending on interpretation theories, it could be possible that the said article has accommodated the precautionary principle, but it is unclear if the provision mode has really accommodated the precautionary principle.

The second amendment (2002) newly introduced a provision concerning the 'risk assessment of science and technologies' which reads, "When the government deems its necessary to prevent harmful impacts caused by the development of science and technologies on ecosystems or human health, the government shall prepare appropriate measures, including analysis of such impact or assessment of risk" (Article 21-3). In other words, the government is required to prepare appropriate measures to prevent harmful impacts on ecosystems or human health as required, including assessment of environmental risks caused by the development of new science and technologies. Though the said article is unclear, it could be understood that it reflects the precautionary principle of the weaker type as it considers a response to scientific uncertainty.

63) Freestone & Hey, *supra* note 27, pp. 12-13.

The seventh amendment (2012) further solidifies the concept of an 'equity inside generation' as an element of the sustainable development principle by adding to the basic ideal article (Paragraph 2 of Article 2) a provision reading, "The central and local governments shall consider that equity may be maintained in use of environment-related goods and services between regions, layers and groups."

3. Presentation of environmental standards

The Pollution Prevention Act of 1963 set up "pollution safety standards" and provided ordering or controlling means, including issuing an order for actions to prevent pollution if the standards were exceeded in pollution prevention zones. The Pollution Prevention Act of 1971 abolished the concept of pollution prevention zones, switching from region-centered regulation to business establishment-centered regulation but still focused on ex-post regulation of pollution itself. The concept of "environmental standards" was not known at all.

The concept of "environmental standards" was introduced into the Korean environmental law for the first time in 1977 when the Environment Conservation Act was enacted. However, the environment standards at that time focused on "protection of human health from environment contamination." As the city mayors or provincial governors were allowed to set up separate regional environmental standards considering the unique characteristics of their regional environment (Article 4), there was room for them to set up environmental standards looser or reduced versions of the national environment standards. Meanwhile, the environmental standards set up by the government served as criteria for applying special discharge permission

standards to new discharge facilities in special measure zones (Paragraph 3 of Article 14) and for the total volume regulation of air and water contamination (Paragraph 1 of Article 26, Paragraph 1 of Article 36).

Then, the Environment Conservation Act of 1981 clearly specified the duty of the state to set up and maintain environmental standards by requiring central and local governments to consider (i) prevention or removal of causes for deterioration of environmental conditions, (ii) recovery of polluted areas, (iii) preemptive prevention of environmental risks caused by use of new science or technologies, and (iv) adequate distribution of resources for prevention of contamination (Article 4-2) when they develop or implement environment-related legislations or administrative plans so that environmental standards may be properly maintained.

The Framework Act on Environmental Policy of 1990 inherited provisions of the Environment Conservation Act concerning setup and maintenance of environmental standards but extended the focal point to "creation of pleasant environment" as well as "protection of public health." The Framework Act on Environmental Policy of 1999 added a provision that restricted local governments to set up regional environmental standards that expanded or augmented national environmental standards (Paragraph 3 of Article 10).

In summary, it could be said that environmental standards were set up considering the environment as well as human health only when the Framework Act on Environmental Policy was enacted though 'environmental standards' as it had been set up in the era of the Environment Conservation Act as objectives to attain through efforts for improving environment in the state or in given regions. Further, in the era of the Environment Conservation Act, the environmental standards functioned as

criteria for applying standards to special discharge permission or total volume regulation. When the Framework Act on Environmental Policy was enacted and the environment law switched into a plural statute system, the functions of environmental standards were expanded as criteria for setting up environmental preservation objectives based on environmental impact assessments (Article 5 of the Environmental Impact Assessment Act), elements to be considered for determining items for environmental impact assessments (Paragraph 4 of Article 11, Paragraph 5 of Article 24 of the Environmental Impact Assessment Act), grounds for air pollution warning (Paragraph 1 of Article 8 of the Clean Air Conservation Act), grounds for designating atmospheric environment regulation zones (Article 18 of the Clean Air Conservation Act), and grounds for limiting installation of discharge facilities (Paragraph 6 of Article 23 of the Clean Air Conservation Act, Paragraph 5 of Article 33 of the Water Quality and Ecosystem Conservation Act). In the abovementioned development processes, the environmental standards have played a solid role or base determining the level, strength or format of regulation while specifying discharge permission standards by discharge facility through individual, discrete environment statutes.

4. Introduction of an environmental impact assessment and advance review of environmental safety

(1) Environmental impact assessment under the Environment Conservation Act and Framework Act on Environmental Policy

The environment impact assessment system is designed to realize preemptive prevention or precautionary principles, and basic principles of the

environmental law as it predicts and analyzes environmentally adverse impacts caused by administrative plans or development projects in advance and selects or pursues ways to avoid such impacts. It plays a crucial role or means to preemptively prevent, control or regulate environmental pollution as it ultimately helps develop measures for preserving the environment and inducing environmentally friendly development by examining environmental safety as well as the technical feasibility of development projects. Further, it performs the function of an advance regulation through checkup and ex-post control of consultation details. It can be said to provide a great feature of the Korean system for assessing environmental impacts that is hard to find in other countries.

The Korean system for assessing environmental impacts originates from the US National Environmental Policy Act (NEPA)[64] of 1969. As it was widely recognized that the US environmental impact assessment system plays important functions of preemptively preventing environmental pollution, over 100 countries have introduced the system, including Canada (1973), Australia and Germany (1974).[65]

Korea introduced the environmental impact assessment system for the first time when the Environment Conservation Act was enacted in 1997. However, the Environment Conservation Act at that time had only one article titled "advance consultation" under which the administrative department head who intends to develop plans that would affect environmental preservation, including urban development, industrial site or energy development,

64) NEPA §101. 42 U. S. C. §4331.

65) Ministry of Environment, *2002 Environmental White Paper*, page 95. It is said that over 70% of the countries around the world have introduced and implemented a system for assessment of environmental impacts. Kevin R. Gray, *International Environmental Impact Assessment*, 11 Colo. J. Int'l Envtl. L. & Pol'y 83 (2000), p. 89.

was required to consult with the Minister of Public Health and Social Affairs on the plan in advance (Article 5).

The concept of 'environmental impact assessment' was specified in the Environment Conservation Act amended in 1979. Under an article titled, "Environmental impact assessment or consultation,", the Act required the administrative department head who intends to develop plans that would affect environmental preservation, including urban development, industrial site or energy development, to assess the impact such plans would have on environment and to consult with the Minister of Environmental Protection Agency on the plan in advance (Article 5). The Environment Conservation Act amended in 1981 provided that the Minister of the Environmental Protection Agency should take actions for research, technology development, and development of personnel required for the environmental impact assessment while expanding those who were responsible for the environmental impact assessment from government agencies to public organizations and government-invested institutes (Article 5). It also newly inserted a provision concerning the entrusted performance of the environmental impact assessment (Article 5-2).

The Environment Conservation Act amended in 1986 imposed duties on operators of businesses that affect environmental preservation to prepare a report on the environmental impact assessment and provided that the Minister of the Environmental Protection Agency may present his opinions on the report after reviewing it and may request the business operator to take necessary actions, including adjustment or supplement of the business plan, constituting a basic framework similar to the current environmental impact assessment system (Article 5, 5-2 and 5-3).

The Framework Act on Environmental Policy enacted on 1990 had a separate section on “environmental impact assessment” and provided provisions on preparation of the environmental impact assessment report (Article 26), its review (Article 27), and the ex-post management of environmental impact assessment (Article 28). What is greatly different from the era of the Environment Conservation Act includes the provision that residents’ opinions should always be collected in preparing a report on environmental impact assessment and a provision was newly inserted on ex-post management. However, when the Environmental Impact Assessment Act was enacted in 1993, all the provisions (Article 26 to 28) concerning the environmental impact assessment under the Framework Act on Environmental Policy were deleted. The Framework Act on Environmental Policy amended in 2002 maintained only legal grounds for the environmental impact assessment (Article 28).

(2) Advance review of environmental safety under discrete statutes and the Framework Act on Environmental Policy

As the previous environmental impact assessment was usually performed at the stage of implementation plan development after the basic plan was finalized, it was difficult to resolve problems that arose with locale or service routes. The existing system for advance review of environmental safety was designed to overcome the limits of the environmental impact assessment system. This advance review system was introduced to have the adequacy of development plans examined at the stage when the basic plan was set up, including selection of project location and development plan details, and to prevent reckless development of environmentally sensitive areas, such as semi-agricultural areas.

In the earlier days, advance consultation with the Minister of Environment was required under individual discrete statutes on development plans that may affect the environment, and inter-ministry consultation was performed accordingly on any proposed changes to national land use plans under the Act on Control of National Land Use, on implementation plans for power source development under the Special Act on Power Source Development, and on use of sea zones under the Act on Prevention of Marine Contamination.

Later, active implementation of the systematized advance review of environmental safety was ardently required for government administration plans for development or individual development projects since investment in such social overhead capital facilities such as roads and harbors which increased along with economic growth, demand for various amusement facilities increased steadily, including resorts and sports facilities, and municipal development projects accelerated as a local autonomy system was actively implemented.

In January 1993, the Premier enacted a directive called Regulations on Environmental Safety: Review of Administrative Plans and Development Projects for enforcement from April 1993 to maintain the environmental standards, based on Article 11 of the Framework Act on Environmental Policy, which required mandatory consideration of prevention of environmental deterioration and removal of causes when the government sets up administrative plans or implements development projects. The provision was amended in June 1994 to simply the consultation procedures. The advance environmental safety review was implemented on administrative plans lacking in legal grounds for consultation under discrete statutes or

small or medium size public development projects that are implemented in environmentally sensitive areas.[66)]

However, no means were available to restrict private-sector development projects which were a major cause of reckless development even if their location was inadequate since the targets for the advance review of environmental safety under the Premier's directive were limited to government or public projects. The system was limited in its function as advance preventive means as the projects subject to environmental impact assessment were excluded. The system had another problem in that no in-depth advance review of environmental safety could be performed for key plans or development projects that may seriously affect the environment as administrative plans and development projects were also excluded when they were consulted on with the Ministry of Environment in advance under other statutes.

Advance consultation under the relevant provisions under the statute was performed with other environmental administrative agencies on administrative plans that may affect the environment like the national land use plan or basic plan for tourism development but there were no specific provisions on documents required for such advance review of environmental safety. Further, since there were no ground provisions, advance review of environmental safety could not be performed in many administrative plans.

In order to remove problems and limits included in the system for advance review of environmental safety under the Premier's directive and the current system for environmental impact assessment, the Framework

66) Song Yeong-il et al., *Ways to improve system for advance review of environmental safety*, Korea Environmental Policy Assessment Research Institute. 12), page 5-6.

Act on Environmental Policy amended in 1999 introduced the advance review of environmental safety as a statutory system by inserting the system for environmental impact assessment in Article 11 that had already provided for "maintenance of environmental standards." According to the new provisions, the relevant administrative agency head is required to consult with the Minister of Environment or the municipal government agency head prior to finalizing or approving administrative plans or development projects on prevention of environmental deterioration, removal of the causes, recovery of contaminated or polluted areas, prevention of environmental risks from use of new scientific technologies, and on adequate distribution of resources for preventing environmental pollution when they intend to set up or finalize administrative plans or approve development projects that may adversely affect the environment (Paragraph 2 of Article 11). Specific matters concerning documents to be submitted for advance review or consultation of environmental safety, types or scales of administrative plans or development projects, time or method of advance consultation were delegated to the Presidential Decree (Paragraph 2 and 3 of Article 11). In addition, the Act provided that the head of the relevant administrative agency who is notified of the consultative comments should take actions necessary to reflect them unless there are extraordinary causes and the business operators should perform them faithfully. In so doing, the system for advance review of environmental safety could play its role of providing means for decision making for preemptive prevention.

The term "advance review or consultation of environmental safety" was used under the Framework Act on Environmental Policy amended in 2002 for the first time. Under the 2002 amendment, the previous provisions on advance consultation that had been stipulated along with the earlier

environmental standards were expanded and reorganized into Chapter 2 (Development of an environmental preservation plan) Section 4 (Advance review on consultation of environmental safety). The relevant administrative agency head who is notified of the consultative comments is required to take necessary actions and to notify the outcome or plans (Article 26). The management or supervision of the performance of the advance consultation-related responsibilities was strengthened by prohibiting approval of any development projects before the consultation procedure is completed (Article 27).

Since various problems were raised despite such provisions, including cases where large-scale development projects were stopped by social conflicts caused by environmental problems after the project was finalized, the 2005 amendment specified that administrative plans for projects subject to environmental impact assessments or development projects inside areas that need be preserved are subject to advance review of environmental safety (subparagraph 7 of Article 3, Article 25-2).[67] The amendment improved the system for advance review of environmental safety by having

67) Many of the administrative plans subject to advance consultation that had been performed based on the amended Act were accommodated by the Enforcement Decree amended on 30 May 2006 among those subject to advance review of environmental safety under the Framework Act on Environmental Policy. Yet, there still exist administrative plans that need advance consultation with the head of relevant administrative ministries or departments pursuant to relevant statutes. The representative examples are the Comprehensive National Land Plan under the Framework Act on the National Land (Paragraph 3 of Article 9), the Metropolitan Urban Plans and Basic Urban Plans under the National Land Planning and Utilization Act (Paragraph 2 of Article 16, Paragraph 2 of Article 22), the Urban Plans Concerning Designation or Release of Development Restricted Zones, and Plans for Control of Development Restricted Zones (Paragraph 6 of Article 10) under the Act on Special Measures for Designation and Management of Development Restriction Zones (Paragraph 2 of Article 7). Kim Hong-Kyun, *Environmental Law: Problems and Cases*, Hongmoonsa (2007), page 54.

comments by residents, relevant experts, environmental and non-government organizations, and other stakeholders reflected on the report on the advance review of environmental safety prepared for administrative plans (Article 25-5). The amendment also provided that the relevant administrative department head should request the consulted department head for re-consultation by re-preparing a report of advance review of environmental safety if the former intends to changes administrative plans or development projects after having received consultation opinions from the latter on the advance review of environmental safety (Article 26-2). The amendment also reinforced the follow-up management of advance review of environmental safety by providing that the consulted department head may request the relevant department head to order an original state recovery or revoke a project license in addition to project a stop order for development projects that are implemented before the advance review of environmental safety is completed (Paragraph 2 of Article 27).

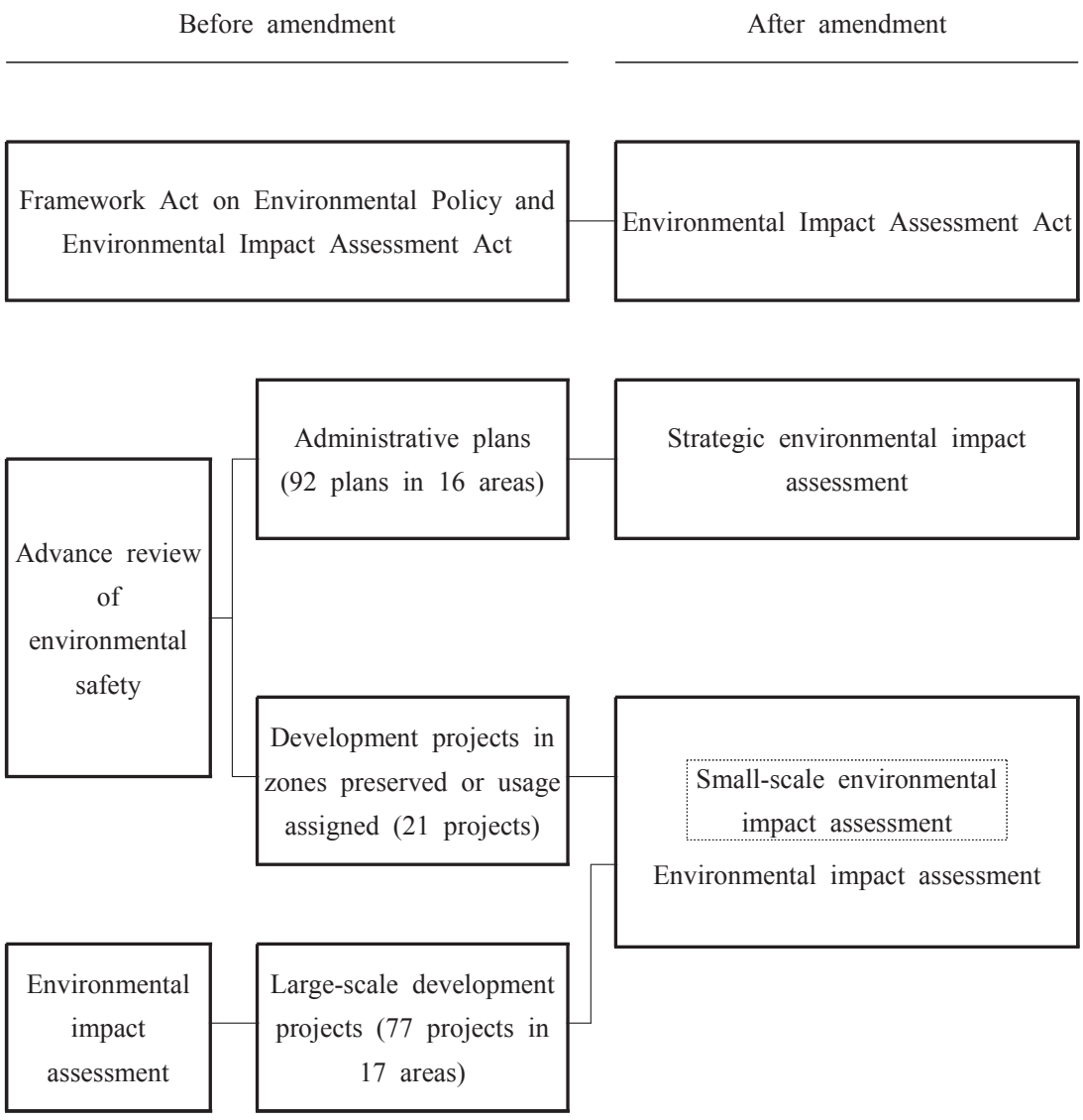
Despite such provisions, cases were found where development projects were implemented before the consultation procedure was completed. Therefore, in order to ensure effectiveness of the advance review or consultation for environmental safety, penal provisions were provided for business operators who started construction work for projects subject to advance review of environmental safety, before the consultation procedure is completed (Paragraph 2 of Article 27, Article 42 and 43).

(3) Integration of advance review of environmental safety and environment impact assessment

In 2011, a highly significant change finally took place. In the past, the environmental safety of administrative plans or small-scale development

projects that may affect the environment were reviewed in advance under the Framework Act on Environmental Policy while an environmental impact assessment was performed for large-scale development projects under the Act on Environmental Impact Assessment. Various problems emerged, including cases where the consultation period is prolonged as assessment procedures were complicated and some procedures overlapped as assessment systems for similar purposes that were provided under different statutes. Further, as advance review of environmental safety was provided under the Framework Act, it was difficult to provide specific enforcement methods or standards or penal provisions. The Act on Environment Impact Assessment was amended to accommodate the system for advance review of environmental safety for the purpose of improving the assessment procedure and making it more reasonable by integrating and providing the dual environmental impact assessment system under one statute as well as to enhance the structure and efficiency of the system. As shown in <Figure 2>, the previous advance review of environmental safety for administrative plans was reshuffled into a “strategic environmental impact assessment,” the previous advance review of environmental safety for small development projects in environmentally sensitive areas was renamed into “small scale environmental impact assessment,” and the previous environmental impact assessment for large-scale development projects was reshuffled into “environmental impact assessment.” As shown in <Table 3>, the amendment provided for differentiation of opinion collection procedures depending on the nature of administrative plans, streamlining of related committees, system for the entrusted advance review of environmental safety, and introduction of certified environmental impact assessors. <Figure 3> shows a diagram of environmental impact assessment procedures under the amended Act.

<Figure 2> Comparison of environmental impact assessment before and after 2011 amendment



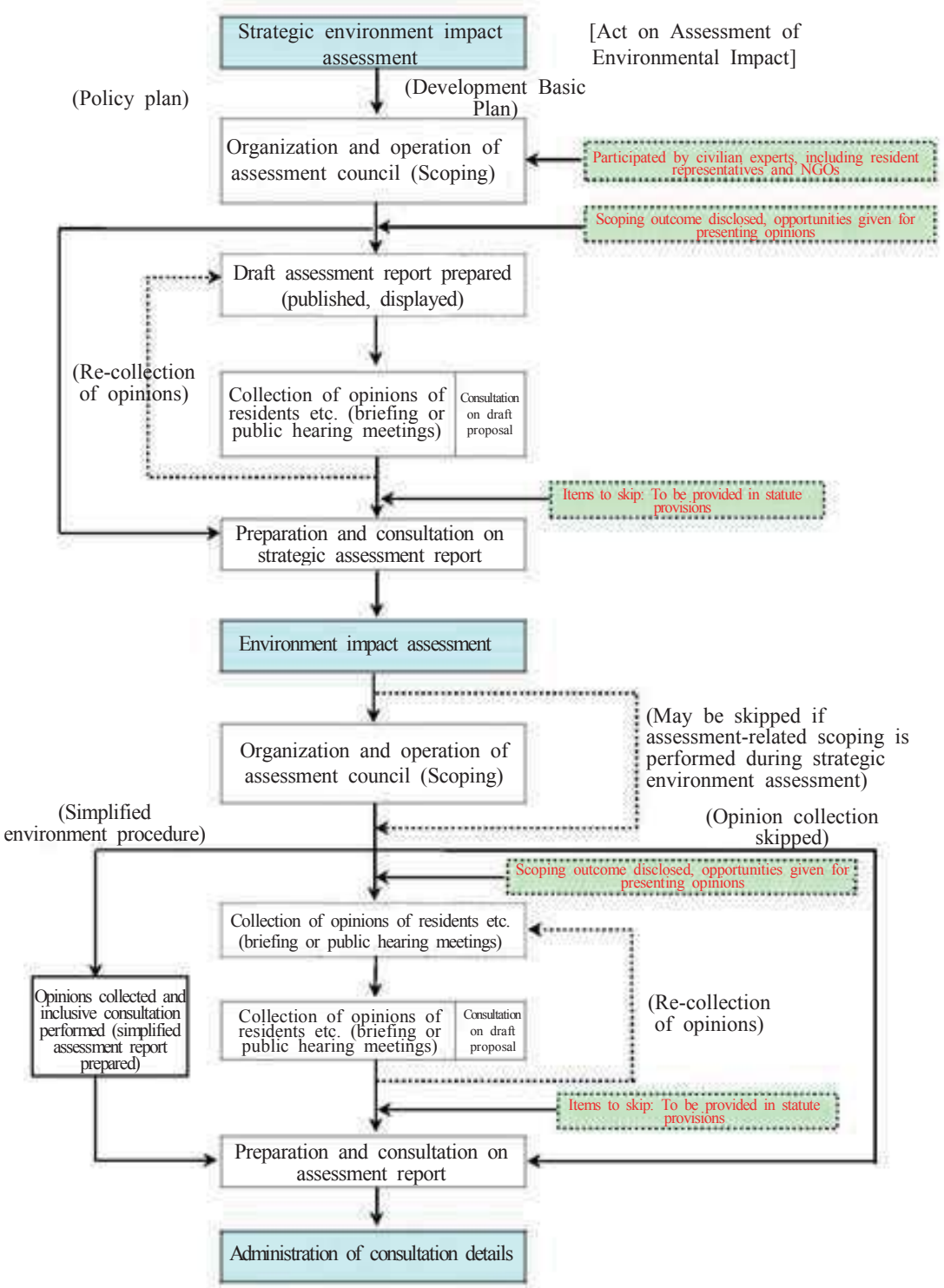
<Table 3> Comparison of environmental impact assessment before and after 2011 amendment

Classification	Before amendment	After amendment
Name of statutes	○ Framework Act on Environmental Policy ○ Act on Environmental Impact Assessment	○ Act on Environmental Impact Assessment
Classification of assessment	○ Advance review of environmental safety - Administrative plans (92 types in 16 areas) - Development projects (21 preserved areas) ○ Environmental impact assessment (77 in 17 areas)	○ Strategic environmental impact assessment ○ Small-scale environmental impact assessment ○ Environmental impact assessment
Classification of administrative plans	○ Identical procedures and mandatory collection of opinions from residents irrespective of high or lower agency administrative plans	○ Classification by type of administrative plans - Policy plans: Plans for a wide area, with basic directions or guidelines, including basic plans for tourism development - Basic development plan: Designated plans for specific development zones, including plans for promoting redevelopment

Classification	Before amendment	After amendment
		○ Collection of opinions - Collection of resident opinions for policy plans replaced by a collection of expert opinions - Procedures and methods for the collection of resident opinions for basic development plans enhanced to the level of environmental impact assessment ※ Public hearings should be held if requested by residents; resident opinions should be collected again if major changes are made before consultation
Assessment related committees	○ Environmental safety review council, committee for review of written plans for environmental impact assessment, and committee for review of objections raised	○ Integrated into environmental impact assessment council

Classification	Before amendment	After amendment
Entrusted preparation of report of advance review of environmental safety	○ None (Anyone can prepare a report of an advance review on environmental safety)	○ Mandatory preparation of strategic environmental impact assessment report by certified assessment service providers ※ Technical personnel required for registration, differentiated depending on scope of services provided
Introduction of certified assessors	○ None (Qualified technical personnel for air, water and other media)	○ Introduction of certified environmental impact assessors and supervision of preparation of assessment reports
Penalties	○ No penal provisions for preparation of a sub-standard or false report of the environmental impact assessment	○ Penalties provided for preparation of sub-standard or false report of strategic environmental impact assessment and for non-performance of consultation details

<Figure 3> Procedure for environmental impact assessment under the amended Act



5. Strict or absolute liability[without fault]

Paragraph 1 of Article 60 of the Environment Conservation Act of 1977 provides, “The business operator shall compensate if damages are caused to human life or body by pollutants generated at his business establishment” while Paragraph 3 of the same article provides, “The Civil Act shall apply to compensation of damages under Paragraph 1, except for those provided under this Act. However, if any other provisions exist in statutes other than the Civil Act, such provisions shall prevail.” In so doing, the Environment Conservation Act clearly provided absolute liability [without fault] for environmental pollution as a specific provision to Article 750 of the Civil Act. This is a statutory adoption of the legal doctrine of absolute or strict liability. Remedies for environmental damages become that much more substantial as the victim can get compensation for damages without proving the willful intent or negligence of the perpetrator.

The Framework Act on Environmental Policy of 1990 removed the qualification of “life or body” under the Environment Conservation Act and the provision linking it with the Civil Act. Paragraph 1 of Article 31 of the Framework Act on Environmental Policy admitted the absolute liability of 'business operators’ for damages caused by environmental pollution by providing that the business operator “shall compensate damages if any are caused by environmental pollution arising at his business establishment.” Thus, the damages subject to the absolute liability were extended to include physical damages as well as human life or bodily damages caused by activities at business establishments. Meanwhile,[68] there

68) For an opinion denying specific effects of the absolute liability provisions under the

has been a controversy as to whether this provision has specific effects, but the majority theory and precedent have recognized specific effects.[69)]

Then, the 6th amendment (2011) admitted the absolute liability of 'causers' for damages by environmental pollution while replacing the 'causer' concept after deleting the requirements of 'business establishments etc.' and 'business operators' from Article 44. In other words, "the causer of the environmental pollution or mutilation shall compensate for damages if any are caused by environmental pollution or mutilation."

The Environment Conservation Act was finally replaced by the Framework Act on Environmental Policy while the subject and scope of the absolute

---

previous Framework Act on Environmental Policy (Article 31), see Lee Eun-yeong, *Specifics of Obligation Law*, Pakyoungsa (1993), page 714. Some other scholars also deny specific effects of the provision concerning absolute liability of business operators, as it is hard to interpret that provision as an effect-creating provision that endows citizens a right to claim compensation for damages in view of the legislation intent or provisions of the Framework Act on Environmental Policy. It would be appropriate to view it as an administrative provision that presents a public law indicator of regulations on environmental standards and environmental policies. Son Yun-ha, *Environmental Infringement and Civil Lawsuit*, Cheonglim Publishing Co. (2005), page 66 and 318.

69) For opinions admitting specific effects of the absolute liability provision (Article 31) under the Framework Act on Environmental Policy, see Lee Sang-gyu, *Environmental Law Theories*, Bobmunsa (1998), page 242; Oh Seok-rak, *Problems of Environmental Lawsuits*, Samyoungsa (1996), page 77; Lee Gyeong-chun, Noise and Environmental Lawsuit, Various Issues of Environmental Law (bottom), Trial Materials Collection No. 95, Court Library (2002), page 186; Seo Hui-won, *Environmental Lawsuit*, BookPD.com (2004), page 214; Jeon Gyeong-un, *Legal Theories on Remedy of Damages by Environmental Right Infringement*, Environmental Law Research Vol. No. 25 Issue No. 2, Korea Environmental Law Research Society (2003), page 384-385; Jo Eun-rae, *A Study on Proof Issues in Environmental Lawsuits*, Environmental Law Research Vol. No. 28 Issue No. 3, Korea Environmental Law Research Society (2006), page 331. For precedents that admitted specific effects of the absolute liability provision under the previous Environment Conservation Act, see Daegu Appellate Court 1990. 01. 12. sentenced Decision 88Na3049. For precedents that admitted specific effects of the absolute liability provision under the Framework Act on Environmental Policy, see Supreme Court 2001. 02. 09. sentenced Decision 99Da55434; Incheon District Court 2004. 10. 22. sentenced decision 2002GaDan23361.

liability have expanded through several amendments. However, another controversy is likely to be experienced as to the specific effects of Article 44 of the amended Act. Admitting the absolute liability for all environmental damages is a grand switch from the existing viewpoint of the scholars or practitioners who had understood that environmental damage lawsuits were for fault liability based on Article 750 of the Civil Act. We should be careful with the interpretation of the provisions. Some would deny that the specific effects of Article 44 of the amended Act and the above are merely guidelines or policy provisions by citing the lack of specificity of the requirements and effects and that the Framework Act on Environmental Policy does not have any character or nature of a special statute of the Civil Act. We cannot exclude the possibility as some people did not admit the specific effects of the previous provisions concerning absolute liability of 'business operators' whose requirements were more limited and liability subject was more relatively limited than the absolute liability of causers.[70)]

As the liability subject is defined as 'causers' of environmental pollution or mutilation, 'causers' should be understood to mean those who have provided causes for environmental pollution or mutilation by their acts or business activities (Article 7). Ultimately, it should be interpreted that the acts of 'causers' need not necessarily be profit-seeking acts. Therefore, as the scope is so inclusive and wide-ranging, the absolute liability of causers could possibly change into anybody's liability. We cannot exclude an extreme situation where the absolute liability should be borne whenever a case constitutes damages by environmental pollution. The attempts to

70) Kim Hong-Kyun, Notes 3, page 91.

expand the remedy scope may be attacked from both sides of effectiveness and practicality. The previous controversy surrounding the interpretation[71] of 'business establishments' or 'business operators' is likely to reoccur surrounding the question of who the 'causers' are.

Legislative examination should be made, as there is room for controversies as to the scope of liability or subject, even if the specific effects are recognized. As this provision is related to the overall system of environmental liability, the entire liability system should be examined when such legislative review is made.

71) 'Business establishments etc.' refer to factories, business units and all other equipment where facilities discharging contaminating substances are installed. It is interpreted that business establishments include vehicles, construction heavy equipment, plants for treating or preventing sewage, wastewater and feces, and providers of service treating wastes discharged from business establishments. Gu Yeon-chang, *Environment Conservation Act, Samyoungsa (1981), page 446; Jeon Gyeong-un, Issues and amendment directions of absolute liability under Article 31 of the Framework Act on Environmental Policy: In connection with Article 44 of an amendment proposed for the Framework Act on Environmental Policy*, Environmental Law Research Vol. 31 Issue No. 2, Korea Environmental Law Society (2009. 08), page 330. But, no definite grounds are provided to support that vehicles or construction heavy equipment should be included in 'business establishments etc.' As to this, there are opinions that the 'business establishment' requirement should be limited to fixed commercial facilities, excluding farmland, ranches, fish farms and plants for treating marine wastes. They also include vehicles and vessels that do not fall in business establishes as private cars lack in commercial nature whereas vehicles and vessels lack in fixed facility. Lee Seung-u, *Review of Legislation of Absolute Liability for Pollution*, Environmental Law Research Vol. 29 Issue No. 1, Korea Environmental Law Society (2007. 04), page 271.

Chapter 4. Suggestions based on changes in Korean environmental legislation

Section 1. Inclusive assessment of the development of environmental legislation

As of June 2011, the Ministry of Environment was responsible for a total of 49 environmental statutes.[72] The current structure or system of environmental statutes has a merit so it can address contaminated media speedily and effectively depending on diverse patterns of environmental pollution, as it consists of multiple statutes rather than a single statute like the Environment Conservation Act. However, if the system consists of two many different statutes, the people who should comply with them will have difficulties in accessing or understanding them. It could rather be inefficient in the protection or improvement of the environment. It may blur the mutual relations among the environmental statutes. In some cases, a duplicate regulation could happen between statutes.

But, it is impossible and inefficient to address diverse and complex environmental issues with one statute as was done in the past. The single statute system tends to make the statute too broad or deformed. It is hard to address environmental issues smoothly or flexibly. On the other hand, the current plural statute system enables efficient regulation by mobilizing special regulatory means depending on the unique situation by contamination medium or area. The plural statute system may be only natural in the current circumstances where we need to address diverse

72) Ministry of Environment, *2011 Environmental White Paper*, page 724-725.

complex types of environmental pollution or mutilation. Under the current circumstances where many different statutes are enacted and operated for each individual environmental medium and policy area, a framework act is quite necessary to integrate and coordinate individual and discrete environmental statutes. In that sense, the Framework Act on Environmental Policy is highly important.

As examined earlier, the Framework Act on Environmental Policy has played a significant role in leading the Korean environmental law into the direction of preserving environmental mutilation as well as contamination while liberating it from the previous concept of 'pollution.' And, it declares principles of sustainable development, polluter pays or causer liability, and precautionary care. The individual, discrete environment related statutes should be formed and operated based on those principles declared by the Framework Act on Environmental Policy.

Furthermore, the Framework Act on Environmental Policy functions to induce various actions for environmental management, including standards for discharge permission under discrete environment-related statutes, by setting up environmental standards and various environmental plans that constitute national environmental objectives.

In fact, as the basic environmental statute in Korea, the Framework Act on Environmental Policy may be assessed to have contributed to diverse efforts in minimizing various adverse effects attributable to the plural statute principle adopted in Korea. Furthermore, it has certainly contributed to a minimized environmental impact by having the 'environmental preservation' premise considered in connection with administrative plans developed in areas other than the environmental law as it has steadily developed the system for advance review of environmental safety.

It has also contributed to a faithful remedy for damages caused by environmental pollution or mutilation as it has introduced and developed the provisions concerning absolute liability.

However, its frequent amendments on total nine occasions since its enactment in 1990 have made its title of 'Framework Act' questionable. To efficiently control various contamination media, numerous environment-related statutes have been legislated so far. As they are so dispersed, fragmented, obese, complicated and disorderly, the Korean environmental law should resolve these problems. This situation is largely attributable to their extemporaneous enactment based on the situation at various points in time rather than being enacted with a macro-view based system or consistency. This has raised questions if the Framework Act on Environmental Policy has played its proper role as the basic or framework statute.

The functions and roles of the framework act need be emphasized to minimize problems incidental to the plural statute system that have to be maintained. Though the Framework Act on Environmental Policy has the title of Framework Act, it is not believed to have a validity superior to the individual, discrete relevant statutes. Ultimately, the Framework Act on Environmental Policy should sufficiently be respected and considered in executing discrete environment-related statues in administrative domains, in enacting or amending environment-related statues in legislative domains, and in interpreting discrete environment-related statues in justice domains. In order to let the Framework Act on Environmental Policy function as the mother law of the Korean environmental statutes and to specifically realize the right to the environment as one of the basic human rights provided under the Constitution, it is necessary to pursue a development

direction in which the Framework Act on Environmental Policy may perform its proper roles of leading, coordinating and integrating discrete environment-related statutes while linking them to the Constitution.

Section 2. Features and suggestions of development processes

1. Plural statute principle

It would be simply impossible and inefficient to address diverse complex environmental issues with one statute as in the past. The single statute system tends to make the statute too broad or deformed.[73] It is hard to address environmental issues smoothly or flexibly. On the contrary, the plural statute system has the merit that it can efficiently regulate contamination by mobilizing unique regulation means depending on the unique situation by the contamination medium or area[74] though it is

73) Legislation formats may be deformed if significant provisions are provided in enforcement decrees or other subordinate statutes.

74) Kim Yoo-hwan, Statutory Failure of Environmental Law Provisions and Legal Response, Environmental Law Research Vol. 16, 1994, page 117. The single-medium regulation is likely to transfer pollutants to other media as it would have businesses or others regulated under the law to focus on regulation of end-of-pipe contamination. For example, the regulation of air pollutants under the Act on Atmospheric Environment may induce the operators of pollutant discharging facilities to discharge air pollutants to other environmental areas (water quality, wastes) in order to evade regulations under the Act. Because of these problems, interest has recently grown in multimedia or cross media regulation methods. When the regulators monitor or supervise discharge of pollutants into the air, water and soil at the same time, it will remove such inefficient elements such as redundant or conflicting regulations that often occur under the single medium regulation system. Other problems that are indicated as resulting in connection with the discrete statute system by contamination medium include - it fails to properly understand the essence (or cause) of environmental problems, overlooking the fact that prevention is best, focusing on solutions for outstanding issues only, without considering ways to reduce contamination by multiple media, reducing competences to understand

likely to make it difficult to address environmental problems comprehensively or it is feared to attempt fractional regulations. In this sense, the plural state system emerged naturally. At present, the Korean environmental law consists of the Framework Act on Environmental Policy as the basic or framework statute and over 40 other discrete statutes as the law has repeated divisions for specialization in order to address different environmental problems by contamination medium and area.

The problem is that the efficiency has degraded as many statutes have been enacted through excessive division or specialization. In particular, too many unnecessary statutes are maintained for identical or similar contamination mediums or areas in essence, aggravating the complexity and redundancy of the environmental law. The relations between the Framework Act on Environmental Policy and discrete environmental statutes and between environment-related statutes[75] are unclear. Sometimes, they regulate the same issue redundantly. So, the question may arise as to which of them should prevail in any given situation.

The related statutes are dispersed or disorderly mainly because they have been extemporaneous based on the given situation at various times rather than being enacted with a macro-view based system or consistency.

---

and respond to new environmental problems, causing difficulties in determining priority orders among environmental problems that need be addressed, impeding efficient integration of environmental policies with other policies, and inducing excessively complicated and inconsistent administrative organizations. Jo Hong-sik (Footnote 19), page 45 to 48.

75) For example, a controversy may be raised as to if the provision for compensating damages caused by soil contamination under the Soil Environment Conservation Act (Article 10-3) which has a special law position over the absolute liability provision for business operators under the Framework Act on Environmental Policy reading, “the business operator shall compensate for damages caused by environmental contamination or mutilation at a business establishment etc."

As a result, it impedes an efficient enforcement and complicates the statute system unnecessarily. The statute system is very distracted, unsystematic and inconsistent. From the viewpoint of the people who are regulated by the statutes, it is very confusing and hard to access or understand. For example, as multiple statutes regulate waste-related wrongdoings rather than a single statute, it is very difficult for a layman to determine which statute regulates his acts. Such a situation inevitably results in such serious problems as confusion, redundancy or conflict between statutes in connection with terms, concepts, and application scopes.

Excessive mass-production of statutes impedes efficient systematic law enforcement. If regulation targets or methods that are practically similar were regulated by different statutes, it would make the statute system unnecessarily confusing and complex. It is not desirable in connection with the people's understanding of the law. The statutes have been excessively dispersed for the sake of convenience in legislation. If regulation provisions are dispersed in multiple statutes though a basic concept or regulation means are similar, it would degrade efficiency and impedes responsible administration by causing a diversified control system. The legal system and institution should be streamlined to enhance uniformity, comprehensiveness, efficiency and equity while removing confusion or redundancy in regulations and the regulation system. At least, efforts should be made to integrate, adjust and unify similar statutes by regulation target area. However, it appears to be not so easy in reality in view of selfishness or excessive devotion to achievements by the relevant ministries. In view of these points, partial integration or adjustment is desirable in reality.[76)]

76) For necessity for enacting an integrated environmental law, see Goh Mun-hyeon,

2. Diversified control systems

In January 1990, the Korean Environmental Protection Agency was upgraded to the Environmental Protection Service headed by a government minister. The founding of the Environmental Protection Service was highly significant as a government department was newly born to perform environment-related administrative services independently. In late 1994, the Environmental Protection Service was promoted to the Ministry of Environment through governmental reorganization.

Yet, as environment-related details are provided in statutes, the other government ministries are responsible in addition to the Ministry of Environment, which means their efficiency is degraded, causing redundant regulation or unclear accountability in some cases. For example, the responsible departments or ministries or statutes vary in connection with designation or protection of wild animals and plants, disabling efficient law enforcement of protection of endangered or protected wild animals and plants, or internationally endangered species (the Act on Protection of Wild Animals and Plants, the Ministry of Environment), precious natural monuments (the Cultural Heritage Protection Act, the Cultural Heritage Administration of Korea), fish (the Fisheries Act, the Ministry of Agriculture, Fishery and Food), and the forest (the Creation and Management of Forest Resources Act, the Korea Forest Service). Meanwhile, the administration or regulation related to water is dispersed or scattered among multiple ministries or departments as follows: water volume management

---

Development of Korean Environmental Law and Desirable Direction of Amendment, Public Law Research Vol. 9 Issue No. 3, 2008. 08, page 564 to 566. However, this opinion seemingly considers the single codification where all environment-related statutes are integrated rather than having a partial integration of statutes by segment.

belongs to the Ministry of Land, Transport and Marine Affairs (the River Act), water quality management to the Ministry of Environment (the Water Quality and Ecosystem Conservation Act and the Water Supply and Waterworks Installation Act), water resources, dam construction and water supply to the Ministry of Land, Transport and Marine Affairs and Korea Water Resources Corporation, survey, development and use for maintenance or regulation of underground water to the Ministry of Land, Transport and Marine Affairs, and preservation of underground water quality to the Ministry of Environment.

It is confusing to the people as they are regulated by multiple statutes and ministries, and it may cause such problems as unclear accountable parties, evasion or attribution of responsibilities or redundant regulations among ministries. The efficiency is degraded in circumstances where no smooth cooperation is available among the ministries.

3. Frequent amendments and legislation of many special statutes

Many special statutes are frequently enacted in the environmental law domain. As hinted by the statute title, Korea has enacted the Act on Special Measures for the Control of Environmental Offenses, the Special Act on the Preservation of Ecosystem in Island Areas Including Dokdo Island, and the Special Act on the Improvement of Air Quality in Seoul Metropolitan Area. There are other acts that do not have the special act in their title but function as special measure acts. A good example is the Acts on Four Grand River Systems, including the Act on the Improvement of Water Quality and Support for Residents of the Riverhead of the Han River System.

Another point that should be indicated in connection with the mass-production of special acts is that they are excessively amended quite frequently. The seriousness of the problem is represented by the fact that the Framework Act on Environmental Policy, that is a basic or framework statute of the environmental law, has already been amended 10 times in a short period. Other key statutes have been amended as frequently as the Framework Act on Environmental Policy, including the Clean Air Conservation Act and the Water Quality and Ecosystem Conservation Act. The situation is even more serious when we consider the frequent amendment to the subordinate statutes (enforcement decrees, regulations and notices).

The special statutes are enacted or amended with certain reasonable causes – efficient and smooth enforcement of law and convenience of legislation depending on regulation targets that vary along time. Yet, the degree and frequency are simply excessive. The mass-production or frequent amendment of special statutes show that they are enacted extemporaneously based on a given situation a various points in time with a fractional or micro approach rather than being enacted with a whole macro-view.

The frequent enactment or amendment of special statutes degrades the efficiency or validity of law enforcement while making it difficult for the people to access, track or understand it. When the statutes are scattered disorderly and are frequently amended, a uniform control or regulation is difficult and it is hard to perceive the total structure. The statutes related to an identical contamination area should be united or adjusted while abstaining from enacting special statutes as much as possible to help the people to access and understand the law easily by simplifying it while ensuring a comprehensive uniform planning or control of each contamination area. The practice of frequent amendment should also be rectified.

4. Complexity of legal systems and delegation to subordinate statutes

The regulation means under the environmental statutes are excessively delegated to their subordinate statutes while their statutory form is complex and diverse. Further, it is difficult to understand the statutes in their entireties as the relevant provisions are not distributed among the related statutes, enforcement decrees or regulations in a logical or reasonable manner. Matters that should be provided under an act are often provided under enforcement decrees or regulations. As the result, it is often difficult to understand the related details without having to look up all related enforcement decrees or regulations as well. It deserves the sarcastic criticism that the enforcement regulations, the lowest statutory order, are most important. It is impossible to know accurate regulation details unless you crosscheck the details given in annex tables when matters that should be provided under the enforcement decree or regulations are provided in annex tables.

The regulation of acts by notices is also negligible. For example, special measure regions are designated by a notice issued by the Ministry of Environment based on Article 22 of the Framework Act on Environmental Policy to restrict the use of land and installation of facilities in such special measure regions. Though any restriction of land use or facility installation that accompanies infringement to property rights involves a direct impact on the residents, it is a serious problem that the regulation is based on a notice rather than an act or enforcement decree. Restricting acts of the land owners or their property ownership by a Notification of the Ministry of Environment violates the general principle of law formality

and the principle of legislation by congress [National Assembly] as well as enabling a convenience-oriented, non-open administration by the administrative agency.

When considering the specialized and technical aspects for enforcing given policies, it could be reasonable to designate such restricted regions under a notice. However, it is quite problematic to include provisions that are closely related to the people's exercise of their property rights in a notice.[77] Delegated legislation may enable convenience-oriented, non-open administration by the government though its reasonableness and necessity are recognized because of administrative expertise, technicality, flexibility and convenience in legislation technique.

5. Imperfect regulations and legal blanks

Blanks in regulation or statutes may cause problems. As environmental problems become more diverse and complex, we may become unable to address them in a timely manner or the countermeasures may not be insufficient under the current level of legislation though problems are noted. As the environmental law is a product of the time, such circumstances may be inevitable to some extent. Yet, we should pursue countermeasures as much as possible as we need to accommodate and resolve the agony of time. It can be said that the Korean environmental law is equipped with a relatively advanced legal system, apart from its enforcement, by introducing foreign advanced legal systems. However, insufficient parts or blanks are still found in certain areas in the regulation of statutes.

77) Jeong U-hyeong, Problems and Policy Directions for Statutes Related to Protection of Potable Water Sources, National Land, 1994. page 73.

The representative example is the careless handling of such problems as those related to acid rain, destruction of the ozone layer, electromagnetic waves, and endocrine disruptors (environmental hormones). Responsibility for existing contamination and problems related to purification that arise when causers lack resources still remain a legal blind spot. The legislation in this regard is insufficient though creation of funds and environmental insurance could be suggested as alternative solutions. Other tasks that need be resolved by legislation include setup of relations between the right to use underground water and the land ownership, expansion of target environmental disputes subject to settlement or mediation, disclosure of environmental information, introduction of an environmental audit system, and legislation of environmental responsibility statutes. The problems that need resolutions or improvement include a lack of damage compensation scope, standards and calculation methods[78] as well as provisions on compensation of damages to the natural environment and the lack of legislation concerning the concept, subject, targets and procedure of ecosystem recovery.[79]

6. International nature of environmental law

Today's environmental problems have features of global problems rather than of a country. Such globalization of environmental issues requires promotion of international cooperation and joint efforts of multiple countries.

78) Choi Mi-hui, *Theories on Compensation for Damages to Natural Resources: Comparison with US System*, Environmental Law Research Vol. 23 Issue No. 1, 2001. 09, page 303 to 305.

79) Park Jong-won, *Legal Issues Concerning Preservation of Biological Diversity and Ecosystem Recovery*, Environmental Law Research Vol. 30 Issue No. 3, 2008. 11, page 100 to 102.

In this regard, the Framework Act on Environmental Policy declares that the state shall strive for international cooperation and preservation of the global environment (Article 17). The problem is that the Korean environmental law fails to properly meet international efforts as it lacks in provisions for addressing acid rain, climate change, ozone layer destruction, and desertification, which have emerged as international problems. For example, Korea has enacted the Act on the Control, etc. of Manufacture of Specific Substances for the Protection of the Ozone Layer in connection with protection of the ozone layer and the Act on the Promotion of the Conversion into Environment-friendly Industrial Structure (Article 25). The degree of regulations, standards or concreteness is much weaker than those in USA and other advanced countries. From this viewpoint, diverse programs need be developed and implemented. Legislation should urgently be effected to enact or amend statutes that are required to actively address such international issues likes acid rain and climate change.

Chapter 5. Conclusion

The Korean environmental law structure adopted the so-called plural statute system, a method of enacting multiple independent statutes by type of contamination or regulation target, such as air or water quality, soil and wastes, rather than deploying a single united structure of an 'environmental code.' This method may cause legal inefficiency or lack of a systematic approach as discrete environmental statutes regulate diverse purposes or content, respectively.[80] The main contents of the criticism indicated about the poor system is that the legal system is too difficult for the general public or even the regulators to understand as the environmental statutes are excessively fractional, enumerative and infinite.[81]

The overall system of the environmental law should be used to streamline the external structure as we need to examine areas that are conflicting or contradicting in the legal structure or its contents, including the contents of the Framework Act on Environmental Policy and the

80) This study skips discussions on the inefficiency of environmental law as the discussions should be preceded by an analysis of regulations provided under the relevant statutes and their effects. For your reference, these points are mentioned as grounds for criticizing the inefficiency – (i) the law system adopts a discrete statute system divided by contaminated medium, (ii) the law system is excessively regulator-oriented, and (iii) the law system excessively depends on direct regulation. Jo Hong-sik, Song Sang-hyeon and Noh Sang-hwan, *Research on Streamlining the Korean Environmental Law System I*, Korea Environmental Policy Assessment Institute, 1997, page 26.

81) The grounds cited are (i) the relations between the Framework Act on Environmental Policies and discrete environmental statutes are unclear, (ii) the regulations under individual statutes are redundant or unbalanced, and (iii) provisions are excessively delegated to subordinate statutes. As to the poor system structure of the environmental law, the 'ambiguous relations' between the Framework Act on Environmental Policies and individual environmental statutes are discussed. For details, see Lee Sang-don, *Framework Act on Environmental Policies and Individual Environmental Measure Statutes*, Justice Administration Issue No. 375 (1992), page 32-39.

relations with discrete environmental statutes, for example, the Clean Air Conservation Act, the Water Quality and Ecosystem Conservation Act, the Natural Environment Conservation Act, and the Soil Environment Conservation Act. In addition, internal restructuring should precede the external restructuring as legitimacy or conformity should be based on the internal structural perfection of the basic act. Therefore, this study focuses on the internal rather than external structure among the environmental statutes.

The study has mainly focused on the development processes of the Korean environmental law by examining the Framework Act on Environmental Policy. However, we should consider that the frequent enactments or amendments of the law is a problem with the entire Korean legislation as well as the overall environmental law, rather than be limited to the Framework Act on Environmental Policy.[82] A feature

82) Those enacted in 2000 or later include the Special Act on the Nakdonggang, Yeongsangang and Keumgang Rivers to supply clean water to residents that brought a revolutionary switchover from the previous policies oriented to ex-post disposal of pollutants to preemptive prevention, including a system for controlling total volume of pollutants based on a win-win spirit between the upper and lower streams. In 2003, three statutes were enacted, including the Special Act on the Improvement of Air Quality in Seoul Metropolitan Area to promote measures for improving atmospheric environment in the Seoul metropolitan area, the Construction Waste Recycling Promotion Act to efficiently treat or recycle construction wastes, and the Baekdudaegan Protection Act. In 2004, these statutes were newly enacted – the Act on Protection of Wild Animals and Plants (repealing the Wild Animal Protection and Hunting Act), the Malodor Prevention Act, the Act on Antarctic Activities and the Protection of Antarctic Environment, and the Act on Encouragement of Purchase of Environment-friendly Products. In 2006, the Act on the National Trust of Cultural Heritage and Natural Environment Assets was enacted to preserve cultural heritage and natural environmental treasures, along with the Act on the Management and Use of Livestock Excreta and the Environmental Examination and Inspection Act. The new statutes enacted in 2007 include the Persistent Organic Pollutants Control Act for systematic control of persistent organic chemical substances, the Act on the Resource Circulation of Electrical and Electronic Equipment and Vehicles for promoting recycle of electro-electronic products and vehicles, and the Framework Act on

of Korean Environmental Law has been environmental policies' fast reaction to environmental issues, however, the lack of systematic structure caused by its frequent amendments fails to present a long-term comprehensive prospect about Korean environmental policies. It also means the Framework Act on Environmental Policy has failed to perform its function of a 'framework act.' Because of such a poor systematic structure, the Act is determined to lack in functions to control the administration or disclose policy directions to the people.

This study is designed to help streamline an overall framework by specifically examining the contents of the Environmental Law while enhancing its position as a framework act based on the critical discussions of its position, role and validity. To that end, this study examined if the Act is provided with a position of the basic or framework act for discrete environmental statutes along with a theoretical examination of the basic act. We also studied systematic streamlining for enhancing the perfection of its internal structure in order to supplement such problems such as that it is excessively fractional, enumerative or infinite.

However, this study was designed to assess and examine the development processes of Korean environmental law objectively and to treat aspects of the system that have been streamlined with the current statute rather than streamlining the law into an ideal legal system. It was difficult for this study to explore suggestions through a comparative legal research or to treat all of the existing discussions related to the Framework Act on Environmental Policy. We plan to approach other problems that are not

---

Sustainable Development for providing a legal and institutional basis for sustainable development of the central and local autonomous governments. When amendments are considered as well, a substantial number of environmental statutes have been enacted or amended each year. For details concerning the changes in the environmental law, see the Ministry of Environment website http:// www.me.go.kr.

treated in this study through additional research.

Bibliography

Books published in Korea

Gu Yeon-chang, *Environmental Law Theory*, Bobmunsa, 1993.

Gu Yeon-chang, *Environmental Conservation Act*, Samyoungsa, 1981.

Kim Du-ol, *History of Economic Laws in Korea From Kiberation to Present*, Haenam Publishing Co., 2011.

Kim Hong-kyun, *Environmental Law: Problems and Cases*, Hongmoonsa, 2007.

Kim Hong-kyun, *Environmental Law*, Hongmoonsa, 2012.

Park Gyun-seong and Ham Tae-seong, *Environmental Law*, Pakyoungsa, 2004.

Seo Hui-won, *Environmental Lawsuit*, BookPD.com, 2004.

Son Yun-ha, *Environmental Infringement and Civil Lawsuit*, Cheonglim Publishing, 2005.

Song Yeong-il et al., *Ways to improve system for advance review of environmental safety*, Korea Environmental Policy Assessment Research Institute, (2002. 12).

Oh Seok-rak, *Problems of Environmental Lawsuits*, Samyoungsa, 1996.

Lee Sang-gyu, *Environmental Law Theories*, Bobmunsa, 1998.

Lee Sang-don and Lee Chang-hwan, *Environmental Law*, Yijin Publishing Co., 2003.

Lee Jun-seo, A Study on the Model Legislation for the Assistance for Legal Reform - Economic Development and the Changes of the Legislation on Smll and Medium Enterprise -, Korea Legislation Research Institute, 2011.

Lee Jun-seo, A Systematic Improvement of the Framework Act on Environmental Policy, Korea Legislation Research Institute, 2009.

Jeong Jong-seop, *Principles of Constitution Theories*, Pakyoungsa, 2006.

Jo Hyeon-gwon, *Environmental law*, Legal Culture Institute, 2006.

Jo Hong-sik, Song Sang-hyeon and Noh Sang-hwan, *Research on Streamlining the Korean Environmental Law System I*, Korea Environmental Policy Assessment Institute, 1997.

Hong Jun-hyeong, *Environmental La*w, Pakyoungsa, 2001.

Ministry of Environment, *2011 Environmental White Paper*, 2011.

Domestic theses

Goh Mun-hyeon, *Development of Korean Environmental Law and Desirable Direction of Amendment*, Public Law Research Vol. 9 Issue No. 3, 2008. 08

Kim Yoo-hwan, *Statutory Failure of Environmental Law Provisions and Legal Response*, Environmental Law Research Vol. No. 16, 1994.

Park Jong-won, *Legal Issues Concerning Preservation of Biological Diversity and Ecosystem Recovery*, Environmental Law Research Vol. No. 30 Issue No. 3, 2008. 11.

Lee Gyeong-chun, *Noise and Environmental Lawsuit, Various Issues of Environmental Law* (bottom), Trial Materials Collection No. 95, Court Library (2002)

Lee Sang-don, *Framework Act on Environmental Policies and Individual Environmental Measure Statutes*, Justice Administration No. 375 (1992)

Lee Seung-u, *Review of Legislation of Absolute Liability for Pollution*, Environmental Law Research Vol. No. 29 Issue No. 1, Korea Environmental Law Society (2007. 04)

Jeon Gyeong-un, *Issues and amendment directions of absolute liability under Article 31 of the Framework Act on Environmental Policy: In connection with Article 44 of an amendment proposed for the Framework Act on Environmental Policy*, Environmental Law Research Vol. No. 31 Issue No. 2, Korea Environmental Law Society (2009. 08)

Jeon Gyeong-un, *Legal Theories on Remedy of Damages by Environmental Right Infringement*, Environmental Law Research Vol. No. 25 Issue No. 2, Korea Environmental Law Society (2003)

Jeong U-hyeong, *Problems and Policy Directions for Statutes Related to Protection of Potable Water Sources*, National Land, 1994.

Jo Yun-je, Park Chang-gwi, and Gang Jong-gu, *Korean economic growth and changes in social indicators, Finance and Economy Research,* Economic Research Institute of Bank of Korea (2012. 01)

Jo Eun-rae, *A Study on Proof Issues in Environmental Lawsuits*, Environment Law Research Vol. No. 28 Issue No. 3, Korea Environmental Law Society (2006)

Jo, Hong-sik, *Risk Law: Environmental Law as Risk Management System*, Seoul National University Law Journal Vol. No. 43 Issue No. 4, Seoul National University Law Research Center (2002), p.72.

Choi Mi-hui, *Theories on Compensation for Damages to Natural Resources: Comparison with US System*, Environmental Law Research Vol. No. 23 Issue No. 1, 2001. 09, p. 303 to 305.

Books published overseas

David Freestone & Ellen Hey, Origins and Development of the Precautionary Principle, in David Freestone & Ellen Hey (eds.), The Precautionary Principle and International Law, Kluwer Law International (1996)

Günther Handl, Environmental Security and Global Change: The Challenge to International Law, in Winfried Lang, Hanspeter Neuhold & Karl Zemanek (eds.), Environmental Protection and International Law, Graham & Trotman/Martinus Nijhoff (1991)

Lothar Gündling, The Status in International Law of the Principle of Precautionary Action, in David Freestone & Ton Ijlstra (eds.), The North Sea: Perspectives on Regional Environmental Co-operation, Graham & Trotman/Martinus Nijhoff (1990)

P. W. Birnie & A. E. Boyle, International Law and the Environment, Oxford University Press (2002)

Report of the United Nations Conference on Environment and Development, U.N. Document A/CONF.151/26, Vols. I-IV (1992), V (1993)

Ved P. Nanda & George (Rock) Pring, International Environmental Law for the 21st Century, Transnational Publishers (2003)

Foreign theses

André Nollkaemper, The Precautionary Principle in International Environmental Law: What's New Under the Sun?, 22(3) Marine Pollution Bulletin 107 (1991)

James Cameron & Juli Abouchar, The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protection of the Global Environment, 14 B.C. Int'l & Comp. L. Rev. 1 (1991)