

A Study on the System of Private Investigation

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[Abstract]

Since the Promotion Committee was established on March 25, 2021, urging the enactment of the Detective Business Act, many opinions and attention from all walks of life have been gathered. The Detective Business system, which is also one of the presidential pledges of the current 19th President Moon Jae In, is expected to be significant in that it can promote the development of a welfare state as well as efficient parts such as meeting the demand for security reinforcement services, improving the judicial system, and enhancing internationalization. In accordance with the consensus of the nine judges of the Constitutional Court that the lower part of Article 40 of the "Act on the Use and Protection of Credit Information" which prohibits the use of similar names such as investigating the general life of certain people does not violate the Constitution, detective work became possible regardless of the general life investigation. In particular, the detective job officially appeared on August 5, 2020, and it will be able to provide effective work services to the public by competing with prosecutors, police, and lawyers who have occupied exclusive positions in the field of a criminal investigations. However, although the role of detectives is gradually expanding and society is rapidly changing, illegal activities are prevalent throughout society, and more than 1,600 companies are currently operating suspiciously using the only name of "detectives", but the police are virtually letting go of the situation saying that they are "unauthorized.", and the damage is only going to the people, so at this point, the most worrisome thing is the absence of the law. Meanwhile, amid concerns over institutions overseeing illegal activities caused by the emergence of the detective industry, private security and detectives are similar to each other as in the United States, and it is expected to be able to gain public trust by entrusting the police in charge of managing and supervising private security companies. Therefore, at this time when most OECD countries except Korea legislate the Detective Business Act, prematurely allowing only the detective industry without enacting industry-related laws and systems can further fuel social confusion and hinder the detective industry along with the new fourth industry.

▶ **Key words:** Detective System, Private Investigation, Certified Detective, Detective Business Act, Private detective agency

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[요 약]

지난 2021년 3월 25일 「탐정업법」 제정을 촉구하는 추진위원회가 결성된 이후 사회 각계각층의 많은 의견과 관심이 쏟아지고 있는 실정이다. 문재인 대통령 대선 공약이기도 한 탐정제도는 많은 국민들의 치안서비스 수요 충족과 사법제도 개선, 국제화 제고 등의 효율적인 부분은 물론 실질적인 복지국가 발전을 도모하는 차원에서도 그 의미는 클 것으로 본다. 헌법재판소는 특정인들의 일반생활을 조사하는 것을 직업으로 하는 행위와 탐정이라는 유사 명칭의 사용마저도 금지한 「신용정보의 이용 및 보호에 관한 법률」 제40조 하단이 헌법에 저촉되지 아니한다는 9명 재판관의 의견 합치에 따라 일반생활 조사와 상관없이 탐정업무는 가능하게 되었다. 특히 2020년 8월 5일 탐정업의 등장으로 그동안 범죄수사 영역에서 독점적인 지위를 점유하고 있었던 검찰과 경찰, 변호사 등과 서로 치열한 경쟁을 통해 국민들에게 오히려 효과적인 업무서비스를 제공할 수 있을 것이다. 그러나 사회의 급속한 변화에도 불구하고 탐정의 역할이 점차 확대되고 있지만 입법불비로 인하여 불법적인 행위가 만연할 뿐만 아니라 현재 1,600여개에 달하는 업체들이 탐정이라는 명칭을 사용하며 영업을 하고 있는 가운데 관리감독이 필요하지만 경찰은 “권한이 없다”는 이유만으로 사실상 손을 놓고 있어 그 피해는 오롯이 국민들에게 돌아갈 상황이라 무엇보다 법률 공백이 우려된다. 한편 탐정업 도입으로 불법행위를 감독하는 기관을 우려하고 있는 부분에서 미국처럼 민간경비와 탐정은 서로 비슷한 부분이 많으며, 또 지금까지 민간경비업체 관리 및 감독업무를 담당하고 있는 경찰에 탐정관련업체 관리감독 업무를 맡김으로서 국민들의 신뢰를 얻어낼 수 있을 것으로 본다. 따라서 우리나라를 제외한 대부분의 OECD 국가들이 「탐정업법」을 입법화하고 있는 현 시점에서 「탐정업법」을 제정하지 않고 탐정업을 허용하는 것은 사회적인 혼란을 더욱 부채질할 뿐만 아니라 새로운 4차산업과 더불어 탐정산업을 저해할 수 있기 때문에 「탐정업법」 제정이 조속히 이루어져야 할 것으로 본다.

▶ **주제어:** 탐정제도, 민간조사, 공인탐정, 탐정업법, 흥신소

I. Introduction

A detective refers to a person who secretly finds out the secrets or specific facts of another person, tracks and reveals a crime, or is engaged in such a task. A detective refers to a person who secretly finds out the secrets or specific facts of another person, tracks and reveals a crime, or is engaged in such a task. Academically, it refers to a person who receives a certain payment from the client based on the agreement, collects and identifies necessary information and data through legal procedures, and then provides the client with accurate findings and was once called a "Yeomtammkun(Spy)" in Korea.

Currently, most of the 38 OECD countries except Korea have already implemented this detective system, and 40,000 detectives in the United States, 30,000 in the United Kingdom, and 60,000 detectives

in Japan are activated as a universal vocation, establishing themselves as representative Job. In addition, detectives provide services such as litigation-related evidence collection, corporate investigation, and legal witness data required by members of society based on the principle of beneficiary burden in blind spots of national public power, and supervision and management of these detectives are actively handled by the state in terms of guaranteeing the basic rights and protecting the rights and interests of the people. However, Korea does not actually recognize the job of a detective, and it happens that much of the detective work has emerged as a serious social problem as companies such as errand centers and agency centers handle it through various illegal activities. Therefore, the purpose of this study is to

find a successful plan to enact the Detective Business Act after reviewing the general theory of the detective system, the detective system of advanced countries, and the necessity of the detective system.

II. The general theory of the detective system

1. The significance of the detective system.

1.1 The origin of a detective.

It is no exaggeration to say that the origin of the detective began with the birth of mankind. Even if finding out something is not necessarily one's job, finding something anytime, anywhere is often an act that is commonly seen around us in our real life. However, as secrets arise within certain communities and those who want to collect such information, a new professional group called "Detective," an expert who collects information without others knowing, and a military detective, commonly referred to as a spy, emerged to secretly find the other country's political status, combat capabilities, in a war situation.[1]

1.2 Meaning of detective

The dictionary meaning of a detective means "a person who tracks and finds out things or events that are not revealed, secretly finds hidden secrets, or is engaged in the work, formerly called a Yeomtammkun(Spy), engaged in smuggling and espionage during the war, and today mainly means private detectives [2]. Currently, the job of a detective is not legislated in Korea, and Article 40 of the Credit Information Act restricts the use of the term detective or informant itself, so Agency centers and errand centers have taken over the role of detectives instead [3]. Specifically, they secretly investigate stuff related to the subject of the request, collect various related data or information, and inform the client at a certain cost.

2. The detective system in Korea

2.1 Current status of the detective system

Korean law does not recognize "a detective business that conducts an extensive investigation in all fields." In 2003, the Certified Detective Act was proposed by the National Assembly, but it was eventually not legislated. In fact, only lawyers as civilians have the legal right to investigate all legal relationships they have been commissioned. In addition, pursuant to Article 40 of the Credit Information Act, the scope of Korean private investigators' legitimate work as "detectors" is extremely limited, and investigations are being conducted that may infringe on privacy, such as identification of affair relationships.[4] There was a business called "credit notice business" enacted in 1911, and after the 5.16 Military Revolution in 1961, with the emergence of the so-called "Errand Center," the general public also started a new business, and most of them acted as "solver" to track privacy, but most of them operated their businesses in an illegal form of business, such as "solver" tracking people's privacy, so the Credit Survey Act was newly enacted in 1977, however, the law did not make much difference, and was eventually revised to the Credit Information Act in 1995 and continues to this day. [5]

2.2 Current status of the detective-related market

There are no certified detectives as jobs in Korea, but it is difficult to accurately grasp the current situation because service companies such as errand centers and agency centers are scattered in the form of free businesses similar to detectives who actually conducts a fact-finding investigation at the request of others. These companies are estimated to be about 1,500 nationwide, including 900 in Seoul and Gyeonggi Province and 200 in Chungcheong Province [6], and currently, all similar detective companies such as agency center and errand center cannot be considered to perform only illegal duties, but there are frequent cases of eavesdropping on investigators or committing

illegal acts for the purpose of performing their duties, which has appeared as a big social problem.

3. Types of detectives

3.1 Corporate Detective

A corporate detective is usually in charge of cases commissioned by a company and is a job which searches for risks to the inside and outside of the requested company, technology security, and information on the other corruption company to come up with necessary measures [7].

3.2 Legal Detective

Legal detectives are usually in charge of trial-related cases, collecting evidence for trial or adopting witnesses necessary for interrogation of judges, and testifying directly in court if necessary.

3.3 Financial Detective

Financial detectives generally handle money-related embezzlement, fraud, and malpractice cases. It also identifies the current status of funds of companies in poor financial situations due to being abused of professional accounting knowledge and embezzlement or fraud, and if the person secretly hides the property despite the competent court's judgment on repayment to a specific person, They track them to find a hidden property.

3.4 Insurance detective

Insurance detectives refer to people who are in charge of insurance-related violations and secretly investigate people who commit fake accidents or commit insurance fraud for insurance money to relieve actual damage to insurance companies.

3.5 Security Detective

A security detective works with a security guard to arrest people who steal goods or pickpockets in a department store. It mainly belongs to department stores or large shopping malls.

3.6 Other detectives

Cyber detectives perform tasks such as collecting various data, monitoring illegal activities, and

tracking IPs of offenders online. In addition, there are also detectives specializing in identifying where the wanted criminal is located and detectives specializing in tracking hit-and-run vehicles

III. The detective system of various countries

1. The United States

The United States is the country with the most advanced detective system compared to other countries that operate the same system and is leading the world's detective industry by continuously expanding the detective industry through a solid economic power base. As the United States is a federal country of 51 states, legislation on the detective system is also slightly different for each state and each local government. It operates with various differences in qualification conditions, job scope, license acquisition, and certification method [8]. In addition, detective work is operated separately from that of a certified detective and general detective, large detective companies mainly carry out large cases related to companies, and most of the general individual detectives conduct background checks, search for missing people, investigations related to divorce lawsuits, tracking and monitoring. In most states, private detectives need a state-issued public license, but in some states, business registration alone may be sufficient without a license. In addition, most states basically state that only U.S. citizens can become detectives, but since there are states that do not exist, foreigners can obtain a detective license and are required to subscribe to liability insurance.

2. Unites Kingdom

Britain, also known as the home of detectives, had no license for private detectives before, so illegal methods such as infringement of personal information or unauthorized investigation into the privacy of others were prevalent. Since then, in

2007, in order to qualify detectives and facilitate management and regulation, each agency of the British Detective Association has met to discuss detective licenses, but the system for issuing exclusive licenses for detectives has not been implemented so far [9]. With the enactment of the Security Business Act in 2001, private security business laws and regulations were created, and various regulations on the detective business came into effect in 2006. Among the tasks handled by detectives, there are also personal requests, but there are mainly many office lawyers' duties at financial institutions of insurance companies. And there are no special qualifications or regulations necessary to become detectives, most of which are former police or investigative agencies who are familiar with investigation or law, and the Security Industry Committee was organized in 2003 to manage and supervise the entire detective and security industry [10].

3. Germany

On January 1, 1870, the German Parliament officially recognized the existence of detectives, and more than 100 laws were created and revised, which included many items related to detectives and intelligence agencies. And on November 28, 1901, the detective was already classified as a merchant under the Prussian Ministerial Decree. According to an official survey in 1925, there were 1,321 detective-related organizations in Germany at the time, but despite numerous attempts by the detective association, licenses for the detective industry have not been created so far. Most of the detective's duties are to perform their duties on behalf of individuals, lawyers, or state agency investigation projects when they can pursue legal profits. Most of the detective's duties are to perform their duties on behalf of individuals, lawyers, or state agency investigation projects when they can pursue legal profits. As qualification requirements, secondary school graduation certificates and vocational training in related administrative fields

are required as essential prerequisites for conducting detective activities. Germany has no legally defined regulations on detectives, no special permission to perform complex tasks, no protection of professional positions, and only require to register for business at the administrative supervision level, and in 1998, it was only added as a "business type requiring supervision" when the "Business Act" was amended [11].

4. France

Until 2003, France used a reporting system in which any Frenchman could do the detective business as long as he reported it. A detective business operator who wanted to operate was able to operate by submitting related documents containing the address of the head office and the name of the head of the detective business who was hiring at the same time as reporting the business to the local administrative office in charge of the headquarters. However, on March 18, 2003, the "Act on Private Business for Securing Safety" enacted in 1983 stipulated the detective business at the same time as the security business, and the detective business was changed to a permit system, and the detective qualification system and authorization system were stipulated [12]. After that, on March 12, 2012, it was abolished under the Addenda to the Act on a partial amendment to the Domestic Safety Act, and when the Domestic Security Act was enacted in 2015, domestic security-related regulations, including detectives, were integrated. Detectives in France can work in a relatively wide range of areas, and companies mainly conduct criminal investigations within the company, such as theft or information leakage, and insurance fraud by customers. In the case of small-scale detective businesses, individual lawsuits and information collection are the main focus. In order to act as a detective, you must obtain a detective license, and you are managed by the local police station where the office is located from the start of the detective office to business activities.

5. Japan

In Japan, after World War II, the investigation business began under the name of detective business along with post-war restoration. Subsequently, a special ordinance was included in the "Regulation of Investigation, etc. on Discrimination in Osaka Villages" enacted in March 1980, and detective activities were carried out without laws and systems as in Korea until the Act on Appropriateness of Detective Business was enacted in 2006.[13] Anyone who wanted to do the detective business could do the business by simply reporting it to a competent administrative agency. However, as social problems emerged in the process of indiscriminate implementation without qualification and supervision, the Detective Act was enacted on June 8, 2006, laying the legal basis for supervision of management, and has since been partially revised in 2011 and 2019. The main tasks include searching for missing persons, such as missing children, an affair investigation, and a credit investigation. As a qualification condition, it is possible to operate by reporting to the competent prefectural public security committee without a separate test [14].

IV. Legislative strategy of the detective system

1. Determination of the scope of work as a detective

A lot of attention has to be paid to the revision of the law because the law must be enacted so that the act of detective is not illegal. Among the detective business bills drafted by the 21st National Assembly in November last year, proposed by lawmaker Yoon Jae-Ok, Article 1, No. 2 of the bill stipulates:

- (1) investigation into the whereabouts of missing children, runaway, missing persons
- (2) Factual investigation related to lose, theft, tracking of hidden property, and identification of whereabouts
- (3) The protection of clients' rights and investigation of facts related to the damage is

stipulated as the scope of detective work.

In addition, several degree papers suggest the scope of work, such as (1) security, (2) recovery of damage, and (3) confirmation of facts [15], so many opinions are in conflict over the scope of work of detectives. In particular, since the scope of the detective's activities itself is vast, abstract determination of the detective's job scope is likely to lead to an invasion of the job scope of a number of occupational groups conducting investigation activities in various fields other than the investigative agencies in our society. Therefore, in determining the detective's work, it should be considered within the area that respects the vested rights of existing occupational groups and does not invade their scope of duties.

2. Reinforcement of disciplinary action, etc. for violation of detective activities

Occupational ethical norms required by society must be supported in performing detective duties. Since these professional ethics do not have compulsory power and have a strong tendency to take responsibility required by social norms, professional ethics alone will not be able to replace social regulations for detectives. Therefore, in order to minimize the possibility of illegal activities, social side effects, and abuse that occur during detective work, and to protect the rights and interests of the people, strong disciplinary or penalty regulations should be established to impose obligations on detectives.

3. Designating detective management and supervisory authority

It is the problem of detective management and supervisory authority that is emerging as an issue that will arise when the detective system is officially approved in Korea. There is a conflict between the view that the police should manage and supervise and the view that the Ministry of Justice should manage and supervise. Looking at examples in legislation in developed countries, many states in

America and France have shown that the police play a role as management and supervisory authority. Accordingly, it would be right to designate the role of supervision as police in Korea due to the efficient aspect of work, the opinion of lawmakers recently proposed, the detective work is part of private expenses, and the overwhelming view of most scholars in academia.

4. Designation of detective training, educational institution

Regular and high-quality detective education must precede in order to establish a desirable detective system and properly meet the people's demand for detective services, as well as to produce detectives with qualities and abilities. Since it is virtually impossible to conduct and demand training and education in all fields for detectives, I think expertise is required in each field of work of detectives. Therefore, it is possible to consider ways for professionals currently working in specialized fields to complete the training and work as detectives, and for those who want to become detectives to complete training and education on basic investigative techniques, related knowledge, laws, etc. In addition, from the perspective of educational institutions, it seems a good idea to require prospective detectives to receive education from police education-related institutions, university-affiliated institutions, and private investigation associations but to ensure that an educational institution certified by the police is in charge of it.

V. Conclusion

Korea has made 10 legislative attempts to create a detective system and Acts from the 17th National Assembly to the 21st National Assembly. Despite these efforts, however, it has not been legislated due to difficulties in designating a detective's management and supervisory authority, personal life violations, and opposition from stakeholders.

Due to the fact that the law has not been enacted, the damage to the people is increasing day by day as errand centers and private agency centers continue to perform their duties illegally amid the continuous increase and turmoil of illegal detectives. In particular, the detective system is a presidential pledge of President Moon Jae In, and according to the consensus of nine judges that the lower part of Article 40 of the Credit Information Act of 2018 does not violate the Constitution, is currently possible to use similar names such as detectives regardless of the general life survey, as well as detective work that does not infringe on personal privacy. Therefore, legislation was proposed in the 21st National Assembly, and at this point in time when the realization of the detective accreditation system is just around the corner, I would like to propose some realistic measures and opinions to successfully settle this system. First, in determining the definition and scope of a detective's work by law, it should be done within areas that respect the vested rights of existing similar occupational groups and do not invade their scope of duty. In addition, in order to minimize social side effects arising from detective activities and protect the rights and interests of the people, strong disciplinary or penal provisions should be established against detectives. Given that detective work is a part of private expenses and that the majority of scholars in the academic world argue that the police should be designated as a management and supervisory authority, it would be right to entrust detective supervision to the police in Korea. Lastly, as a detective training and educational institution, it would be desirable for aspiring students to receive education from institutions related to police education, university-affiliated institutions, and private investigation associations, but to be in charge of educational institutions certified by the police.

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