Abstract

Jus cogens used to be out of the interest of the states and it was unrealistic to realize the jus cogens based on the organized principle. Jus cogens is the regulation that cannot be excluded by the any types of the agreement. Therefore, it has the meaning of the principle of the world or the whole law system. In other words, in order for it to be truly recognized and function in the legal filed, it is necessary that various nation discuss about the core nature of it. However, in the past, all of the states had been in the realist's view and they were concentrating on their self- interest based on the sovereignty and the conflict was solved by the war mainly. In other words, there was the hardship for the jus cogens since because of this world view, the principle of this world seemed to be unrealistic to be investigated and even if someone talks about it, it was erased and meaningless. In the end, it could not rise up to the main stage of the international law that is the law of the agreement.

However, currently, starting from the United Nations, the worlds have gotten integrated taking the organized policy and it means the chance of the discussion and the realization of jus cogens is getting solidified. First of all, the most fundamental phenomenon that is also one of the most significant ones is that the war has become illegal. Therefore, now it is no longer unrealistic to make the efforts to develop the function of jus cogens more since now that because of the regulation of the war, the international society has the foundation for keeping the debate as the resolution. In addition to this change from the what the world used to be, the state are constructing the concept of the community in the international society based on the common idea like the human rights. This tendency is significant since the world with the place of the discussion has the possibility to be closer to the organized principle based on this recognition of the common concept and it is connected to the development of the jus cogens. Taking this phenomenon, in the first chapter, I will explain the nature of the code that cannot be excluded from two aspects, the permanent principle and pure theory of law, and reveal the complexity of various interpretations related to it and tell how possible and meaningful it has become for the world to discuss and generate the jus cogens considering these natures by the current situations of the states while dealing with examples of U.N and ICJ and EU.

After fishing this discussion about the general view of jus cogens,, in the second chapter, I will try to catch up the principle of this world since it will expand the forms of jus cogens more. The pure theory of law argues that it is impossible to determine the absolute principle. However, by using the concept of relativism, it is possible to reach at the permanent principle that should be always kept. That is the equality of the values of the lives. After determining this principle, I will also expand this principle and construct another principle that the individuals cannot intervene the individuals who are equal to each other. In addition, I will also investigate the relationship between this principle and the idea of the pure theory of law.

In the third chapter, I will consider the state where there is no public policy as the cause of the voidance of the treaty while taking the idea of the public policy as what will justify the intervention to the agreement as the form of the voidance without the clear cause of the voidance. In the international society, there is still the counter argument that there cannot be public policy for voiding the treaty and it is meaningless to discuss the jus cogens. Surely, there are still the states which do not care the human rights and it is still difficult to intervene these countries, and there are various kinds of cultures in the world, so at certain rate, this argument can make sense. Therefore, in this chapter, I will consider how the existence of jus cogens becomes in the state where this counter argument is accepted. Considering this state, what is useful is the idea of the public policy as what will justify the intervention to the agreement as the form of voidance without the clear cause of the voidance. This idea basically means that although ,there is not the public policy that can be the clear cause of the voidance of the agreement, the law system still has the principle of the intervention preparing for the emergent sate and so on. This idea is useful since it will avoid the situation where there cannot be the jus cogens just because there is not the public policy as the cause of the voidance and it can make the jus cogens survived for the integration of the world. In this chapter, I will describe the validity of this concept and prove the existence of it based on the process of the realization of the international customary law and the application of the right of the self-conservation.

In the fourth chapter, I will organize the criteria for deciding the jus cogens based on the permanent principle and the pure theory of law since it

will solidify the existence of jus cogens. First of all, I will set up the logic to adopt the theory generated in the second chapter to the international society based on the sates since that theory was based on the humans or lives. After this process, I will make the three criteria for determining jus cogens based on this theory, the harm principle that is different from the one by J.S Mill based on the utilitarianism, the collapse of the true self because of the super emotional thinking, the emotional thinking related to the collapse of order in the long span. From the pure theory of law, there will be the basic principles in the international law, "the government should take the action following the customs among the states", so based on this concept, I will examine the criteria for jus cogens

In the fifth chapter, I will test my theories based on the permanent principle by using the example of genocide and prevention principle, precautionary approach, the principle of non-use of the force and the right of the national self- determination and the right to self-defense. These law were chosen since the first three laws are strongly related to the maintenance of the order of the international community that is most significant function for the jus cogens and the last two could be good example for testing how the laws guaranteeing the rights that also consider it as the deviation that the person having the rights abandon those rights based on its determination can be jus cogens and proving the complexity of discussion of jus cogens in such a type of law.

In the last chapter, taking the overall natures of the jus cogens known from thesis, I will point out the current problem of the procedure of dealing with jus cogens and suggest the fixation for it. The problem is that currently, only the states which made the treaty against jus cogens can argue voiding treaty. This is troublesome because it is rare that the concerned parties which had violated the order will void the treaty by admitting that fact. Hence, I will suggest the expansion of the sates with the right for arguing the voidance of the treaty based on the theory that I have constructed in this thesis.