

Master's Thesis Abstract

Student ID Number: 21GH201

Name:

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Takano Taisei

Title A Consideration of “the Act on the Review and Regulation of the Use of Real Estate Surrounding Important Facilities and on Remote Territorial Islands” - From the Point of View of the Study of Japanese Constitutional Law -

In this paper, I consider “the Act on the Review and Regulation of the Use of Real Estate Surrounding Important Facilities and on Remote Territorial Islands” was established on June 16, 2021, from the point of view of the study of Japanese constitutional law.

The Act can be evaluated highly in terms of solving the problem about the regulation of the use of land which is important for Japanese national security abandoned for many years. However, the legislative purpose of the Act is being suspected about unconstitutionality because the Act regulates the rights from the point of view of Japanese national security. In addition, the Act has risk of infringing the right to privacy by researching land.

In this paper, first I will make clear the Act has military publicness by noting background of the Act. Then, I consider whether the legislative purpose is suitable for the public welfare. Next, I consider the problem about the right to privacy in this Act. Last, I suggest improvements in this Act.

In the prologue, I raise issues about the Act briefly.

In chapter 1, first, I explain the articles of the Act. Then, I make clear the Act stipulates about review and regulation of the use of land from the point of view of Japan's economic security and military security. However, I make clear true legislative purpose of the Act is securing military publicness, through analyzing background of the Act.

In chapter 2, I consider whether the military publicness exists in our country, by analyzing theory about public nature and judicial precedent. In our country, military publicness is being avoided because of the Japanese constitution article 9. However, I make clear military publicness exists as national public nature that is national security interest in Japan, through considering theory about public nature and judicial precedents.

In chapter 3, I consider whether military publicness that is national security interest in Japan is suitable for the “public welfare” through quoting theories and judicial precedents. The common view in theory of public welfare, using national interest as a reason of limiting the rights, tends to avoid. However, in the recent theory, new theories of public welfare that may permit using national interest as a reason of limiting the rights have been proposed. In addition, I make clear there are judicial precedents that using national security interest as a reason of limiting the rights.

In chapter 4, I consider the problem about the right to privacy in this Act by using 5 judging criteria—presence or absence of ①legal basis, ②legitimate purpose, ③system safety, ④rules of sanctions, ⑤monitoring organization—that indicated in the precedent that was disputed about legality of “J-LIS system”. Then, I make clear that the Act meets almost the criteria ①, ②. On the other hand, I make clear the Act does not meet the criteria well regarding criteria ③, ④, ⑤. That's why, from now on, we should continue to discuss this problem when enforcing the Act.

Last chapter, I pick up problems—mainly chapter 3 and 4's problems—about the Act once again, and then, I suggest improvement plans about the Act briefly.