

A STUDY ON LEGAL REGULATION ON RENEGOTIATION OF CONTRACT
BASED ON ECOLOGICAL PUBLIC ORDER

—Towards legal support to private ordering over ecological interests—

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[SYNOPSIS]

In this study, the rule of the change of circumstances, which gives a remedy for a party when the performance of a contract becomes more onerous for a party because of the unforeseeable events, was examined. The case of the Court of Appeal of Nancy in France (CA Nancy, 26 sept. 2007) is very useful to examine how the rule of the change of circumstances could solve the issue of contract adaptation based on ecological interests.

In CA Nancy, 26 sept. 2007, the court considered how much contribution each party made to ecological interests and ordered the parties to enter into renegotiation. However, the issue of adaptation of contract, if it is related to public interests, should be solved by law in a heteronomous way rather than leaving it to parties. This is because an autonomous renegotiation is not suitable for taking public interests into consideration and protecting them. In other words, the power to adapt a contract should be given to a judge where the change of circumstances is related to public interests. As a result of being indicated the existence of such power of a judge, renegotiation is drawn into 'the shadow of the law' and the parties can reach an agreement reflecting a court judgment which would be given to parties if the parties failed to reach an agreement.