

沒收、追徵、追繳與抵償法理詮釋系列(二)

剝奪犯罪工具與不法利益之思維

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關鍵字：違禁物、不法利益、犯罪工具、義務沒收、職權沒收。

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摘 要

沒收、追徵、追繳與抵償作為犯罪阻絕與剝奪的手段，其作用的對象，乃以不法之犯罪事實結構為判斷基準，既無涉行為可罰性之認定，也無關於行為人刑事責任的輕重，其法律效果的屬性，本不同於刑罰，故實不宜將其作為刑罰的從刑，其應是一種與刑罰平行的獨立效果。惟有賦予其法律效果的獨立性，方得以使現行規定的正當性，以及其具體的運用的合理性，得到堅實的支撐。因此本文嘗試對於沒收等手段的獨立性，做辯證式的分析，並提出修法的芻議，以供參照。

The jurisprudence explanatory comment series of confiscation, levy, pursuing the payment and compensation II The thinking of depriving the crime tools and illegal benefits

Ke, Yaw-Cheng

Abstract

Confiscation, levy, pursuing the payment and compensation are regarded as the measures to prevent the crimes. The objects of those measures are determined by the structure of the Facts. These measures' legal attributes are different from those of the penalty. Therefore, it is not adequate to think of them as the accessory punishment but they are supposed to have independent effects which are parallel to penalty. Therefore, this essay tries to make a dialectical analysis about the independence of these measures, and then to provide the suggestion of the amendment for reference.