

沒收法制修正之評釋

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關鍵詞：沒收、第三人沒收、屬人性、屬物性、溯及既往禁止

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摘 要

2015 年刑法關於沒收制度的修正，廢棄既有的從刑規定，新增沒收專章，同時將沒收原本的效力加以擴張，對於犯罪工具及犯罪所得或所生的不法利益，除原對犯罪行為人得為沒收之外，更擴及犯罪行為人以外之人，即所謂第三人沒收的規定。整體地說，修正法的核心內容，主要係將沒收賦予獨立性效果的性質，並擴張其內容，得以對於特定的第三人為沒收，並增訂沒收效力及時效的規範。就沒收屬性而言，將沒收訂為獨立性的法律效果，固屬正確的立法，然因未真正揭明沒收的本質，使得原本應為屬物性質的效果，依舊遺留著屬人性的錯誤。加上對於沒收修正規定的適用問題，貿然採取溯及既往的適用方式，將使得修正法的效應，形成規範內部的矛盾與錯誤，司法實務對於沒收修正規範的適用，勢必產生適法性的質疑。此種修正法關於適用規定的謬誤，恐造成規範適用不能的難題，值得深思！

A Study on the Legal System of Criminal Forfeiture

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Abstract

The legal system of criminal forfeiture was reformed in 2015. The reform unclude: 1. abandons the character of accessory punishment of criminal forfeiture; 2. formulate a new special chapter for the forfeiture. This Reformact makes the scope of criminal forfeiture to the Third. In general the main content of this reform is to give the criminal forfeiture a independent effect. And the scope of its application is to expand to a third person for a particular confiscation, meanwhile it is updated the effectiveness and the aging specification of forfeiture specification. In terms of properties of confiscation, it is correct in legislation for Criminal Code, that the institution of forfeiture is orderd as a independent legal effect, but it is error, that it is not made clear the real nature of the forfeiture, not to making the original nature, that it should be a nature of material and not personality. Additionally the legal validity of the reformed forfeiture can be applied retroactively, it will lead to the contradictory between norms and make the error in the ysstem of norm. The justical practice will get the hesitation about the correct appropriateness of normssystem. This reformed error will lead the application to a unsolutive delimma. This is worth pondering!