

The Confiscation of Ill-Gotten Gains in Pollution: The Taiwan Experience and the Interaction between Economic Analysis of Law and Environmental Economics Perspectives

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Abstract : In reply to serious environmental problems, the Taiwan government quickly adjusted some articles to suit the needs of environmental protection recently, such as the amendment to article 190-1 of the Taiwan Criminal Code. The transfer of legislation comes as an improvement which canceled the limitation of 'endangering public safety'. At the same time, the article 190-1 goes from accumulative concrete offense to abstract crime of danger. Thus, the public looks forward to whether environmental crime following the imposition of fines or penalties works efficiently in anti-pollution by the deterrent effects. However, according to the addition to article 38-2 of the Taiwan Criminal Code, the confiscation system seems controversial legislation to restrain ill-gotten gains. Most prior studies focused on comparisons with the Administrative Penalty Law and the Criminal Code in environmental issue in Taiwan; recently, more and more studies emphasize calculations on ill-gotten gains. Hence, this paper try to examine the deterrent effect in environmental crime by economic analysis of law and environmental economics perspective. This analysis shows that only if there is an extremely high probability (equal to 100 percent) of an environmental crime case being prosecuted criminally by Taiwan Environmental Protection Agency, the deterrent effects will work. Therefore, this paper suggests deliberating the confiscation system from supplementing the System of Environmental and Economic Accounting, reasonable deterrent fines, input management, real-time system for detection of pollution, and whistleblower system, environmental education, and modernization of law.

Keywords : confiscation, ecosystem services, environmental crime, ill-gotten gains, the deterrent effect, the system of environmental and economic accounting

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