

## **On the Deprivation of Illegal Benefits: Focusing on the Administrative Penalty Act**

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### **Abstract**

Recent years have witnessed the frequent occurrence of environmental pollution and food safety cases, which leads to the prominence of academic discussions and legal practices on the deprivation of illegal benefits in administrative or criminal penalties, with the hope to reduce acquisitiveness in those cases. This paper, with a focus on administrative penalty, examines the deficits in the deprivation of illegal benefits in Taiwan through a comparative analysis of German and Japanese laws. In sum, this paper finds that the aim of illegal benefits deprivation is not to blame the actors but to restore the lawful property possession. Thus, a comprehensive and effective illegal benefits deprivation should answer to both tests of objectivity (without assuming the accountability of the actors) and pervasiveness (being applied to every illegal acts). This paper further proposes an amendment to Article 18, Section 2, Article 15, Section 3 (the qualifying clause) and Article 20, Sections 1 & 2 of the Administrative Penalty Act, and comments on the related 2016 amendment to the criminal penalty law.

**Keywords: illegal benefits, administrative penalty law, criminal law, increase of a fine, confiscation, forfeiture**

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