

The Research of Criminal Discovery: Focus on Comparison of American and Japanese System

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Abstract

The concept of “discovery” or “disclosure” in criminal procedure arises from Anglo-Saxon adversary system, which is set for preventing trial surprise and making pre-trial preparation. Although our criminal system bases upon civil law and file examination system, the proposal of Japanese indictment structure, which is the same as “Non Dossier-Producing System”, has been discussed for decades. Non Dossier-Producing System is designed to eliminate the prejudgment of adjudicators and the quest for fair trial. Given the prosecutors are not allowed to send case files to court while indicting the criminals under Non Dossier-Producing System, there is the necessity to set a litigants-led procedure of discovering or disclosing litigation information in order to examine prosecutors’ evidences from opposing views.

Recently, Judicial Yuan announced the draft of “Citizen Participation in Criminal Procedure Act”, which has incorporated the articles of Non Dossier-Producing System and criminal discovery. According to the draft, the prosecutors should not send the case files including evidences of documents or objects to court while indicting the criminals, so the defendant and his attorney could only receive evidences of the case from the prosecutors’ discovery. For this reason, the draft adopted Japanese “Three-Phase Discovery Structure” to let the prosecutors disclose materials or information to the defendant. On the other hand, it also provided that the defendant should disclose his defense such as alibi or insanity when the prosecutors have completed his duty. Besides Japanese

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structure, the Federal Rules of Criminal Procedure and ABA Standards are also the basic and essential model of criminal discovery in the U.S.. Therefore, how to choose the proper model of criminal discovery has obviously become a material issue in the future. This article is intending to discuss pre-trial criminal discovery system by means of conducting comparative research on American and Japanese law, and trying to propose practice suggestion by reviewing the new draft and present system in Taiwan.

Keywords: discovery, disclosure, adversary system, file examination, prejudice elimination, fair trial