

Developments in the Law in 2019:

Confiscation Procedure Law

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Abstract

This article discusses several issues related to confiscation procedure law with a selection of judgments with both theoretical and practical importance from the Supreme Court in 2019, in order to observe the practical trend of the new confiscation procedure law after its implementation since the year of 2016. These issues to be selected and discussed in this article include: 1. Seizure for recovery: 1.1 The distinction of two kinds of seizure for recovery (seizure for confiscation or seizure for forced collection) and 1.2 the relation between seizure for recovery and seizure for evidence. 2. Two practical controversies of third person participation process: 2.1 whether the court can adjudicate ex officio a third person to participate in the confiscation process when neither the third person nor the prosecutor has applied to the court for the third person to participate; 2.2 the effect of a judgment when the main text missed out to inform whether the third person be seized or not. 3. An overall view of practical controversies of non-conviction-based asset confiscation with the case of inherited type of confiscation when the defendant dies. It has been three and a half years since the new provisions of criminal confiscation in both the Criminal Code and in the Criminal Procedure Law came into effect to the end of 2019, in comparison with confiscation substantive law, where there have been a lot of discussions and research in literature and the judgements made by the Supreme Court are also gradually growing and the quality of judgments are improving, confiscation procedure law has been long ignored in literature and research field

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by contrast, this article aims to point out some of the above practical issues as seen above and hopes to motivate more discussions and research in the field of confiscation procedure law.

Keywords: confiscation procedure law, seizure for recovery, seizure for confiscation, seizure for forced collection, third person participation, non-conviction-based asset confiscation