

Stigma or Justice? A Study of Taiwan Indigenous Peoples' Right to Effective Assistance of Counsel in Criminal Procedure

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Abstract

In 2013, Article 31 of the Code of Criminal Procedure of Taiwan was amended to improve “the human rights of indigenous people in judicial procedure”, and the status of indigenous people became the reason for compulsory counsel. However, since the concept of “the human rights of indigenous people in judicial procedure” is still ambiguous and the legislative purpose was not clearly explained, the criticism that the indigenous people shouldn't be unjustly stigmatized is also brought about. In this context, the main issue of this article is to justify this revision of the Code of Criminal Procedure and to examine the legislative model of this article. Firstly, this paper will clarify the substance of “the human rights of indigenous people in judicial procedure”. That is to say, through the analysis of J. Y. Interpretation, I will point out that the substance of this right is the indigenous defendants' right to defend in criminal procedure. Moreover, I argue that, based on the predicament in criminal procedure that results from the cultural variation of indigenous defendants, the essence of this rights is to avoid the difficulties that the indigenous defendants fall into an undefendable situation due to cultural variation. Secondly, in this paper I will attempt to justify this revision of the Code of Criminal Procedure in 2013. Namely, in this paper, I will adopt the viewpoint of “the politics of difference”, and argue that the amendment in 2013 would not make indigenous people stigmatized. Besides, I will assert that the revision in 2013 is focusing on the difficulties brought about by the cultural variation between indigenous peoples and Han Chinese, and aims to realize the

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purpose of allowing indigenous defendants to fully assert their rights and defend themselves. Thus, it can be said that this revision is suitable for values such as justice and equality. Thirdly, this paper examines the validity of the amendment in 2013, and analyzes whether the legislative model of compulsory counsel should be adopted. Therefore, I conclude that this law amendment is only the first step in securing the status of the procedural subject of indigenous peoples. To satisfy social justice, establishing a criminal procedure that the indigenous people consider to be the subject is a fundamental method.

Keyword: Code of Criminal Procedure, the right to defend, right to effective assistance of counsel, compulsory counsel, Taiwan indigenous peoples, the cultural conflicts, the politics of difference, justice, stigma, Indigenous peoples basic law