

**The Development of Taiwan's Judicial Review of EIA
Decisions under a Comparative Law Perspective:
An Interpretation in Response to the Context of Democratic
Transformation in Taiwan**

*Ying-Lei Chang**

Abstract

The design of Taiwan's Environmental Impact Assessment procedure (hereafter referred to as the "EIA procedure") was modeled after the U.S. one. Some environmental groups challenged the operability of this system through litigation. A few opinions assessing EIA decisions have created some degree of confusion. I find that such confusion originates in part from the transplantation structure of a U.S. system into a legal system which conceptual framework being heavily influenced by German law. Local scholars have introduced theories from both countries as guidance. However, none of them has yet provided satisfactory answers to the issues arising in the context of Taiwan.

In order to answer the above-mentioned questions, I first reviewed the history of the EIA system in the U.S., prior to comparing it to the German system. I argue that the pluralistic understanding at the core of the U.S. procedure makes it an information-generating process which can trigger conflicting social interactions between the government and the citizenry. The standard of judicial review clearly demonstrates such pluralistic grounds. I further analyzed Germany's administrative law and the EIA system. I consider that public participation in the German administrative decision-making

* Assistant Professor, Department of Law, Aletheia University.
E-mail: ylch3014@gmail.com

procedure aims to provide reliable information for administrative decision-makers. Mistakes happening in the course of the EIA procedure are very often considered as procedural defects. They are seen as irrelevant so long as the decision resulting thereof is the appropriate one.

In contrast to the U.S. and German systems, the unique design of Taiwan's EIA procedure is a trust-building mechanism in response to environmental protests arisen during democratic transition. I propose that legal theory in Taiwan should respond to the context of democratic development instead of considering foreign legal systems as must-be ruling criteria to build and improve our legal system.

Keywords: legal transplantation, democratic transition, environmental impact assessment, judicial review, comparative law, Rechtstaat Prinzip, rule of law, procedural right, participation, pluralism, corporatism