

# A Review of the Implementation of University Autonomy from the Perspective of the Legal Status of Universities: Focusing on the Legal Personalization of Universities

## Summary

### Introduction

The issues of legal personalization of universities emerged in Taiwan first in 1986, and has remained in dispute ever since. The diverse opinions and discussions about it were proposed by various commentators. Some contend that the legal personalization of universities would contribute to the practice of university autonomy, while some suspect the propriety of the legal personalization of universities and worry about its possible negative effects. The debate has become more and more complicated over the years. It is time to reconsider the issue and the disputes about them from different aspects.

The term “legal personalization” includes three possible forms of organization: public law juridical association, public law juridical foundation and administrative legal person. Each may render different impacts on the organizations, personnel affairs, finance, and autonomy of universities. However, few studies distinguish them clearly. The purpose of this study was to clarify the differences and impacts of adopting different forms of organizations.

### Method

The documentary analysis method was used as the framework of this study. Since the purpose of the organizational change was to ensure the

practice of university autonomy, an overall comprehension of it is essential. Therefore, this study first focuses on the constitutional guarantee of the university autonomy. The theory and the function of university autonomy were also the focus of the study. University autonomy would be further classified into four aspects: organizational, personnel, financial, and academic autonomy. University autonomy exhibits different functions in each aspect.

After the ascertainment of the constitutional guarantee of university autonomy, this study focuses on four forms of university organization. Universities in Taiwan at the present stage are administrative agencies of the government. Furthermore, this study categorizes “legal personalization” into three different forms, which are public law juridical association, public law juridical foundation and administrative legal person. The basic organizational characteristics, modes of the operation, merits and defects of the form and examples would be discussed in this study. Case studies from comparative law perspectives would be discussed as well to better illustrate the analysis.

With sufficient comprehensions of different characteristics of these four forms of university organization, this study then reviews each of their practice of organizational, personnel, financial, and academic autonomy. A proper suggestion of the organizational change of universities and a solution for the issues of legal personalization of universities will be proposed after all the categorizing and analyzing of the impact of different forms of organization on university autonomy.

## Results

University autonomy is an institutional guarantee under Article 13 of the Constitution of Taiwan. In spite of being an administrative agency of the government, universities still fall under the domain of the fundamental rights because they belong to the special protective field of certain fundamental rights under the Constitution. With the guarantee of university autonomy, universities may exercise independent control over their administrative and academic matters. University autonomy can also be claimed to prevent or defend the infringement of the state.

Since legal personalization of universities is no more a new issue, and there are many researches on relative topics, this study will focus on the differences and the comparison among different forms of organization. Universities are subject to greater limitations on their organizational, personnel, financial, and academic matters as an administrative agency of the government, but university autonomy can still be well protected by taking proper supporting measures. Universities exercise almost full autonomy on financial affairs under the establishment of an endowment fund at present stage. However, the decreasing subsidies of the government and certain existing laws still constitute obstacles to the flexibility of the organizational operation.

Universities enjoy better flexibility in operation as a legal person; the relaxation in organization, on the other hand, brings new misgivings to researchers and the existing staff of universities. Universities as public law juridical associations provide professors a high degree of autonomy, but an oligarchic government may lead to the centralization of power and the overload of professors. Public law juridical association is therefore only suitable for small universities.

On the other hand, the central executive organ of universities as a public law juridical foundation is the board of directors. Policies of organizational management, financial matters and personnel affairs are decided by an independent board of directors. The formation of the board of directors is consequently very crucial to the future of university autonomy. The communicative mechanism between the board of directors and professors is also another key to the practice of academic autonomy. The success or failure of the organizational change lies in the means of the selection of the board of directors and the rules of procedure of the board of directors.

Administrative legal person is another possible choice for the organizational change of universities, and it is what the Taiwan government prefers. As a form of organization, an administrative legal person emphasizes on its independence on finance and personnel affairs. However, universities as administrative legal persons face the risk of the decrease in governmental subsidies. This is what the opposing commentators concern most. According to the constitutional obligation to support high school education, governmental subsidies shall not be canceled with the organizational change. Moreover, in view of the experience from cases basing upon the

comparative law, an administrative legal person is an organizational form which emphasizes on efficiency, competitiveness and organizational lean implementation. These characteristics may not be all compatible with the purpose of university autonomy. Corresponding adjustment should be done to guarantee the practice of university autonomy and academic freedom.

## Conclusion and Discussion

Four conclusions and recommendations are proposed:

1. At present stage, universities as an administrative agency of the government can still exercise sufficient autonomy by taking proper supporting measures such as the institution of endowment fund.

2. Universities possess better flexibility in operation as a legal person, but the form of public law juridical association is only suitable for small universities.

3. A public law juridical foundation is generally a proper form for organizational change. The means of the selection of the board of directors influences university autonomy enormously.

4. Universities enjoy better flexibility as an administrative legal person, but some of the characteristics of an administrative legal person don't help the purpose of university autonomy, and therefore corresponding adjustment should be made.

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