

论文

司法审判中单位证明现象的法社会学分析

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摘要:

单位证明的证据效力缺乏足够的法理依据,但审判实践对单位证明的运用却十分普遍,这种现象的产生及其变化需... 单位证明最终应退出我国司法证明的历史舞台,但这需要一个较长的过程,其中如何看待法官的“单位情结”至关重要。

关键词: 司法审判 单位证明 单位社会 法社会学

A Legal Sociology Analysis of Certificates Issued by Units in Judicial Trials

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Abstract:

The evidentiary effect of certificates issued by units is short of a basis in legal theory. Nevertheless, the certificates issued by units are in common use in judicial practices. The emergence and development of this phenomenon should be analyzed in the perspective of legal sociology. The social roots which make this phenomenon come into being lie in the advent of the unit system in China. On the one hand, in the unit society, the units supervise and control their members while the members are submitted to and dependant on the units. The social relationship between these two subjects results in a situation that the units become the authoritative spokesmen of the individual witnesses. On the other hand, homogeneity of the units enhances the acceptance of the certificates used in judicial trials. However, as the unit society of China is disintegrating, the phenomenon shows the tendency of a gradual decline. Further more, the transformation of the trial mode has accelerated this progress. Units' certificates applied as evidence ought to vanish in the Chinese judicial practice, but this will undergo a fairly long process. In this process, it is extremely crucial for the judges to adopt a correct attitude towards their "complex of unit".

Keywords: judicial trial certificates issued by units unit society legal sociology

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