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The legal system of ABS in french Polynesia: missed objectives ?

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Progress

Introduction : context and issues

- I. The internal limitations : A questioning of the efficiency bound to the regulation itself
- II. The external limitations : A questioning of the efficiency of the regulations bound to the regional and national disparities (the example of the french law for the reconquest of the biodiversity)

Context

- ABS definition
- CBD's and Nagoya's objectives
- Transposition into french law :

2006 : some regulations only for the Guiana Amazonian Park

2009 : environmental regulations in New-Caledonia

2012 : environmental regulations in French Polynesia

2016 : national law for the reconquest of the biodiversity

Issues

- Objectives fixed in the polynesian regulation
- Main issue :

Do the local regulations on ABS allow to reach the international and local goals ?

- Internal limitations
- External limitations

I. The internal limitations : **A questioning of the efficiency bound to the regulation itself**

A/ The development of the research hindered by the procedures

B/ The share of benefits remained theoretical

C/ The ineffective repression against biopiracy

I. The internal limitations :

A questioning of the efficiency bound to the regulation itself

A/ The development of the research hindered by the procedures

- The deficiencies of the administrative procedures

= Absence of implementing regulations

- No identified administrative department for the demands of access, no precision over the deadline of the instruction of requests
- Arbitrary, lack of transparency : What criteria of evaluation of the demands?
- What procedure of recording in the ABS exchange center ?

I.The internal limitations :

A questioning of the efficiency bound to the regulation itself

A/ The development of the research hindered by the procedures

- The complexity of administrative procedures

- Systematic administrative authorization which can slow down the research
- Prior authorization of owner of traditional knowledge, which puts practical difficulties but which guarantees the prior consent of the knowledge's owner before the administrative authorization
- Obligation to identify the autochton origin of the knowledge which seems impossible in practice

I. The internal limitations :

A questioning of the efficiency bound to the regulation itself

B/ The share of benefits remained theoretical

- None identified community as owner of traditional knowledge
 - In the local regulation, owner who receive a part of benefits can be a single person or a group only if legally identified, like association.
- No model of agreement on benefits sharing
- Only pragmatic solutions, but not generalized

I.The internal limitations :

A questioning of the efficiency bound to the regulation itself

C/ The ineffective repression against biopiracy

- No register, no control
- No legal ratification of prison sentence on the foundation of the organic law of French Polynesia (too high in comparison with metropolitan prison sentence)
- Illegal fines : idem, too high in comparison with metropolitan fines except in case of commercial use of the biological resources.

II. The external limitations :

A questioning of the efficiency of the regulations bound to the regional and national disparities

(the example of the law for the reconquest of the biodiversity)

A/ Competition between french overseas owed to differences of regulations

B/ Difficulties owed to the enforcement of the national law

II. The external limitations :

A questioning of the efficiency of the regulations bound to the regional and national disparities

A/ Competition between french overseas owed to differences of regulations

- "environmental dumping"
- ABS system of the french law is less complex :
 - only declaration for an access to do research or collections (to know and better protect biodiversity)
 - Prior authorization for an industrial or commercial access, or for an access to traditional knowledges

II. The external limitations :

A questioning of the efficiency of the regulations bound to the regional and national disparities

B/ Difficulties owed to the enforcement of the national law

1) 2 national definitions and 1 principle must be enforced in French Polynesia :

- Inhabitants' community
- Traditional knowledge
- Affectation of the advantages stemming from the use of the traditional knowledge to projects benefiting directly to inhabitants' concerned communities.

II. The external limitations :

A questioning of the efficiency of the regulations bound to the regional and national disparities

B/ Difficulties owed to the enforcement of the national law

2) Issue of the identification of inhabitants' communities

- Restrictive definition which does not seem to allow to recognize inhabitants' Polynesian communities
- No legal entities (no moral person in legal sense)
- Necessity of an intermediary to collect their consent and to sign the benefits' sharing's agreement

II. The external limitations :

A questioning of the efficiency of the regulations bound to the regional and national disparities

B/ Difficulties owed to the enforcement of the national law

3) Comparison between the national definition and the local acceptance

- Question of the origin of traditional knowledge
- Question of the identity of the owner of traditional knowledge
- Question of the legal shape of the holder of the traditional knowledge

Conclusion

adaptations of polynesian regulation are necessary :

- To give the regulation more efficiency
- For the legal security of research
- For a better share with the owner of traditional knowlegde
- To take into account the french law (or better...)

Thank you

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