

Study on Benign Utilization of the Resources of Ethnic Law in China

Taking "Degu" of Yi Nationality as an Example

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ABSTRACT

The local resources of ethnic rule of law have gradually become an important part of the current judicial process. This article mainly explores the status quo, advantages and disadvantages of ethnic minorities' use of local resources of the rule of law to resolve disputes through literature research and field investigations, and finds that there are problems such as charges and conflicts with statutory laws while efficiently resolving disputes, and analyzes the importance of local resources of the rule of law. Because of its value and shortcomings, it is proposed to incorporate it into the people's mediator system, and to make a benign interaction between the native resources of the rule of national law and modern statutory laws, so as to achieve the purpose of making full use of the native resources of the national rule of law.

Keywords: ethnic, law resources, Degu, Yi nationality, benign utilization

I. INTRODUCTION

Since the Ministry of Justice proposed to build a grand mediation pattern in 2018, the process of rule of law has been accelerating, and the role of local ethnic resources has become increasingly obvious. The minister of the ministry stressed that "it is necessary to strengthen the guidance and management of alternative dispute resolution, give full play to the advantages of various mediations, strengthen the linkage between various mediations, and strive to build a grand mediation pattern". As a native law resource, the "Degu" in Yi nationality plays an important role in promoting the rule of law, resolving disputes and maintaining social order. It also serves as an alternative dispute resolution in the grand mediation pattern.

II. THE CURRENT SITUATION OF RESOURCES OF ETHNIC LAW

A. Concept of "Degu"

The concept of "Degu" mediation system is as follows: The parties to a dispute choose a third party "Degu", a civil mediator, to use the Yi customary law to reach a negotiated settlement. This method is still the most important way for Yi people to solve the internal and external contradictions. The emergence of Degu

results from the natural selection by the Yi people, and its mediation was based on customary law, Erbi. Its authority benefits from worldly approval, and it features non-law, high performance rate of mediation and compensation.

B. The definition of resources of ethnic law

In the Rule of Law and Its Local Resource, Su Li pointed out that "the road of modern rule of law in China must rely on various resources and norms originating in China, and pay attention to the modernization of Chinese traditional law and culture." [1] The local law resources refer to the institutional elements that have been formed or are developing and can be utilized under the influence of the local social environment. Different ethnic groups around the country have their special law resources, which are employed to solve local problems with autonomy. In China, a multi-ethnic country, ethnic groups with long history and remote geographical location needs to further promote their rule of law. With similar preconditions, "Lama" in Tibet, "touden" and "moba" of Va nationality, "chieftain" and "tima" of Tujia nationality, and "Degu" of Yi nationality share many similarities, serving as principal resolvers of local disputes. They play the role of mediation in ethnic areas, promoting the construction of the grand mediating pattern and the further inheritance and development of the local resources of ethnic law.

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C. The law resources of Yi nationality

As the sixth largest minority ethnic group in China, Yi nationality has its unique language system and deep-rooted concept of family. They are mainly distributed in the plateaus, mountains, and coastal hills of Sichuan, Yunnan, Guangxi and Guizhou, and other remote areas. The ethnic group has little contact with the outside world and insufficient acceptance of the judicial litigation system. The main resolution method of local disputes is "Degu". The use of "Degu" to resolve disputes is the most important way for the Yi nationality in Liangshan to solve the internal and external contradictions of the family for thousands of years. As lawful society picks up, the Degu should exist as unique local law resources given its irreplaceable role in the settlement of conflicts and disputes in ethnic areas.

D. Analysis on the characteristics of resources of ethnic law in Liangshan Prefecture

Liangshan Yi Autonomous Prefecture is the largest Yi community in China. Starting from the present situation of "Degu" mediation in Liangshan, this paper analyzes the local resources of Yi nationality's law resources. The social and cultural environment of Yi nationality is relatively complex: the long-term closed and semi-closed state has formed a unique culture, customs, religious beliefs, ethics and social governance system, which puts forward special requirements to the basic-level rural social governance of Yi nationality in Liangshan. [3] Data surveyed shows that more than 70% of the people among two counties in Liangshan Prefecture and the adjacent Ebian Yi Autonomous County take Degu as the first choice to resolve disputes (see "Table I")

TABLE I. CHOICE OF MASS DISPUTE RESOLUTION IN THREE COUNTIES

Proportion Resolution method Region	Degu	Local mediation	Judicial relief	Other
	Jinyang County	70%	5%	20%
Ebian County	72%	5%	20%	3%
Xide County	60%	5%	30%	5%

The resources of ethnic law: "Degu", the first choice of the mass, play a prominent role in the settlement of daily life disputes of Yi nationality, which has the following characteristics. It has no fixed term and is not hereditary, with its authority deriving from secular approval rather than law. As the saying goes, "the family can always assume the role of Degu, if they were able." By gaining people's trust, he acquired the identity of "Degu", which was not restricted by term and age. Even if he seriously violated professional ethics, he still had this identity, but only lost the trust of some Yi people. [4] The "Degu" mediation is based on Yi customary law, precedents, and Erbi, not on state law. Based on their national beliefs, the people pass on the habits from generation to generation. Because of lack of legal awareness, they trust habit more than law. The performance rate of the cases handled by "Degu" mediation is high. Degu depend heavily on the lineage, especially the head of a family or a respected person. When decision is made by Degu, the head of the lineage urges the party to perform even if he does not. [5] "Degu" mediation features compensation. In terms of fees, Degu has a great deal of discretion, and there is no uniform standard. The remuneration varies according to the requirements of Degu himself. Some only requires payment of travel expenses, and some charges fees in proportion to the amount of money involved in the case. However, some may bid up the remuneration and make

arbitrary charges. Most compensation ranges from a few thousand to tens of thousands.

III. ADVANTAGES OF RESOURCES OF YI ETHNIC LAW

A. Obvious mediation effect and high efficiency

As the first choice of the Yi nationality in the settlement of disputes, Degu plays a crucial role in the settlement of disputes. In view of the Yi nationality's strong sense of family lineage, special geographical location, long-term little contact with the outside world, and low recognition of modern justice, the role of "Degu" mediation system in disputes is highlighted. The system, which is recognized by the common people, has obvious effect in mediation of disputes and is highly recognized by both parties. Moreover, the method, free from complicated procedural routines, relies on customary law and its simple values to mediate disputes, which can often be resolved within a week, and is more efficient than judicial proceedings.

B. Strong credibility with family lineage as a guarantee of mediation and enforcement

The main body of Yi nationality folk disputes is not the party directly involved in the dispute, but the person with certain prestige in the party's family as the agent. In the process of mediation, the agent not only has full

power of agency over the dispute, but also guarantees the risk of the subsequent implementation. Moreover, disputes caused by the parties, if the amount of compensation is large, can often only be borne by family support. Since the agent is authorized by the parties, and the family lineage serves as the guarantee of mediation and execution, the execution and performance rate is high, which reduces the occurrence of secondary contradictions.

In some cases, the Degu, as the mediator, serves as not only the judge of the dispute, but also a guarantee for the execution. If the obligor fails to perform obligations, "Degu" is obliged to perform the obligations of the obligor in advance on behalf of the obligor. Therefore, the role of "Degu" requires not only high reputation, but also powerful family background and strong economic strength. Once the agent loses credibility, the credibility of the whole family lineage will be lost, and then they will be despised by others in the society. Therefore, the mediation results of disputes in Yi nationality areas are rarely difficult to implement except for a few cases of force majeure.

C. Flexible mediation methods

The whole process: from the emergence of civil disputes to the choice of "Degu" by both sides, from the disputed matters to the assumption of responsibilities, all embody the principle of fair and voluntary mediation. By virtue of its own reputation and credibility recognized by the common world, "Degu" reasons and mediates the focus of the dispute between the two parties according to the evidence provided by the two parties, common law and previous cases. There are back-to-back mediation and face-to-face mediation. In case of disputes of great influence, many times of mediation are often carried out. If encounter obstacles in the mediation process, both sides would invite more prestigious "Degu". The mediation personnel, method, frequency, place and time of mediation shall be decided

by both parties and "Degu" on their own, and shall not be bound by the rules of determination. Therefore, such method can be flexible according to the actual situation of different cases, so as to obtain the most convenient and efficient effect.

D. The value of local law resources is obvious

The mediation method advocates the value system with fairness and justice as the core, which implies the value orientation of compromise, democracy, tolerance, justice, harmony and benefit spirit. In the process of the formation and dissemination of Yi nationality's legal culture, Degu advocates the practice of "mass participation and respecting everyone's opinions", which fully reveals the values of freedom, democracy and equality. Relying on its prestige and public trust, Degu's vow of ensuring the fair handling reflects the value of fairness of Yi legal culture. The "Degu" culture of Yi nationality attaches great importance to social and public order and regulates the behavior violating regulations through taboos, folk laws, village rules and conventions, which shows its unremitting pursuit of justice and order.

E. Saving judicial resources

In 2003, the Intermediate People's Court of Liangshan Yi Autonomous Prefecture conducted a special investigation into the jurisdiction of courts in such counties as Zhaojue, Butuo, Meigu and Yuexi. The results show that the five counties have a total population of 21,538, and there were 3,972 civil disputes in 2002. Among them, 149 disputes were settled by court proceedings, accounting for 3.75%, 78.2% were settled by "Degu" according to the customary law, and the rest were settled by administrative organizations such as townships and villages. [5]

The following figure can be obtained according to the investigation. (See "Fig. 1")

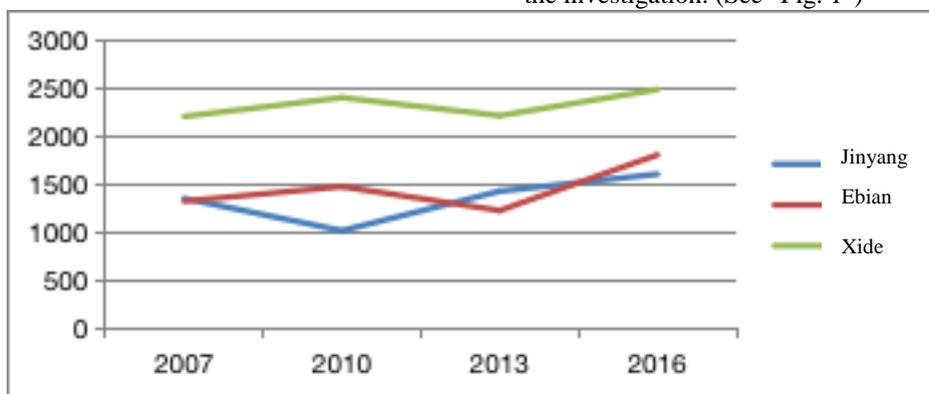


Fig. 1. Statistics of the number of successful settlement of disputes through Degu in three counties.

From the above figure, it can be seen that instances are not rare of cases settled through "Degu" in Jinyang,

Xide and Ebian, but few choose judicial channels. In view of national character and lineage influence, there

are more disputes and contradictions in the areas inhabited by the Yi nationality than that by the Han nationality. Due to the insufficient development of judicial system in mountainous areas, "Degu" solves most of the cases, so that many disputes were handled autonomously before entering the judicial process, which greatly alleviates the pressure of the judicial organs and saves judicial resources.

IV. THE SHORTCOMINGS OF RESOURCES OF ETHNIC LAW

A. Contradiction between the resources of ethnic law and modern justice in connection

"Degu" employs the customary law as the basis to mediate civil disputes, which to some extent ignores the national law and hinders the construction of the rule of law when dealing with conflicts and maintaining social stability. The common law on which the mediation method is based originates from the foundation of life of slavery society, with a strong brand of the slavery society, and contained a lot of old customs, such as the bribe price in marriage, house-changing marriage and so on. In addition, "Degu" mediation covers not only civil aspect, but also criminal cases and civil cases similar to criminal cases, the most obvious being the retention of the custom of "wergild". In areas inhabited by the Yi ethnic group, as for injury cases that cause casualties, the "Degu" often demands compensation for the victims' families and their lineage, rather than seeking the protection of the state judicial organs. Some people in remote rural areas even block the intervention of the state judiciary [6]

Therefore, despite his capability of mediating civil disputes, Degu still encounters challenges in dealing with conflicts between customary law and national law. For example, according to the Yi custom, marriage is not registered with the civil affairs bureau, but is recognized as long as the marriage ceremony is held. The same is true of divorce. The marriage ended only when the two parties reached an agreement on compensation, etc. through the mediation of Degu. [7] This is obviously against the law. However, Yi people's marriage custom has developed into a system of its own, and the contradiction in this respect has become increasingly prominent with the mounting marriage cost.

In addition, there is less connection between Degu and modern judicial institutions. The state organs fail to integrate Degu into a unified system for collaboration and to minimize its disadvantages while playing its role. During the process of mediation, Degu seldom communicates with the court, the mediation process is not subject to the court, and the results are not reported to the court. As a result, court officials had little or no direct contact with Degu. The division of labor in

cooperation is not clear enough, and the functional scope and code of conduct are not clearly defined. For example, the scope of mediation, mediation process and other important parts are decided by the Degu himself, and there are still defects in the coordination norms of state organs.

B. Degu's own shortcomings

Degu has a long history. Due to its location in the marginal mountainous area, imperfect infrastructure and relatively late acceptance of advanced scientific and cultural knowledge, Degu of the Yi nationality reveals many deficiencies in its development. Through investigation, it is found that there are many deficiencies in the method, which makes it difficult to give full play to its initiative. For example, the absolute gender of Degu. The total number of Degu in Ebian County is 31, and female Degu accounts for 3%. At present, there is only one female among Muheluhe of Yi in Ebian. It can be seen that the gender ratio is seriously unbalanced. Local preference for boys over girls explains a lot. Gender imbalance is not conducive to the promotion of gender equality and the construction of socialist rule of law. Secondly, the aging of Degu of Yi is serious. The national classification standard for middle and old age is 60 years old. Research shows that the elderly account for 20% of the total population, far exceeding the country's aging population by 10%. The main reasons for the aging of Degu are as follows: Degu must master the habits, customs, and precedents of the Yi people, which take a long time to learn. Such situation will seriously affect the number of dispute mediations. Third, the poor education background of Degu of Yi nationality. This results from the fact that most Degu was born in the 1960s and 1970s with no education or strict education, which disservices his study of laws and regulations and customary law of Yi. As a result, some mediation results are not in accordance with the spirit of the law, and the results of the same or similar disputes vary.

The group characteristics of Yi nationality are fully applied in the mediation process by "Degu" to ensure its operability and execution. However, due to the shortcomings of group characteristics, there are many group incidents in the process of "mediation". In fact, the resolution of disputes between members of different family lineages is not simply a matter for both parties, but more often it will be turned into a contradiction between the two lineages. During the mediation process, other members of the family lineage will actively participate. Due to the large number of members and the motivation of safeguarding the overall interests of the lineage, the mediation of "Degu" may evolve into the struggle between the lineages at any time. Although this goes against the motivation of seeking settlement, it also reveals the drawback of "Degu" mediation. [6]

C. *Unclear legal status and lack of unified management*

The judge "Degu" who presided over the mediation is mainly based on the customary law of Yi people, Erbi (Yi proverb) and previous cases. However, it can be seen clearly that there are many conflicts between the common law of Yi nationality and the statutory law of the present legal society. Despite his role as a civil mediator, Degu did not have an accurate identity in the government or the judiciary, only the name. Nor is there a legal provision that explicitly stipulates Degu's right to mediate and adjudicate. According to field visits and review of relevant laws, it was found that Degu don't have a formal judicial identity, such as the people's mediator, people's juror and so on.

According to research, there are Degu associations in some areas where Yi people live, which regulate resources of ethnic law and help Degu play its positive role. But in practice, the management system of the association is not good and the training is not effective. Most Degu behave themselves by means of their own morality: their inner conscientious. There are still some deficiencies in the management system of such association, which has no mandatory regulations as guarantee. In the training materials for Degu, it is obvious that sometimes when carrying out training, one pays too much attention to its form, and then neglects the legal knowledge acquired.

Given Degu's unclear legal position, the administrative rights and responsibilities of judicial organs or other relevant institutions towards it are ambiguous. In addition, some management measures without policy and legal support are difficult to implement, which is not conducive to better play Degu's advantages in the judicial field, and difficult to avoid its problems. It is necessary to reduce Degu's negative effects and make it full of vitality while helping to build a harmonious society, so that it can be better developed as a historical heritage. Relying on public support and trust, Degu, who is not subject to a specialized management institution, sometimes accepts bribes to disturb the order of the case, so that the interests of the victims cannot be guaranteed.

V. MEASURES FOR THE BENIGN UTILIZATION OF RESOURCES OF ETHNIC LAW

A. *Incorporating Degu into unified management to absorb excellent talents and learn from each other*

The existing system of Jinyang County is analyzed as follows: In 2016, the Judicial Bureau of Jinyang County set up a leading group for the standardization of civil "Degu" mediation in Jinyang County. According to the number of "Degu" in each township (town), a mediation team is set up in each township (town), which is managed and guided by the Judicial Bureau. It

requires the unified filing of "Degu" personal information, the improvement of such mediation system and disciplines. The joint mediation system is constructed, and on the basis of the established three-three mediation system (three understandings: understanding the key areas where social contradictions are concentrated, the key types where individual contradictions are frequent, and the key personnel who are responsible for the accumulation of cases in letters and visits; three familiars: familiar with the way and channel of conflict investigation, the way and method of conflict resolution, and the way to deal with mass incidents; and one master: master network public opinion), the "Degu" mediation is added to clarify the disciplinary issues during the mediation process. "Degu" work training was carried out, and mediation teaching was strengthened in accordance with the law, so as to improve their mediation ability and standardize the mediation fee.

It is also necessary to expand the role of the association, and formulate relevant management system through the association, so as to better manage Degu, including the standard, assessment, rewards and punishments of the existing Degu and the cultivation of new Degu. These measures make it continuously play its role in the process of historical development and be better inherited as a historical and cultural heritage.

As a local law resource, Degu not only plays a role in resolving local ethnic disputes, but also contributes to the formulation and promotion of laws. Degu helps the integration of written law and local folk culture. For example, the content of the rule of law is blended with traditional songs of Yi nationality, which plays a promotion role along transmission and singing. This is conducive to the further improvement of the agreement between written law and culture of ethnic areas, and gives full play to the bridge role of Degu.

B. *Constructing a new platform to facilitate the connection between judicial and legal resources*

1) *Building an innovative platform:* The innovating of the "three platforms" model. The "three platforms" were created to facilitate ethnic mediation. The authors take Degu as an example: platform one, "the docking between litigation and mediation". The first is to include "Degu" in the people's mediator team and allow it to participate in the pre-trial mediation; the second is to include "Degu" in the people's jury team and allow its participation in the trial in the court; the third is that the county court conducts judicial confirmation on the case mediated by Degu to ensure effectiveness. Platform two, "the connection between the procuratorate and the mediation of Degu". The county procuratorate hires "Degu" as "mediator of criminal cases" to participate in criminal mediation. [8] Platform

three: The people's mediation studio of "Degu" was established, and the best Degu was selected and brought into the mediation studio for unified and standardized management. This move can better promote the connection and exchanges between the Party and government organs and the folk mediators in the minority areas.

2) *Establishing an information work platform:* It is necessary to analyze, investigate and report relevant contradictory information, collect cases uniformly, receive them in different windows, and register visiting cases. It is also needed to summarize and sort out the disputes that are accepted or checked out according to their nature and category or to mediate directly, or to ensure the pertinence of cases based on the principles of "territorial management" and "the one in charge is responsible", so as to improve efficiency. Furthermore, it is necessary to keep a unified archive of relevant information, analyze the characteristics of relevant contradictions, so as to provide reference for better resolution of contradictions.

3) *Provision is made for relevant courts to provide resources support to civil mediators in minority areas:* The court should provide corresponding support with its own existing human and financial resources. For example, the court can provide training in statutory law to assist the civil mediators in minority areas to further understand the national statutory law, so as to better integrate the statutory law and the common law, and better solve civil disputes with positive interaction. In addition, the court can also set up directional full-time

staff to assist and supervise the folk mediators of ethnic minorities to deal with disputes, so as to avoid their shortcomings, which not only helps the social construction in the aspect of the rule of law, but also provides driving force for the inheritance of ethnic culture.

4) *Attempts to endow new legal status to civil mediators:* Ethnic communities can formulate local policies according to their actual situation, take the initiative to establish the status of Degu, and encourage Degu to actively participate in the national judicial practice. In addition, the information of Degu shall be collected and uniformly sent to the departments at and above the county level for record, so as to facilitate the communication with Degu. The management of Degu can effectively reduce its negative role, better play its positive role, and promote the communication between Degu and state organs, which is conducive to the publicity of national laws in Yi communities and the formation of a good atmosphere of rule of law. In addition, a clear legal positioning will be conducive to the inheritance of Degu as a precious historical and cultural heritage, and attract the younger generation of Yi people to better understand the Degu system in advance.

For example, the employment system of the Degu jury incorporates "Degu" into the jury team, endowing them with legal status. At the same time, they are managed and standardized by the juror system, so that the ethnic resources can further play its positive role. (See "Fig. 2")

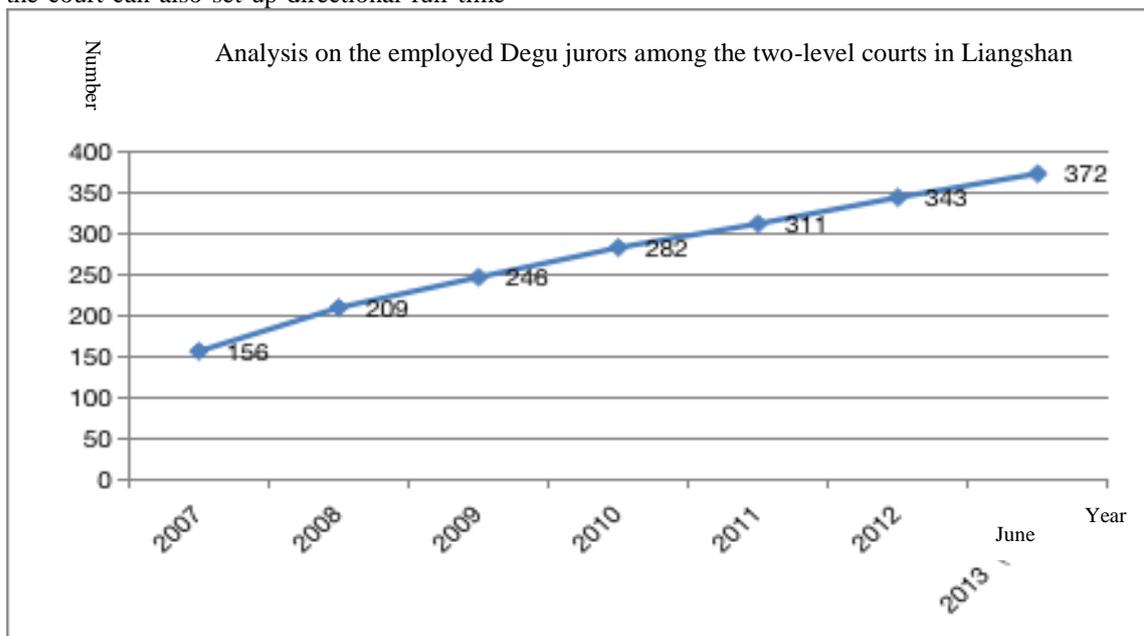


Fig. 2. Analysis on the employed Degu jurors among the two-level courts in Liangshan.

VI. CONCLUSION

The local law resources play a positive role in the construction of the current diversified dispute mediation pattern. and its mediation role in the practice of civil disputes should not be underestimated. Based on the characteristics of different nationalities, the paper analyzes their operating methods, and proposes relevant countermeasures in response to actual problems, with a view to helping them to play a better role in practice and promoting the further benign utilization of national resources.

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