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硕 士 学 位 论 文

我国再审程序之立法发展及其优化

Legislative Development and Advancement of Chinese  
Retrial Procedure

揭元源

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## 内容摘要

再审程序的设计目的是通过启动再审程序，以纠正民事生效裁判实体或程序错误的制度。再审程序作为一种非正常的救济程序，是保障当事人合法权利的补充性程序。从世界范围来看，无论是大陆法系还是英美法系国家，各国都对再审程序规定了严格甚至苛刻的适用条件，尽力将这种非常救济途径控制在“极端例外”的范围之内。我国再审程序的设计也不应当例外。本文以平衡再审诉权保障与既判力维护为基点，通过梳理我国再审程序立法之发展，深刻分析了我国再审程序仍存在的弊端与不足，借鉴国外先进的立法经验，提出我国再审程序优化之原则与具体设想。

论文除了引言及结语外，共分为四章：

第一章，再审程序概述。该章阐述了再审程序的基本概念，分析了再审程序依循的原则与特点，并重点论述了再审程序的理论基础。

第二章，我国再审程序之变迁及比较法上的启示。该章梳理了我国再审程序的立法变迁，并比较分析了国外再审程序立法模式及其特点，指出其对完善我国再审程序的启示。

第三章，我国再审程序的修正及反思。该章详尽分析了 2007 年修正后的民事诉讼法关于再审程序的进步性及由此产生的旧疾与新患，评析了 2012 年新民事诉讼法对再审程序的反思。

第四章，我国再审程序的优化。该章深刻分析了我国再审程序的现实困境，进而提出我国再审程序立法优化之原则和具体设想，并针对 2012 年新民事诉讼法再审程序修正后在审判实践中应注意的问题提出具体建议。

**关键词：**再审程序；再审诉权；既判力

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## ABSTRACT

The design of retrial procedure is to supervise the system of civil effective judgment or procedure mistakes by enabling the party to start the application for a retrial. Retrial procedure, as an irregular remedy procedure, is a supplementary procedure to guarantee the party's legal rights. Both the continental law system and common law system countries worldwide lay down strict, and even tough applicable conditions for retrial procedure, try hard to confine the irregular remedy procedure within "extreme exceptions", and our country is no exception. The thesis gives an in-depth analysis of the disadvantages of retrial procedure in our country by combing the legislation development of Chinese retrial procedure, based on balancing assurance of retrial right and assertion of judicial res judicata.. The thesis further puts forward the principles and specific ideas of the way to optimize Chinese retrial procedure.

The thesis is divided into four chapters except introduction and conclusion.

Chapter One The Introduction to Retrial Procedure The chapter gives an introduction to the basic concept of retrial procedure and analyzes the principle and characteristics that retrial procedure abide by. It mainly discusses the theoretical foundation of retrial procedure.

Chapter Two The Historical Change of Retrial Procedure and Enlightenment from Comparative Law. In this part, the author elaborates the historical changes of Chinese retrial procedure, conducts a comparative analysis of the modes and characteristics of foreign retrial procedure legislation, and summarizes its enlightenment for the improvement of our country's retrial procedure.

Chapter Three Modification and Reflection on Chinese Retrial Procedure The chapter elaborately analyzes the advancement and weakness of the revised edition of Civil Procedure Law in 2007, and the reflection on retrial procedure demonstrated in Civil Procedure Law revised in 2012.

Chapter Four Advancement of Chinese Retrial Procedure The chapter gives an in-depth analysis of the predicament of Chinese retrial procedure, puts forward the

principle and detailed ideals of legislative advancement of Chinese retrial procedure, and raises suggestions for the 2012 revised Civil Procedure Law in the judicial practice.

**Key words:** Retrial procedure; Right of retrial application; Res judicata

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