

# *Regulation of Public Administrative Punishment Decisions from a Teleological Perspective*

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**Abstract:** The system for the disclosure of administrative punishment decisions originates from the "administrative law enforcement publicity system" within the three systems of administrative law enforcement. Its main purpose is to supervise the law enforcement activities of administrative organs. Based on this legislative purpose, it is inferred that administrative agencies would adopt a self-restrained disclosure standard to protect their credibility. However, empirical data analysis shows that this is not the case. In practice, the disclosure of administrative punishment decisions has gradually evolved from a tool for supervising public power to a means of imposing secondary punitive sanctions on individuals. This shift in purpose not only infringes on the basic rights of individuals but also leads to an expansion of public power. It is necessary to regulate the administrative disclosure procedure from a teleological perspective, ensuring that the implementation of the system aligns with its original legislative purpose.

## 1. Introduction

Since the revision of the "Administrative Penalty Law", there have been numerous controversies in the academic community regarding the interpretation and explanation of Article 48, as well as the nature of the public administrative punishment system. There are two main viewpoints on the nature of this system: the administrative factual act theory and the administrative legal act theory. (1) The administrative factual act theory holds that the disclosure of administrative punishment decisions is a specific type of administrative action that objectively lacks legal effect and subjectively does not directly produce legal effects[1]. (2) The administrative legal act theory argues that the disclosure of administrative punishment decisions is an administrative penalty action that not only formally meets the characteristics of a "reputational penalty"[2] but also substantively has legal effects on the counterpart, thereby enhancing the actual effect of the criticism announcement[3]. There are two completely opposing views on the interpretation of Article 48. The prevailing view in academia is that Article 48 establishes the logic of "non-disclosure as the principle, disclosure as the exception," and that disclosure must balance individual and public interests[4-5]. There are various standards for judging the phrase "having a certain social impact" in Article 48, such as time period[6], degree of harm[7], or penalty standards[8]. Some scholars believe that according to the normative logic of the "Regulations on the Disclosure of Government Information", "disclosure as the principle, non-

disclosure as the exception", using "having a certain social impact" as the logic for disclosure is both impractical and difficult to truly balance legal interests[9]. Based on the existing academic foundation, this article introduces new perspectives on the disclosure of administrative punishment decisions from a teleological standpoint.

## **2. Reflections on the Legislative Purpose of the Disclosure of Administrative Punishment Decisions**

Legal dogmatics summarizes the normative purposes in legal interpretation into subjective and objective purposes. The subjective purpose refers to the legislative intent, while the objective purpose refers to the values or social functions that the legal provisions are expected to achieve, serving as the basis for interpretation to explore the objective normative purpose of the law itself. This article will analyze and discuss the legislative purpose of the disclosure of administrative punishment decisions based on the current effective laws and regulations.

### **2.1 The Normative System of the Disclosure of Administrative Punishment Decisions**

The construction of a government under the rule of law is based on the principle of administration according to law, and the exploration of the purpose of the system should return to the norms. China's legal system interprets the disclosure of administrative punishment decisions both in terms of process and content. The establishment of the system for disclosing administrative punishment decisions is based on the administrative law enforcement publicity system within the "three systems of administrative law enforcement." In 2014, the Central Committee of the Communist Party of China issued the "Decision on Several Major Issues in Comprehensively Advancing the Rule of Law" (hereinafter referred to as the "Decision"), which emphasized the need for strict and impartial law enforcement and strengthening the restraint and supervision of administrative power. In order to further promote administration according to law and speed up the construction of a government ruled by law, it is necessary to strengthen the restriction and supervision of administrative power. The construction of social supervision and public opinion supervision systems is part of a scientifically effective system for restraining and supervising power, which can effectively "enhance the synergy and effectiveness of supervision." Regarding government transparency, the "Decision" proposed the principle of "disclosure as the norm, non-disclosure as the exception," and for normative documents involving the rights and obligations of citizens, legal persons, or other organizations, it should be "published according to the requirements of government information disclosure."

Subsequently, the "Outline for the Implementation of Building a Law-based Government (2015-2020)" specifically deployed the administrative law enforcement publicity system, including measures to fully promote government transparency. In 2015, the People's Government of Zhejiang Province issued the "Interim Measures for the Online Disclosure of Administrative Punishment Result Information in Zhejiang Province," which specifically stipulated the content of administrative punishment result information that can and cannot be disclosed online. The information that can be disclosed includes the document number of the administrative punishment decision, the name of the punished person or entity, the main illegal facts, etc., but it did not restrict specific items of administrative punishment. In 2019, the newly revised "Regulations on the Disclosure of Government Information" provided a general stipulation on the subjects, content, and methods of government information disclosure. Article 20, paragraph 6 stipulates that "the basis, conditions, procedures for implementing administrative punishment and administrative enforcement, as well as administrative punishment decisions deemed to have a certain social impact by this administrative organ" should be proactively disclosed. In 2021, the newly revised "Administrative Penalty Law" Article 48, paragraph 1 stipulates that "administrative punishment decisions with a certain social impact should be disclosed

according to law," establishing the disclosure of administrative punishment decisions as a procedural aspect of the administrative punishment decision process. Subsequent local government regulations on the disclosure of government information have mostly used the newly revised "Administrative Penalty Law" and the "Regulations on the Disclosure of Government Information" as their legal basis. Additionally, Articles 15 and 20 of the "Regulations on the Disclosure of Government Information" stipulate the exclusions for the disclosure of administrative punishment decisions. The normative system for the disclosure of administrative punishment decisions includes both an authorized disclosure structure and a restrictive disclosure content[10]. It can be said that China has established a bidirectional normative system for the disclosure of administrative punishment decisions, with disclosure as the principle and non-disclosure as the exception.

## 2.2 Exploration of the Subjective Purpose of Disclosing Administrative Punishment Decisions

From the analysis of the establishment process of this system, it is clear that the primary purpose of the initial design of the disclosure of administrative punishment decisions was to safeguard the public's right to know and their right to supervise, thereby strengthening the supervision of administrative law enforcement[11]. On one hand, achieving substantive democracy requires substantial public participation, and such participation necessitates legislative protection of the public's right to know. On the other hand, the disclosure of administrative punishment information can also be seen as a way to exert pressure on public authorities, prompting them to be more cautious in making administrative punishment decisions, thereby enhancing the normative nature of administrative activities. The public's access to government information makes the administrative process more transparent, allowing people to supervise the government through this essential means, thereby implementing the modern democratic political system. Legislators, through repeated declarations, inform the public that the measure of disclosing administrative punishment decisions is a tool for them to supervise the administration according to the law[12].

Beyond the legislatively emphasized purpose, in a modern society where information gradually becomes a resource, the disclosure of administrative punishment decisions also carries certain warning value. Sociologist Ulrich Beck introduced the concept of the "risk society." He argued that various social forms throughout human history can be considered risk societies to some extent because all conscious individuals can recognize the danger of death. However, in the process of modernization, humans have gradually become the main producers of risks. With economic development, a series of market-related institutional constructions provide incentives for human risk behavior. To address these risks, it is not only necessary for the government to act as a leader in breaking down knowledge barriers and providing the public with correct value guidance, but it also requires the transformation of closed-door negotiations between decision-makers into open dialogues in society. Moreover, due to considerations of self-interest and the potential reduction of social evaluation, risk-producing businesses usually do not choose to voluntarily disclose risks. As the modernization process accelerates, social risks increasingly develop in complex and unpredictable directions, and the risks that the public can avoid based on life experience relatively decrease. At this time, the government assumes the responsibility of filling the gap in risk information to ensure social stability. By disclosing administrative punishment decisions, administrative authorities provide the public with reliable risk information through the authority of public power. This aligns with the legislative purpose, which posits that the disclosure of administrative punishment decisions is beneficial for "the public to be aware of relevant situations, enhance their ability to cope with risks, thereby regulating market order and increasing the sense of happiness and security among the people"[13].

## 2.3 The Deviation between Legislative Purpose and Reality

According to Article 48 mentioned above, "Administrative punishment decisions that have a certain social impact shall be disclosed according to law." This article has been interpreted in practice and by many scholars as establishing the principle of non-disclosure with disclosure as the exception. Since not all administrative penalties can be disclosed, when disclosure is defined as a tool for supervising and controlling public power, there inherently exists a power vacuum where this supervision cannot reach. Moreover, if the fundamental purpose of this system is to supervise administration according to the law, administrative agencies, which prioritize efficiency, will inevitably interpret "having a certain social impact" in the narrowest sense to avoid public credibility issues that may arise from disclosing information. However, the reality is quite the opposite. As previously mentioned, more and more administrative departments are using official platforms and integrated media to disclose their administrative punishment decisions, leveraging the amplification effect of the internet to further magnify the impact of administrative violations. In the absence of mandatory organizational obligations, why would administrative agencies engage in such "self-restrictive" behavior? This clearly cannot be explained by self-restraint alone; there must be deeper, more administrative-oriented purposes behind it.

Historically, the practice of public disclosure can be traced back to the medieval European inquisitions. Trials were required to be public because the nature of religious trials was secretive, prone to judicial despotism, and public disclosure was established to counter darkness and protect the interests of the parties involved. "Trials should be public, and evidence of crimes should be public, so that public opinion, which may be the only means of social restraint, can check power and desire; thus, the people will say, we are not slaves, we are protected"[14]. Public trials are a key mechanism for ensuring judicial fairness, with both legislators and parties having a genuine need to initiate public trials. However, this need does not arise in the process of administrative penalties. On one hand, the issuance of administrative punishment decisions is subject to more layers of supervision compared to judicial trials, with limited types of punishments and relatively low possibilities for corruption. On the other hand, the content of administrative penalties, whether in terms of severity or method, rarely touches on the core interests of the counterparts, but the disclosure of administrative punishment decisions may seriously infringe on personal privacy. In this context, the parties with this right, including the individuals subject to administrative penalties and other related parties, may not voluntarily choose to disclose the punishment decisions, which is clearly at odds with the purpose of supervising administration according to law.

So what is the real intention of administrative agencies in disclosing administrative punishment decisions? By using internet platforms to disclose these decisions, administrative agencies not only reduce administrative costs and improve regulatory effectiveness, but they also impose a second round of sanctions and strikes on violators. Japan's Information Disclosure Law defines the act of disclosing facts about non-compliance with administrative obligations or administrative guidance as "sanctioning joint expression," an act of providing information to the public that does not directly affect the rights and obligations of citizens[15]. By issuing negative evaluations of individuals and amplifying these evaluations through the internet, administrative agencies serve a public interest group far beyond the scope of the case itself. This culture of shame is reflected once again in the process of disclosing administrative penalties, marking the individual as subject to societal and public condemnation, "causing the violator to lose public support, national trust, and social friendship and tolerance"[14].

This sanctioning method causes both material and psychological harm to the counterpart beyond the administrative penalty. Moreover, since the primary medium of disclosure is the internet, disclosure includes not only official government websites and integrated media accounts but also

secondary exposure by non-governmental media, allowing administrative agencies to inflict significant negative impacts on the counterpart at very low cost. Compared to traditional paper disclosures, online disclosures can generally be retrieved later, and because of people's inherent retention of negative information, the loss of rights post-sanction is nearly irreversible and unrepairable. Additionally, due to the inherent ambiguity of language, people may overinterpret summaries of texts, causing some negative events to continuously ferment, amplifying and distorting the negative effects of the sanction itself. This foreseeable powerful and persistent deterrent effect greatly satisfies the administrative agencies' governance needs, complementing the deterrent gap in traditional regulatory methods. Although some scholars believe that the moral judgment the public makes on the counterpart after negative information is disclosed is merely an indirect effect and not caused by the disclosure act itself, the guiding role of public opinion embedded in the administrative punishment decision itself cannot be ignored.

### **3. Nature and Substantive Application of the Disclosure of Administrative Punishment Decisions**

#### **3.1 Disclosure of Administrative Punishment Decisions as a Factual Act**

Before discussing the procedural control of the disclosure of administrative punishment decisions, it is essential to clarify the nature of the disclosure act itself. Even after the revision of the "Administrative Penalty Law," scholars have not reached a consensus on the nature of the disclosure of administrative punishment decisions. Current viewpoints mainly include administrative punishment, factual act, and administrative coercion.

Some scholars argue that the disclosure of administrative violation information is a form of reputational penalty. Administrative violation information differs from general government information. Not only is this type of information not explicitly regulated in the "Regulations on the Disclosure of Government Information," but its disclosure often results in an aggravated punitive effect. The disclosed administrative punishment information is a type of government information generally restricted from public access. Since reputational penalties aim to harm the violator's mental interests, they fundamentally differ from the information disclosed under the "Regulations on the Disclosure of Government Information," which aims to clarify citizens' right to information and promote administration according to law[16]. This process of interpreting legal provisions based on practical considerations to justify their application fundamentally contains logical flaws. Firstly, Article 20 of the "Regulations on the Disclosure of Government Information" lists 15 types of government information that should be actively disclosed in a parallel relationship. From both purposive and systematic interpretation perspectives, no distinction in applicability should exist between clause 6 and the other clauses. Secondly, the "Administrative Penalty Law" stipulates that administrative penalties should follow the principle of disclosure in two senses: not only should laws, administrative regulations, and local regulations involving citizens' rights and obligations be published, but also the decisions, bases, and reasons for administrative penalties should be disclosed. Some administrative penalties with significant rights impacts or those requested by the parties require a hearing, which should be open to the public and the media unless specifically provided otherwise by law. However, the disclosure of administrative punishment decisions has not followed this principle.

Other scholars believe that the disclosure of administrative punishment decision information is an innovative enforcement measure under the "Administrative Coercion Law," serving as an indirect coercive method[17]. However, the primary enforcers of administrative coercion are the courts, and the punitive nature of disclosing administrative punishment decision information significantly differs from other administrative coercive measures. Treating the disclosure of administrative punishment

decisions as another form of administrative coercion could conflict with systematic interpretation. Furthermore, according to Article 13 of China's "Administrative Coercion Law," administrative coercive execution can only be established by law. If the law does not specify that administrative agencies can enforce coercion, the administrative agency making the administrative decision should apply to the people's court for coercive execution. There are significant differences between the disclosure decision and administrative coercive measures in terms of both legal establishment and implementation methods.

Before the disclosure of an administrative punishment decision, the procedural process of making the administrative punishment decision has already concluded, resulting in a final punitive effect on the counterpart[8]. Defining the disclosure of administrative punishment decisions as a form of reputational penalty presents various issues. Therefore, the disclosure of administrative punishment decisions should be considered a factual act with psychological implications. The above analysis shows that the disclosure of administrative punishment decisions can cause a certain degree of harm to the counterpart's mental interests, but this harm is not absolute. The most detrimental outcomes can be attributed to biased media reports and irregularities in how administrative departments disclose administrative punishment decisions. In the absence of new illegal facts, considering the disclosure of administrative punishment decisions as a form of administrative punishment might violate the principle of "no double jeopardy." If such reputational penalties are biased or erroneous, can they be remedied through effective administrative litigation procedures? Analyzing from the perspective of textual setting, it can also be observed that the disclosure of administrative punishment decisions is stipulated in the section on administrative punishment decisions, fundamentally indicating that the new "Administrative Penalty Law" has categorized the disclosure of administrative punishment decisions as a factual act.

### **3.2 Detailed Legislation at Lower Levels: Executive Legislation or Innovative Legislation**

Innovative legislation refers to the legislative process wherein, in the absence of national laws or administrative regulations in a particular area, local governments enact laws to address pressing issues facing regional economic and social development. Such innovative legislation must comply with the principle of legality, ensuring that the legislative process and content do not conflict with the constitution and existing laws. Executive legislation, on the other hand, refers to local legislative efforts to further refine and detail national laws and administrative regulations, integrating them with local conditions to ensure smooth implementation at the regional level[8]. The "Interim Measures for the Online Disclosure of Administrative Punishment Result Information in Zhejiang Province," promulgated by the Zhejiang Provincial Government, was formulated before the amendments to the "Regulations on the Disclosure of Government Information" and the "Administrative Penalty Law." This measure is an example of innovative legislation. However, following the subsequent amendments to the "Administrative Penalty Law" and the "Regulations on the Disclosure of Government Information," local governments should treat the disclosure of administrative punishment decisions as a matter for executive legislation.

Returning to the legal text, it states: "Administrative punishment decisions that have a certain social impact should be disclosed in accordance with the law. If disclosed administrative punishment decisions are changed, revoked, confirmed illegal, or confirmed invalid in accordance with the law, the administrative agency should withdraw the administrative punishment information within three days and publicly explain the reasons." According to the "Regulations on the Disclosure of Government Information," the entity responsible for disclosing administrative punishment decisions should be the administrative agency that made the decision. Furthermore, the specifics regarding the method and channels of disclosure, whether the disclosure requires prior review, and whether the

reasons for the disclosure decision need to be publicly explained are all delegated to local governments. Additionally, what is disclosed are the administrative punishment decisions, while what is withdrawn are the administrative punishment information. The distinction between these two terms can only be defined through local legislation and practice. The content and practical measures of local legislation should not exceed or deviate from the original legislative intent of Article 48 of the "Administrative Penalty Law."

## **4. Regulation of the Disclosure Procedure for Administrative Punishment Decisions**

### **4.1 Restrictions on the Disclosure of Administrative Punishment Decisions**

The exercise of administrative power requires procedural rules to restrain it; power that is not bound by procedural rules will ultimately devolve into violence. In the process of administrative punishment, the violator discloses personal information to the administrative agency, allowing the agency to effectively regulate the unlawful behavior[18]. However, this disclosure does not imply a complete forfeiture of the violator's personal information, nor does it mean that all disclosed information can be freely managed by the administrative agency. This disclosure merely extends the boundary of personal privacy to a collective boundary. When the disclosed content includes parts that pertain to personal information, the government's information disclosure must comply with the provisions of the "Personal Information Protection Law". Article 34 of the "Personal Information Protection Law" states that when a state agency processes personal information to fulfill its statutory duties, it must do so within the necessary scope and limits to meet the requirements of the proportionality principle. When determining whether to disclose a specific administrative punishment decision, the considerations include not only the fault of the offender but also whether the act violates or harms socialist core values, the field of law enforcement involved (such as tax evasion), the relationship between the offender (such as celebrities) and the public's sense of security, trust, and public interest, the frequency of violations, their duration and harmful consequences, and whether the administrative agency is responding to public concerns (such as whether it is acting in accordance with the law in a timely manner). These factors might not all impact society in every specific administrative punishment case, but the presence of any single factor with significant social impact could suffice to warrant disclosure.

### **4.2 Choosing Between Anonymous and Non-Anonymous Disclosure Based on Different Expected Outcomes**

Returning to the original legislative purpose, the following approach can be adopted: when personal information does not fulfill the purpose of supervising administrative law enforcement or protecting public interests, such information should be anonymized. For natural persons subject to penalties, administrative agencies can anonymize the name in the disclosed administrative punishment decision by retaining the surname and replacing the given name with a pseudonym. However, since anonymous disclosure only achieves the supervision of administrative agencies and does not fully identify the punished individual, it cannot accomplish comprehensive supervision. Therefore, whether to disclose the individual's full name should be determined by factors such as the severity and impact of the unlawful behavior. In cases where the severity of the punishment warrants greater public awareness or when the individual fails to fulfill their obligations within the prescribed period, names can be fully disclosed to respond to public concerns and achieve indirect enforcement functions. For penalized companies and other organizations, their names, legal representatives' names, and unified social credit codes should always be fully disclosed without exception. Sometimes, even if the administrative agency does not disclose names, media reports and public scrutiny may still

reveal the offender's identity. In such cases, the administrative agency must promptly clarify any potentially misreported or distorted information to prevent negative impacts on unrelated third parties and to control the spread of information.

### 4.3 Choosing Between Disclosure and Non-Disclosure Based on the Impact on the Individual's Personality

Analyzing the contents of administrative penalty decisions reveals that the information to be disclosed can be categorized into two types based on its impact on the individual's personality. One type, represented by violations of traffic rules, may disclose specific personal information such as the individual's name and ID number. However, this type of disclosure does not completely negate the individual's personality but may only lower their social reputation. After disclosure, the negative impact on the individual can gradually diminish through self-reflection and corrective actions, making it reversible. The other type, represented by offenses like involvement in illicit activities (e.g., gambling, drug-related offenses), including the mentioned "public bus sexual harassment" cases, may not completely negate the individual's personality under the law. However, such information may lead to irreversible societal condemnation that is difficult to reverse through the individual's actions. The irreversible negative impact of such disclosures demands greater caution from administrative agencies when deciding whether and how to disclose information. The selection of information for disclosure should be based on more objective criteria rather than a general consideration of "having a certain social impact." For example, administrative penalty decisions subject to summary procedures, where the violation is clear and the penalty is relatively minor, and the illegal behavior can be stopped on the spot, may not need to be disclosed to the public. However, decisions involving complex or difficult-to-define cases should be disclosed to the public, especially if the party chooses a hearing process, which expresses an urgent need for supervising administrative law enforcement. In such cases, public disclosure is essential to meet the legislative purpose of transparency. Regarding the degree of disclosure, for administrative penalties that are foreseeable to have irreversible negative effects on the individual but still require public attention, anonymization or other methods to obscure the true identity should be employed. Additionally, it is advisable not to disclose such information on rapidly spreading media platforms to safeguard the individual's privacy.

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