

The Brief Analysis of the Codification of China's Environmental Law

Haoyu Su^{1,a,*}

¹Department of Law, Hebei University of Economics and Business, Shijiazhuang, Hebei, 050061, China

a. sbultman3460@mymail.stratford.edu

*corresponding author

Abstract: Environmental Law in China has achieved continuous development after decades of legal construction and judicial practice. So far, China's environmental law legal system has been preliminarily established. At the same time, with the development of the global economy and the changes in the national conditions of China's economic development, the promulgation of the Chinese Civil Code has led to an increasing call for the promulgation of the Chinese Environmental Law Code. In this context, this paper takes the codification of China's environmental law as the research object, using the methods of historical analysis, literature analysis, and comparative analysis. The first section points out the background and significance of the codification of environmental law, the second section discusses the necessity and feasibility of codification of environmental law, and the third section compares the environmental law codes of other countries, summarizes the experience and lessons, and finally puts forward ideas for the framework of China's environmental law code, and puts forward suggestions for improving the legal effect of environmental law code.

Keywords: environmental law codification, environmental protection, ecological environment

1. Introduction

The research object of this topic is the codification of China's environmental law, Under the guidance of Marxist methodology, this article discusses the necessity and significance of codification of China's environmental law, puts forward corresponding suggestions for the codification of China's environmental law, and proposes ideas for the framework of codification of China's environmental law, to improve the actual effect of environmental law codification.

The appeal for the codification of China's environmental law reflects the changes in the world situation and China's actual national conditions. With the continuous development of global economic globalization, the protection of the world's ecological environment has become a common responsibility of countries around the world. At the same time, with the continuous development of China's economy, the theory of building a prosperous, strong, democratic, civilized, harmonious, and beautiful socialist power has been proposed, which has stricter requirements for environmental law standards. In the past, China's environmental law had some drawbacks, such as lagging content, indistinguishable responsibilities and rights, and unclear legal effects. Therefore, the codification of the environmental law is meaningful. The specific content of this study is why environmental law

should be codification, in other words, the necessity, importance, and feasibility of codification of environmental law, Through the analysis of the current laws and the actual implementation effect of the law, this paper puts forward the drawbacks of the current legal system and points out the necessity and importance of codification of environmental law.

At the same time, the codification of environmental laws in France, Germany, Sweden, and other countries also has implications for China. The author compares and analyzes the environmental law codes of other countries to provide experience for the codification of China's environmental law. On this basis, we propose an idea of the framework of codification of China's environmental law, in other words, what kind of environmental law code should be built. Finally, we put forward suggestions on how to improve the actual effect of codification to ensure the implementation of the law.

In this study, how to improve the actual effectiveness of the Environmental Law Code is the key point and difficult point of the study. Because this problem involves multiple reasons and is difficult to predict. It has variables and uncontrollable factors, which is a challenge in this study. To better address this challenge, the author advocates strengthening the construction of legal content and clarifying the subjects of rights and obligations to solve this problem. At the same time, we should increase the cost and accountability of illegal activities, improve and simplify the accountability procedures, solve the problems of light illegal costs and cumbersome procedures, and enhance legal deterrence. We should also adhere to the principle of flexibility and reflect practicality. In a word, we also hope that the study can contribute to the codification of environmental law.

2. Research Background and Significance of Codification of Environmental Law

2.1. Background of Codification of Environmental Law

2.1.1. Domestic Background

After decades of legal construction and judicial practice, China's environmental law has made great progress. So far, China's environmental laws, local regulations, and departmental rules have all made progress. The legal system of China's environmental law has been preliminarily established, and environmental protection work has made progress.

However, on the one hand, due to the changes in China's national conditions, the old environmental unilateral law has hysteresis and inherent drawbacks, such as contradictions between superior law and subordinate law, unclear division of responsibilities, and the need to improve the legal content, which cannot meet the requirements of ecological civilization construction at present.

On the other hand, the compilation of China's civil code has also provided a reference for the codification of environmental law. At the same time, Chinese scholars have also studied the codification of environmental law. There are many academic journal papers on the codification of environmental law, and jurisprudence and other legal disciplines have also developed. For example, Dr. Xia Ling pointed out that based on integrating the common parts of the current environmental separate laws, China has eliminated the overlapping parts of various separate laws, and also made appropriate "blank spaces" to supplement future environmental laws, namely the "open" environmental law code, which is also advocated by some scholars [1]. In short, the previous research results provide us with a lot of references and experience to study the codification of environmental law.

2.1.2. Foreign Background

Due to the development of the global economy, countries around the world are becoming increasingly interconnected and have stricter requirements for environmental protection. The ecological environment is not a problem for a country, but a problem that the world needs to face together,

Therefore, it is necessary for China to strengthen legal construction, improve environmental laws, and enact an environmental law code that is in line with international standards.

At the same time, France, Germany, and Sweden have all promulgated environmental law codes, which also provide experience and reference for China to implement the codification of environmental law.

2.2. Significance of the Study

2.2.1. Legal Perspective

The codification of environmental law is a legal system with core principles and organizational systems. The Environmental Code is a law specifically designed to protect the environment, which is a requirement for legal systematization. It is of great significance for the construction of the rule of law in socialism with Chinese characteristics and an important step in improving the socialist legal system.

At the same time, the codification of environmental law is also the integration of the original environmental separate law, which can change the scattered and chaotic situation of the original law. It also enhances public awareness of environmental laws and promotes citizen compliance with the law.

2.2.2. Application Perspective

The division of responsibilities and powers in the past one-way law was not clear, and its actual effect was not ideal. The codification of environmental law can not only make the public familiar, but also provide an important basis for future environmental protection law enforcement, division of responsibilities and rights, and judgments. At the same time, it can solve conflicts in law enforcement power among various departments, improving administrative efficiency, which is very convenient for application and reference. This plays an important role in improving the actual effectiveness of the law and improving the efficiency of law enforcement.

2.2.3. Environmental Protection

The codification of environmental law can be constantly and timely adjusted according to new environmental scientific knowledge, which will help to play its practical role. It also strengthens ecological protection efforts from a legal perspective and promotes the construction of socialist ecological civilization. It can also provide legal support for protecting the ecological environment.

3. Necessity and Feasibility of Codification of Environmental Law

3.1. The Necessity of Environmental Law

The author thinks that it is necessary to codify environmental law. The following is an analysis of the necessity of codification of environmental law:

3.1.1. The Content of the Original Single-line Method is Lagging, Whose Actual Effect Is Not Ideal

Although China's environmental law has enacted many separate laws and other regulations over the past few decades, there is still a lag in legislation and guiding ideology, still carrying the color of the past era. For example, the Environmental Protection Law is still based on the principle of "centrism of human interests", only stipulating people's health, and still has the idea of prioritizing economic

development over environmental protection [2]. Its role in environmental protection is not ideal, nor can it meet the requirements of sustainable economic development, so it is necessary to codify environmental law.

3.1.2. Incomplete Legal Content and Unclear Division of Responsibilities and Powers

Although there are numerous legal documents related to environmental law in China, much of the legislative content is too one-sided, with most of them being principled and lacking detailed legal provisions. At the same time, there are legal conflicts and overlaps in many legal documents. They have unclear divisions of responsibilities and powers for environmental protection departments, and many instances of duplicate legislation contradict each other, resulting in low efficiency and lack of clear legal basis in the enforcement process of environmental protection departments. The content of the original single-line law needs to be improved, and the unclear division of powers has increased the difficulty of law enforcement. At the same time, China's environmental law lacks clear provisions for environmental supervision, making it difficult to regulate environmental resources and other related work. The actual effect of the law is not obvious.

3.1.3. The Need to Align with International Standards

In today's globalized economy, the connections between countries are becoming increasingly close, Protecting the ecological environment and protecting the earth has also become the consensus of most countries in the world. The promulgation of the environmental law code which can be in line with international standards and has international significance is the need for China to integrate into the world market, the need to build a socialist legal system with Chinese characteristics, and the need for China to make contributions to the world's ecological protection. Therefore, it is very necessary to codify the environmental law.

3.2. Feasibility of Codification of Environmental Law

3.2.1. Previous Research Has Yielded Rich Results

China's environmental law and related basic research have achieved fruitful results, providing theory and reference for the codification of environmental law. For example, Yan Chao proposed in his works that the codification of China's environmental law should be positioned as an appropriate codification, which should be gradual [3]. Xia Ling, Gao Qing, and other scholars have studied the field of codification of environmental law, providing many theoretical achievements for the study.

3.2.2. Legal Basis and Other Codes Provide Experience and Reference for Environmental Law Codes

There must be a certain amount of legal basis in the codification work. In the field of environmental law in China, the legal system of environmental law was initially formed, with many environmental separate laws, local regulations, and departmental rules, providing a legal basis for the compilation of the Chinese Environmental Law Code. At the same time, the codification work of civil code can also be learned from experience, and it is feasible to apply the codification experience of civil code to the codification work of environmental law.

3.2.3. Experience with Environmental Law Codes in Other Countries

Germany, France, and Sweden have all promulgated environmental law codes, providing experience for China's environmental law codes. Protecting the environment is no longer a domestic issue for a

country, but a common issue for the world to face and discuss. The world's environmental legislation has become more codification, and the content of environmental laws and regulations has become more similar. Most of them express the demand for coordinating the relationship between man and nature. Under the background of the convergence trend of global environmental law codification, it is feasible for China to draw on the experience of other countries' environmental law codes and issue environmental law codes with Chinese characteristics.

3.2.4. Actual National Conditions

In recent years, China has made great achievements in economic development, but environmental issues are more prominent in reality, and existing laws cannot effectively solve environmental problems, Sustainable development has become China's pursuit, and the development of a socialist market economy has put forward requirements for the codification of environmental law. At the same time, the stable political environment and the constantly developing economy in recent years have also provided material conditions for the codification of China's environmental law, making the codification of environmental law feasible.

4. Inspiration of Other Countries' Environmental Law Codes and Assumption of China's Environmental Law Codification Framework

4.1. A Brief Introduction to the Codification of Environmental Law in Other Countries

Firstly, Germany has a rigorous and logically rigorous substantive codification model. Although Germany has not promulgated a formal environmental code, the "German Environmental Code (Draft)" is deeply rooted in people's hearts and has a wide impact, which is considered a substantive environmental law code.

Next is France's environmental law system. As a representative country of the continental legal system, France's environmental law code is also worth learning from. The French codification in the form of compilation is a codification model that simply arranges and classifies all environmental legal norms [4]. This model is easy to modify and reduces the difficulty of modification and supplementation. At the same time, the coexistence of codes and regulations can also ensure the actual effectiveness of the law to the greatest extent.

Finally, we want to discuss Sweden. Swedish codification is between Germany and France. Compared with the code in the strict sense, Sweden belongs to the framework of substantive codification, but it achieves relative openness and operability by giving up absolute rigor and certainty. The substantive compilation model of framework compilation and authorized legislation not only integrates much-existing legislation but also innovates to a certain extent, achieving the vision of modernization of environmental legislation.

4.2. Assumption of the Framework of China's Environmental Law Code

In this article, the author believes that although there are necessary and feasible conditions for formulating an environmental law code, China has not yet met the conditions for formulating a fully meaningful environmental law code, Therefore, we should achieve appropriate codification, combine openness with appropriateness, achieve coexistence and complementation of codes and separate laws, and adopt the mode of "general provisions - specific provisions - supplementary provisions".

The choice of this mode is more in line with the requirements of environmental law. Firstly, the general principle can be clarified, reflecting the systematic characteristics and overcoming the conflict of original legal content. At the same time, the content of the specific provisions is more specific, which is the concretization of its basic principles and can improve the applicability of the

environmental law code. Finally, the supplementary provisions are supplementary assistance to the code. This framework can be modified and adjusted according to the actual situation, and can also reflect the characteristics of legal systematization, overcoming the lag and dispersion of existing laws, which is more in line with China's national conditions and legal pursuits. It can also draw on the experience of other countries' codes and Chinese civil code compilation.

5. How to Improve the Actual Effect of Environmental Law Code

How to improve the actual effectiveness of environmental laws and regulations is a key and difficult point of research, as this issue is not only related to its content factors, but also involves various reasons such as environmental protection departments, public opinion, and public ideology. The codification of environmental law has variables and uncontrollable factors, which are difficult to predict. The actual effect that laws can have is the most important aspect of legislation, because even if the content of the law is good, if it cannot be effectively implemented, even good laws are in vain. Therefore, it is very important to improve the actual effectiveness of the Environmental Law Code. The following are suggestions for improving the actual effectiveness of the Environmental Law Code:

5.1. Strengthen Legal Construction, Improve and Clarify the Responsible Parties, and Improve the Legal Content

In the past, China's environmental laws did not clearly define the division of responsibilities and rights, which posed significant obstacles to the implementation of the law.

Therefore, the first step is to systematically compile the Environmental Law Code, strengthen and improve the legal content, and clarify the division of responsibilities and powers, to solve the problem of unclear subjects and low efficiency in the past.

5.2. Increase Illegal Costs and Accountability Efforts, Improve and Simplify Accountability Procedures

In the past, the punishment for violations of environmental laws was weak, and relevant departments did not held accountable, resulting in repeated violations of environmental pollution. The effectiveness of environmental laws was not fully realized. Therefore, it is very important to strengthen punishment and accountability, enhance legal deterrence and shock, and strengthen legal enforcement. At the same time, it is also necessary to simplify accountability and law enforcement procedures and strengthen environmental supervision and administrative management.

5.3. Adhere to the Principles of Flexibility and Pragmatism, with a Focus on Solving Environmental Problems

China's environmental law code should be moderately codification and open, so that it is not only convenient to adjust according to the actual national conditions, but also can listen to public opinions to supplement and modify. We need to change the current situation where some individual laws are lagging, insist on the principle of flexibility and pragmatism, and actively modify and adjust the legal content according to the actual situation, with the main purpose of solving environmental problems.

5.4. Pay Attention to the Connection with Other Departmental Laws

In the process of compiling environmental codes, it is also necessary to incorporate environmental protection content from other departmental laws such as civil law, criminal law, procedural law, and administrative law [5]. Therefore, the environmental code should be coordinated and supplemented

with other departmental laws, and if necessary, other departmental laws can be modified to achieve mutual coordination and connection between laws.

6. Conclusion

In short, from the perspective of the world situation and China's national conditions, it is necessary and feasible to formulate an environmental law code. The "moderate codification" of China's environmental law is very important. It is an important step to promote the codification of environmental law. It provides ideas for solving the drawbacks of the original law and solving environmental problems and also hopes to make a modest contribution to the codification of China's environmental law.

References

- [1] Xia Ling. *Codification of Environmental Law [D]*. East China University of Political Science and Law, 2007.
- [2] Gao Qing. *On the codification of China's Environmental Law [D]*. Shandong Normal University, 2007.
- [3] Yan Chao. *On the codification of China's Environmental Law [D]*. Northwest University for Nationalities, 2012.
- [4] Zhang Guangyuan. *Research on the codification of China's environmental law [D]*. Hebei University of Geosciences, 2019. DOI: 10.27752/d.cnki.gsjzj.2019.000021.
- [5] Chang Ji Yun. *Codification of China's Environmental Law [D]*. Sichuan Academy of Social Sciences, 2016.