



The Construction of China's Environmental Legislation Public Participation System

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Abstract

China's environmental legislation could be enhanced by the public participation and conversation, consultation mechanism, and the mechanisms could be hearing, the legislative forum and Legislative demonstration.

Key words: Environmental legislation; Public participate; Consultation mechanism

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1. THE IMPORTANCE OF PUBLIC PARTICIPATE IN ENVIRONMENTAL LEGISLATION

The legislation refers to the activity or process to create legal norms. Legal norms, including laws, regulations, and rules. Broad legislative agencies are the state organs, including of state power, the executive authorities. Terms of environmental legislation, environmental laws in China's legal system does not belong to the basic law, and the National People's Congress is not the main agency of environmental legislation. Divided in accordance with the legislative powers of the organs of state power and the executive, environmental legislation consists of two parts, First, the laws enacted by the Standing Committee of the National People's Congress, local people's congresses,

regulations by the State Council, the ministries of the State Council, the Commission, the local government's administrative rules and regulations.

Environmental administrative regulations formulated in accordance with the division of legislative authority, the right to be exercised by the State Council, the Ministry of Environmental Protection to develop the right exercise of departmental rules. In the implementation of environmental laws, environmental laws enacted by the Standing Committee of the NPC occupy the dominant position, but when we observe environmental laws, rules and regulations of the formulation process, founding that although the legislative body of environmental laws and the Standing Committee of the National People's Congress, and regulations making body of the State Council, the legislative body is often commissioned by the State environmental Protection Administration (SEPA) is responsible for the research and the drafting of laws and regulations. The result is a national environmental administrative department of fact, in addition to directly exercise their right to formulate environmental regulations, but also indirectly, in part, the exercise of the legislative power of the environmental laws and regulations. Involving in a wide range of our country enjoys the power of the environmental administration departments including not only the Environmental Protection Agency, but also many resource management agencies, such as irrigation, mining, forest, agriculture, urban construction department. This article is not affording its expedition, so it would have to expand the environmental protection department of the main analysis, which also has a reference for other administrative departments for the analysis of the environmental protection department (DU, 2005).

Environmental laws enacted by the National People's Congress is in line with the theory of democratic decentralization, administrative regulations and rules developed by the Government in the legitimacy of the democratic countries, it is easy being questioned. The

rule of law is founded on the consent of the people above rule, it means that unless the established legislative power in the country after the consent of the people outside, from the disposal of any other legislative power, which is the traditional idea of the rule of law. But in the 20th century, with the expansion of national administrative power, the world rapid development of the executive and the legislature, which to some extent impact is on the traditional legal aspect.

People's Congress of the authority vested with legislative power, and the People's Congress is composed of representatives elected by the people, therefore, to solve the problem of the legitimacy of power. However, the rule is no longer based on the consent of the people elected by the people authorities enacted the law, but by the executive enjoyed universal legal rules created by the legislative power. In accordance with the principle of the balance of powers, the executive authorities can not exercise the legislative and judicial powers. However, if we stick to the conventions, it is unable to face the real life, complex social problems. Some creative administrative activities are response to the demanding of the times. Of the administrative organs of legislative powers wary mainly because I do not know how to check and balance the executive authorities, local conditions restricting the executive authorities, that is the solution to the problem critical, after all, between the legislature and the executive is only a vague boundaries granted that they are two fundamentally different formal powers view is wrong ... an attempt to draw a clear boundary between the two is one of the early political theory could not be achieved due to unrealistic long-cherished wish (Wade, 1997, p. 588)". The crucial question is how to make up for the principles of democracy and the cracks between the executive and the legislature, the people why should obey legal norms drawn up by non-institutions elected by the People? Moreover, the number of the current environment, the executive and the legislature more and more content is becoming increasingly complex and technology, in this case, how to supervise and control environmental executive and the legislature? Through institutionalized dialogue and consultation mechanisms to ensure the participation of the people in the executive and the legislature, to establish the legitimacy of the executive and the legislature. In addition, by strengthening public participation in the process of the execution the legislature controls the executive and the legislature. Therefore, this paper argues that dialogue, consultations either in theory for the executive and the legislature to seek to the legitimacy of the basis of supervisory control functions, but also in the specific process of the executive and the legislature, dialogue, consultations for the executive and the legislature has important theoretical and practical significance.

2. CONVERSATION AND CONSULTATION MECHANISM IN THE LITIGATION PROCESS (YANG & ZHANG, n.d.)

"Law of Practical Reason, the legislation only proceeds from reality and seeking truth from facts, to reflect the laws of social movements, seen through the phenomenon of nature, in order to achieve the desired social effect (ZHOU, 2003, p. 3)." In modern society, economic growth is largely built on environmental resources use on, even though the concept of sustainable development in the concept of bridging the gap between economic development and environmental pollution, but often there are many conflicts in the actual operation. Environmental legislation essentially reconcile with the balance of economic interests and environmental interests, and the transfer and redistribution of the various interests. Interests of the transfer and redistribution process are undoubtedly full of contradictions and conflicts: vested interests not only enjoy the economic benefits, but also enjoy good environment benefits; relatively weak position of the party is neither reasonable economic benefit, at the same time the living environment is deteriorating. Economic environment does not interest groups do not have the appropriate channels and opportunities to express their opposition, they are bound to be resisted and resist the implementation of the law, and environmental law naturally difficult carrying into effect. Since environmental legislation is a kind of benefit re-allocation process, then, it is imperative to let the interests of the parties to participate in the legislative process, so that they have the opportunity to express their views and have the opportunity to make their own interests to be recognized or refuted.

Dialogue and communication is a process of rational exchange lots of subjects. In this process, the multi-subject to the views of relevant parties understands each other, to create the opportunities for mutual understanding and understanding each other. On this basis can coordinate the actions of the parties, to avoid conflict, and thus cooperation. Consultation is based on dialogue and communication as a precondition, James Bohman thinks our best consultation described as a social activity only through public dialogue to consultation is a joint social activities, embedded in the social activities of the dialogic – mutual exchange of rational dialogue and communication (James, 2006, p. 29), focused on dialogue and communication to express their own ideas and listen to each other's ideas, while the negotiation is hope to reach the transfer of preference, and finally reached a consensus. Dialogue and communication, consultative mechanism for the introduction of environmental legislation is very important.

2.1 Solve the Crisis in the Environmental Litigation

Dialogue and consultation mechanisms can be introduced into the executive and the legislature can strengthen public participation in the process of the executive and the legislature to increase the degree of democracy of the executive and the legislature. A state and society is an important criterion of democracy is the people of this country is able to effectively participate. Social transformation in China during the social stratification leads to the pattern of a wide range of interests, only through public participation to the maximum extent aggregation opinion, the balance of various interests. Dialogue, negotiation is an effective participation process. Since the executive and the legislature is a legislative process, then it necessarily involves the allocation of interests. The executive and the legislature should not only consider how coordination of benefits between multiple stakeholders, and also take into account what means problems in the process of coordination. So, in the process of the executive and the legislature, should allow the participation of the relevant stakeholders. Environmental legislation, although the parties engaged in economic activities, but due to the lack of a variety of interests expression institutionalized channels and methods, the lack of a wide range of interests to consider legislation. Dialogue and consultation mechanisms can be introduced into the executive and the legislature can strengthen public participation in the process of the executive and the legislature to increase the degree of democracy of the executive and the legislature. A state and society is an important criterion of democracy is the people of this country are able to effectively participate. Social transformation in China during the social stratification leads to the pattern of a wide range of interests, only through public participation to the maximum extent aggregation opinion, the balance of various interests.

Environmental administrative authorities to enhance their legitimacy primary means of improving the legislative process, especially in the legislative process of absorption parties through participation and supervision, and respect for the right to speak of the stakeholders in the legislative will of the formation process, namely the legislative processed moralization. Public participation is conducive to improve the transparency and openness of the legislative, and the legislative democratization and openness will help to make the legislation more just, and also allows the conflict of interests of the parties to reach a consensus on issues of common concern, and through legislation this consensus is fixed.

This paper argues that environmental legislation should reflect the environmental public interest, but the public interest is a vague and abstract concept, it can only be formed by the parties to a conflict of interest or compromise. Only after each relevant stakeholder dialogue

and consultation in order to finalize the distribution of benefits programs; this allocation scheme, in order to obtain the recognition of the various stakeholders and get accepted to improve the environmental legal norms of rationality and legitimacy in the institutional members of society in general, directly or indirectly involved or may be involved in the decisions that affect all members of. In this sense, the crisis of legitimacy of the environmental legislation is defused.

2.2 Reduce the Cost of Execution Environmental Law

Environmental does not end in establishing, law by no means a static society, but rather a dynamic society to regulate people exist. The point of view of economic analysis to observe the effectiveness of the legislation can be found that the legislation is only the beginning of the run of the law, the more important thing is that the law can play in society the reality of the effectiveness of norms, that is, whether the law only on paper rather than the law in action. Legal is only in its recognition and observance of people's real social normative legal. Environmental legislation is a case of scientific and public law-abiding for the recognition of the law, which makes environmental enforcement costs have fallen dramatically. The purpose of the environmental legislation can be reached depends on the method to be able to get people generally complied with the social. So the key issue is how to obtain the effective recognition of the environmental legislation. Communication and consultation mechanisms can be introduced in the process of environmental legislation, and effectively improve the legitimacy and acceptability of the environmental legislation.

In the process of environmental legislation to establish communication and consultation mechanisms need to expose the desire to reach the goal of environmental protection department of environmental protection, while public access to sufficient environmental information provides the premise. The same time, the environmental protection department of communication and consultation for the public's views fully considered. Agree with the understanding of the attitude held by the public of the environmental laws in the case of environmental legislation were fully involved, the cost of the enforcement of environmental laws is accordingly reduced. If you choose to tolerate pollution victims, he would have the backlog of social resentment, (YANG & ZHANG, 2006) if we choose resist, we cannot find a peaceful solution, and had to rely on private relief and violent clashes with the polluter. China's environmental legislation, if there is no law norms stakeholders the lack of a broad social base, environmental pollution, the spokesmen of the interests of the victims and the environment and other social subjects to participate fully in environmental legislation, environmental laws operability and acceptability for the corresponding poor.

This is the effect of the implementation of environmental administrative considerations.

3. MORPHOLOGY OF ENVIRONMENTAL LEGISLATION PARTICIPATE IN THE SYSTEM

3.1 The Legislative Hearing System

Hearing originated from English common law principles of natural justice. Legislative Hearing System is the legislative body in the legislative activities of the rights and interests of citizens, legal persons or other organizations related to the legislation, to give interested parties the opportunity to comment on the legal system of the program by the legislative body to hear their views. (WANG, 2003, p. 3) “*Legislation Law*” of our country, “*Administrative rulemaking procedures Ordinance and regulations establish procedures and Ordinance provisions made on the legislative hearings. In the actual operation of the process of environmental legislation*”, are also no legal legislative hearings instance, but the drafting of environmental regulations has been introduced in a legislative hearing system. Legislative hearings, however, did not become mandatory legal system arrangements, selection, hearing the views of the participants and record and so no legally binding rules to follow, the need to develop a legislative hearing rules to be sound and norms (DU, 2005).

The following parts focus on environmental legislative hearing host, the participants, organizational processes of the hearing, the hearing results deal with such matters and the intent of the preliminary hearing system constructed environmental legislation.

(1) The hearing main body

Hearing the main Total tripartite, including the chairperson of the hearing, the executive and the legislature, and the hearing on behalf. The Tripartite must separate, alone on behalf will and interests to participate in the hearing. The chairperson of the hearing should not be objective and neutral, nor should the hearing on behalf of the selected intervention of the executive and the legislature, or the chairperson of the hearing, the only way to comply with the system designed for legislative hearings.

The selection of the chairperson of the hearing must be borne by have relatively independent, impartial and detached without partiality or legal status of a neutral, people with an interest in hearing matters shall not be used as the chairperson of the hearing. Since the hearing from the British common law principles of natural justice, which advocates “Everyone cannot be used as a judge of their own case”. *Administrative rulemaking procedures Ordinance enacted by the State Council* and the *Rulemaking Procedure Ordinance* provide that the

administrative regulations and departmental rules and regulations by the State Council Legislative Affairs, drafting units organized hearings. Since the provisions of the chairperson of the hearing is to be both a player and the referee, is clearly inconsistent with the principles of natural justice. Difficult to build trust in the hearing on behalf of legislative hearings presided over by the legal organs of the State Council and the drafting unit is closely related to the legislative interests, and may even lead to legislative hearings a mere formality, a waste of social resources, damage stakeholders enthusiasm. China’s *Legislation Law* provides that the filing system of administrative rules and regulations, the proposed creation of an independent agency modeled on the filing system, following in the National People’s Congress Standing Committee of the Provincial People’s Congress Standing Committee, may be called Executive and Legislative hearing Committee, specialized organizations and presided over the hearing of the executive and the legislature. Hearing Committee members employed by the Standing Committee, composed by full-time and part-time staff, mainly from the experts and scholars, representatives of social organizations, on behalf of the government and its departments at all levels of legal institutions, Government agencies at all levels and has extensive law enforcement experience professional representatives of the technical personnel. The preparation of the members of the hearing committee, appointment and removal, wages, job treatment and Standing Committee members, non-statutory basis and legal procedures shall not be deposed. Member to preside at the Executive and Legislative Hearing Committee should delegate has no interest in legislative hearings, in order to ensure the impartiality of the hearing of the executive and the legislature.

The executive and the legislature must attend legislative hearings and key is selected stakeholders to participate in legislative hearings. The executive and the legislature for the interested parties in general are not specific, and a huge number, all participated in the Executive and Legislative hearing can not be feasible, it must establish a system of representatives of the Executive and Legislative Hearing. Hearing on behalf of the executive and the legislature selected, must be integrated into the interests of the representative, balanced, public welfare, efficiency, to determine legislative hearings to participate in the basis of the number of the people, by the Executive and Legislative Hearing Committee selection in accordance with the following rules: A) determination by the executive and the legislature the range of interested parties, the specific manner through newspapers, radio, television, the Internet and other channels to publish draft laws and regulations, the announcement an interested party; B) interested party may apply directly to the Executive and Legislative hearing Committee to participate in legislative hearings; C) allows social groups

public interest representatives to participate in the hearing of the executive and the legislature. Individual citizens to participate in legislative hearings on the one hand because the quantity is too large is not conducive to the point of view of the integration and coordination of interests, on the other hand may lack the appropriate knowledge and moderately rational. In this case, the dispersed individual interests organized to be fixed, and organized manner and form a pattern will produce a good effect of public participation. The purpose of the organization is the formation of a number of the social middle between the government and citizen's organizations, the formation of self-discipline and social groups. Social groups of people with common interests to organize themselves concerned about their vital interests of the issues related to the public interest representatives elected by the community groups, polymerization, and different coordination within the group interests. The perfection of the system of social groups is of great significance.

3.2 The Process of Hearing

The Process Will Goes as Following:

1) Before hearing a period of time, so far as the scope of application of the laws and regulations of the territory Newspapers, Internet and other media published the draft laws and regulations, on the legislative basis for the purpose of legislation, legislation to solve the problem of the relative rights affected by the legislation and interests of the method of the way to apply to participate in the hearings and legislative hearings representative, and provides for a period of time before the legislative hearings to participate in the hearing of the application submitted to the Standing Committee of the Executive and Legislative hearing Committee.

2) Executive and Legislative Hearing Committee to determine legislative hearing held several days before the hearing the specific time, place, the rules of the hearing, and hearing procedures to inform participants of the hearing, and should be published.

3) With the members of the executive and the legislature has no interest in organizing and chairing the hearing will be assigned by the Executive and Legislative Hearing Committee, and to comply with the principles of the meetings to the public, to allow public attendance and media coverage.

4) The hearing will be conducted in accordance with the following procedures: A) chairperson of the hearing took the hearing rules and hearings process; hearing on behalf of the executive and the legislature B) administrative organs to develop regulations on various management standards, the request of the interested parties, should disclose information about determining these standards the method, according to the material. Administrative agencies to develop regulations, sometimes based on material up to tens of thousands of pages or hundreds of thousands of pages of case files, and

its use is only one of some materials. In this case, if the relative request, administrative agencies to explain the use of certain materials and the purpose and justification of the use of certain materials. C) Reply relative evaluation comments. Administrative bodies for the evaluation of the views put forward by the relative regulations enacted after officially annexed to the brief description of hard to explain understand, given alone relative to reply, the Executive and Legislative Hearing Committee also instructed the administrative agency to be answered. D) Confrontation the course of the hearing, if there is some important controversial parties conducted face-to-face oral argument in order to clarify the facts and draw accurate conclusions, the chairperson of the hearing shall convene the parties to confront such confrontation is often limited to a specific problem, in order to avoid a comprehensive trial-type hearing caused by consuming and time delays (WANG, 2001).

5) The record of the hearing the results of treatment, is a key link in the last part of the official program of the Executive and Legislative Hearing administrative the legislative hearing system. First, the record of the hearing must be objective, truthful, fully reflects the statements of the participants and opinions of the hearing, it is recommended that the chairperson of the hearing record of the hearing should be submitted to the executive and the legislature, and at the same time should be the record of the hearing to the public. The executive and the legislature should seriously consider the contents of the record of the hearing, and must account publicly for the reason of the adoption and adopted and submitted to the Executive and Legislative Hearing Committee. Administrative Hearings Legislative Committee published the announcement of the official text of the laws and regulations of the executive and the legislature decided to, and adopted by the executive and the legislature and the reason not to adopt the hearing record should be in a period of time after the end of the hearing.

3.3 Other Consultation Mechanisms in Environmental Legislation

3.3.1 Participate in the Negotiation of Environmental Legislation Through the Legislative Forum

Legislative forum is the regulations drafting department regulations intended to solve the problem, the main measures to be taken, and intends to establish the main system, held listening sessions attended by representatives from the public in such a system. Legislative forum is a relatively free to take public opinion, and public consultation program, in practice the executive authorities in the legislative process is often legislative discussion.

Forum listen to the views of the public consultation with the following issues: (1) due to the forum how convene fully grasp the initiative in the hands of the executive authorities, therefore, in determining the personnel attending the symposium, administrative

the draft legislation and related material sent to them convened the forum to determine the time, place, and according to the actual situation. (2) At the forum, the staff of the executive authorities responds to the content of the executive and the legislature after a brief introduction by the personnel participating in the forum to speak one by one. In this process, the executive and the legislature do need to explain the problems they mentioned, do not have a problem with them on the debate. (3) The workshop was organized by the staff of the executive and the legislature made transcripts do not have to be signed by the forum to participate because the forum to participate in human speech can be seen between the executive and the legislature, and the citizens made to the executive and the legislature an ideological communication. This helps citizens agree with the executive and the legislature, and to ease the tension of the executive and the legislature with citizens (WANG, 2008, p. 9).

3.3.2 Participate in the Negotiation of the Executive and the Legislature Through Legislation Argumentation

The legislative argument Act of professional, technical issues, is inviting angle of relevant experts from the scientific feasibility study proposed demonstration opinions. The identity of the participants, the demonstration will be a forum functional orientation is not the same. Often associated with attending the symposium discussed the draft legislation has a more direct interest in the relationship, so they tend to express their views on the draft legislation starting from their own interests. Personnel participate in the demonstration will tend to be experts in one aspect, and often have no direct stake in the discussion of the bill, so they put forward their views on the draft legislation from the point of view of the expertise.

Demonstration will listen to the views of experts on the draft of the executive and the legislature, should pay attention to the following questions: (1) select suitable experts to participate in the demonstration will be. Each expert has its own field of study, beyond their own field of study and he became ordinary people as ignorant. Therefore, must participate in the demonstration will be experts in the field of the administrative draft legislation designed, otherwise, the demonstration will be impossible to achieve the intended purpose. (2) Correctly deal with expert advice. The demonstration will be is not the legitimacy of the administrative draft legislation will be demonstrated, that the experts can only say "yes" to the draft of the executive and the

legislature. Executive authorities should be encouraged to experts the contrary opinion, and correctly deal with the objections of the experts. Executive authorities in the administrative procedure in which the position actually is both "parties" and "judge" ruled, if we cannot hear, and not listen to other people's objections, the executive and the legislature enacted its final inevitable lack of necessity, practicable and scientific. (3) The expert should maintain the necessary neutrality status. The credibility of the expert opinion is often whether to maintain a neutral position is proportional to its. Experts conduct professional knowledge, rumors, and provide services to their own professional knowledge. Therefore, the process to participate in the Executive and Legislative argumentation, the expert should be based on their own expertise on the draft of the executive and the legislature necessity feasible and scientific argumentation, not for hundreds of pieces demonstration fee regardless of expertise blindly obey the demand of the executive authorities, the interests of the executive authorities departments, the departmental interests legalization apologists. If the expert does not exist in the draft of the executive and the legislature to put forward the view that they should be raised, it is undoubtedly contributing to administrative illegal administration (WANG, 2008, pp. 10-11).

REFERENCES

- Bohman James (2006). *Public Deliberation: Pluralism, Complexity and Democracy* (p. 29). Central Compilation & Translation Press.
- DU, Wanping (2005). *Study on the Supervision Mechanism of Environmental Administrative Power* (Doctor thesis). Wuhan University.
- WANG, Quansheng (2001). Administrative Law Litigation in US. *Research on Administrative Law*, 3.
- WANG, Quansheng (2003). *The Research of Litigation* (p. 3). Peking University Publisher.
- WANG, Xixin (2008). *Public Participate in Administrative Process* (pp. 9-11). China Law Publisher.
- William Wade (1997). *The Administrative Law* (p. 558). China Encyclopedia.
- YANG, J. J., & ZHANG, Z. Y. (2006). On Communication and Consultation in Administrative Legislation. *Research on Administrative Law*, 3.
- ZHOU, Wangsheng (2000). *Technologies in Legislation* (p. 3). China Law Publisher.