

# On the problems and countermeasures in the construction of the legal system of ecological civilization in China

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**Abstract.** under the background of building a beautiful China, we should deepen the reform of ecological civilization, accelerate the improvement of the legal system of ecological civilization construction, build a new ecological "basic law", and promote the new development of socialist ecological civilization construction of harmonious development between man and nature. To construct a new system of ecological legal domain and set up a new principle of ecological civilization construction under the background of the new era: the principle of the ecological center theory as the main line gives consideration to the needs of human interests, the principle of intergenerational equity, the principle of public democratic participation, the principle of ecological compensation mechanism and the principle of the admittable enterprise mechanism. It is based on the constitution, guided by the basic law on ecology, guided by legal principles, supported by the legal framework for ecological progress, and supported by broad public participation.

## 1. Introduction

The report of the 19th national congress of the communist party of China put forward: "uphold the harmonious coexistence of man and nature. Building ecological civilization is a millennium plan for the sustainable development of the Chinese nation. The construction of ecological civilization is the core of ecological construction. Therefore, it is necessary to study the construction of ecological civilization and build a legal system. China is a country with a large population, limited land resources and few resources available for development and utilization. With the rapid development of social economy and industrialization, ecological resources are facing unprecedented challenges, and the ecological problems we are facing are becoming more and more complex. The problem of ecological resources has become a very important factor restricting the development of social economy. Although our ecological civilization construction has achieved certain results before, the only way to make long-term and solid progress and achieve results is to establish a complete legal system. Although China has a large number of ecological and environmental legislation at present, the ecological field is extensive and complex, and the adjustment is difficult, and the overall adjustment effect is not obvious. Therefore, it is necessary to explore the construction of ecological civilization. Only with the construction of legal security system, can ecological governance be better constructed. Economic development and human survival of the three harmonious coexistence system.

## 2. The necessity of ecological civilization construction of the law

### 2.1 Ecological problems arise frequently

Our country's achievements in the economic field have attracted worldwide attention. However, since 2013, ecological news such as haze, straw burning and oil pollution have occupied the headlines of newspaper websites for a long time. People generally realize how to develop the economy and how to develop the economy.

The concept link of ecological civilization construction still has not been well implemented. Punishment is too slight, although have relevant law adjust, but not specific, very general. Therefore, in order to promote the rapid development of local economy, a large number of illegal constructions still exist despite the small amount of illegal costs. It reflects the ecological civilization construction in our country is still at the early exploration stage, for the establishment of consciousness is not achieved overnight, for such ecological disaster, we have to see, don't have the heart to want to be able to build perfect law system, to institutionalization, standardization, perfect the construction of ecological civilization, to become China's ecological construction of the key step and the core link of problem solving.

## **2.2 Existing laws need innovation**

Innovation is the primary driving force for development. Perhaps we did not build a good ecological civilization construction system before, but we have environmental legislation, resource legislation, it affects and promotes the development of ecological civilization construction. Since the amendment to the constitution of the People's Republic of China has written ecological civilization into the constitution, although the party and the state have a high degree of foresight, the bottleneck of implementing and implementing the concept of ecological civilization still exists. How to break the bottleneck requires the innovation and improvement of the existing legal system.

Obviously, the current construction of such laws is not systematic, and there is no clear idea. Ecology is a complex ecosystem, including air, water, soil, farmland and mountain forests, etc., which are all managed in pieces and difficult to be unified into an effective organism. The extensive and complex ecological field leads to incomplete legislation, lax law enforcement, imperfect supervision and difficulty in establishing awareness. "Only the strictest system, the most strict rule of law, in order to provide reliable guarantee for the construction of ecological civilization." Therefore, to develop must be innovative.

## **3. Problems existing in the legal construction of ecological civilization**

Throughout the 40th anniversary of China's reform and opening up, the economy has achieved a "leapfrog" development, and the people live a rich life. Our environment is polluted, resources are scarce, and ecological system degradation is frequent and severe. We are in a mess of "partial governance and overall deterioration". It mainly displays in:

### **3.1 The concept, not the law itself**

The essence of ecological civilization construction is not the perfection of law concretization, but the implementation of the concept of ecological civilization construction. Since 1978, we have a lot of legislation, and gradually perfect the various fields of ecology in our country, also gradually improve the "ecological law" legal system, made a long-term progress in legal level, the actual effect is not ideal, but for society there are still a lot of eco-environmental problems, we need to reflect on, must set up the concept of ecological construction, rather than simply by law to make up the blank, should "rule and the rule of law" system construction.

### **3.2 Lower legislative level**

Laws and regulations in the field of environmental ecology have a low level of legislation, mainly administrative regulations and rules. The national legislation in the field of environment is extensive but not deep, the level of legislation is low, local attention is not paid, the cost of breaking the law is low, and the purpose of ecological legislation cannot be effectively realized.

### **3.3 Environmental legislation decentralization**

The laws and regulations in the field of environment and ecology are scattered and lack of "procedure law in the field of ecology". The content is relatively rough and rough, the operability and enforceability of laws and regulations are poor, and the legal system still needs to be improved. There is almost no procedural and standardized legal guidance for environmental and ecological

protection, making it difficult for local departments to learn, promote and implement. Therefore, the legislation in the ecological field is criticized as "soft law".

### **3.4 Unscientific management**

The establishment of administrative management is not scientific, the responsibilities of ecological and environmental supervision departments are separated, and the unified functions and powers cannot be achieved, making it difficult to achieve unified management of ecological construction. In the process of ecological construction, not only the competent environmental protection administrative departments of the local people's governments at or above the county level are under their jurisdiction, but also the various ministries and commissions of the state may, in accordance with the law, supervise and administer the prevention and control of environmental pollution and the protection of resources. The institutional reform of the state council, set up the ecological environment, natural resources, trying to solve the problem of ecological civilization construction field related, but how to coordinate the interests of all parties, better carry out the spirit of the central for the construction of ecological civilization, the implementation of better regulation, all departments of the division of labor cooperation is particularly important, straighten out the right listing of environmental law enforcement, establish accountability system, refinement, area of responsibility accountability mechanism still needs to explore.

### **3.5 The judicial effect is not obvious**

The strict judicial interpretation, which excludes the subject qualification of environmental public interest litigation, has a narrow scope and great ambiguity, and it is difficult to achieve good results in practice. In cases of ecological pollution, inversion of burden of proof is generally applicable. Polluters or infringers of public interests generally have a certain social status and dominate information, technology and resources, making it more difficult to provide evidence. Public interest litigation still needs to pay litigation fees, because the environment for the benefit of society as a whole, if the institutions bear, greatly reduce the enthusiasm of public interest organizations. The above five reasons reflect the urgent need to solve the ecological field of justice.

## **4. Countermeasures**

The construction of ecological civilization and the improvement of laws are not only the operation mechanism of legislation, law enforcement, judicature and law abiding, but also the change of thinking mode in ideology and principle.

Under the guidance of the report of the 19th CPC national congress, the legal system for the construction of ecological civilization should be improved, principles set up and framework set up in accordance with the concept of ecological civilization and the law of ecological nature.

### **4.1 Establishment of legislative principle**

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#### **4.1.1 Anthropocentrism**

Anthropocentrism holds that only human beings are entitled to moral care, that human beings are the only beings with intrinsic value, and that everything else is of instrumental value. Although this mode of thinking has long been criticized, in reality, some people still develop ecological construction according to this mode. Whenever there is an ecological crisis, especially a regional or global one, people will reflect on themselves and tell themselves what they have done wrong. Ecocentric theory is still the mainstream, but the theory is developed and adapted to local conditions. Ecocentric theory should be preposed. For the construction of ecological civilization, no matter what link the rule of law is in, it is the principle of preposition of action. I just think this is ideal, today's social and economic development still need ecological center theory principle, but should be

modest, if excessive emphasis on ecological center theory, lead to too much of a good thing, may appear stagnation, also will bring greater social crisis, also can appear back history, make the human society back to the original nature. Therefore, the improvement of ecological civilization construction law should take the ecological center theory as the main line and give consideration to the needs of human interests. Only in this way, can we achieve the coordinated development of ecology and economy, build a beautiful China and create a good living environment for the people.

#### 4.1.2 *Intergenerational equity*

Intergenerational equity refers to the right to life that human beings should enjoy fairly in different times. The laws in the field of ecology have certain commonalities, and their adjustment objects are the legal norms on the social relations generated by the utilization and protection of the earth between modern people and future generations. The formulation of this principle provides a clear direction for the improvement of law in this field. We should not only consider the present, but also consider the future fairly. Intergenerational equity mainly includes three aspects: environmental quality, environmental development options, and ways to utilize the environment. Therefore, we should not treat the natural environment as a cheap or even free resource to deal with tangible things, such as the disposal of plastic waste. Can't consume higher resources, such as coal and natural gas resources. There are also resources that do not consume the best form of exploitation yet discovered, such as the exploitation of combustible ice on the seabed. These effect the choice of the offspring, so to promote fair between the generations, the principle of intergenerational equity to add to the current legal system of ecological civilization construction, we can draw lessons from international law, international environmental law and other countries legislation, further clearly this principle in the legislation, enhance people's awareness of intergenerational equity and ecological law, enable our country to sustainable and healthy development of the play of the Chinese nation ecological construction's contribution to the world. The social system of "co-consultation, co-governance and sharing" has also been fully demonstrated in the field of environment.

#### 4.1.3 *Public democratic participation*

The construction of an ecological civilization requires not only the efforts of the state and the government, but also the support of the people, namely, the principle of relying on the masses to protect the environment. Public democratic participation can effectively solve the conflicts of multiple values and interests in the field of ecological construction. The constitution of our country states that "all power in the People's Republic of China belongs to the people. The people administer state affairs, economic and cultural undertakings and social affairs through various channels and in various forms in accordance with the law. This is the right and obligation of the law to our people to participate in the ecological field. In the current ecological legal system, we should also follow and reflect this principle, so as to better participate in the whole process of ecological civilization construction. The law is bound to be included in the whole process, including scientific legislation, extensive supervision, and law abiding by the whole people, so as to improve the ecological civilization of the whole society and make progress towards a beautiful China.

#### 4.1.4 *Eco-compensation system*

For example, in the environmental protection law of 1989, the principle of "polluter's responsibility" was put forward. After years of development, the principle of "polluter's responsibility" has been fully implemented. This principle has become a household name in modern China. Enterprises can also pass on the cost of pollution to the purchasers. This ecological compensation mechanism, which is confirmed by law, may have problems. We need in the process of law operation, improve the standard of audit to the enterprise, to strengthen the government of polluters and resources access control, carry out regular inspection and spot checks with the combination of government supervision way, we can neither make pollution and resources in manufacturing enterprise users free use of the environment and ecological resource consumption, also can't unlimited because of its substantial capital, can any waste or consume natural resources. To sum up, the principle of combining the ecological compensation mechanism with the mechanism of enterprises that can be admitted should be established by law, and the limited development of

enterprises with responsibility, social responsibility and technological strength should be allowed to make full use of ecological resources so as to achieve comprehensive and sustainable development.

#### **4.2 Construction of a legal system for ecological progress**

The law on ecological civilization construction is extensive and complex, and the framework of its legal system should include the basic law on ecological construction, the law on pollution prevention and control, the law on natural resources, the law on ecological protection, the law on climate change, the law on the protection of special regions, and the flexible provisions applicable to international laws and treaties in China.

China's current ecological and environmental law system has a widely recognized basic law for environmental protection, the environmental protection law of the People's Republic of China. In contemporary China, the people's demand for a beautiful China is rising day by day. We should formulate a basic law for ecological civilization construction that is more complete, has rigorous procedures and covers a wider range of areas and is suited to China's national conditions. Ecological environment is closely related to people's life. It should become a basic law similar to civil law and criminal law. It should also be a part of the social legal system with Chinese characteristics under the leadership of the constitution. The content is more extensive, including pollution prevention and control, natural resources, ecological protection, climate change, special regions and flexible provisions applicable to international laws and treaties in China. Because field widely complex ecological construction, ecological basic principle should be a law, the procedural law, the concept of law, expound the principle of ecological civilization construction, only legislative purpose, scope of application, in accordance with the general procedure and the related concepts of ecological field, clear the government, enterprises, individuals, civil rights and obligations in the process of construction of ecological civilization. At present, the protection of natural resources and ecological resources in the environmental protection law is too broad and unrealistic to play a leading role in the field of ecological construction. Formulating the basic law of ecological construction can effectively solve such problems and play a guiding, guiding and principled role in the field of ecological construction. It can be called the "mini-constitution" in the field of ecological construction.

Pollution prevention and control law is the general designation of laws and regulations on environmental pollution prevention and control. Due to previous concepts backward, "first pollution in traditional idea" corrected, such laws nearly 10 years of rapid development, the ecological legal system, pollution prevention and control system have to improve, such as of January 1, 2018 began to implement the law on the prevention and control of water pollution, revised or start the implementation of relevant laws, deliver the legislature to construction of ecological civilization, try to perfect the law on the prophylaxis and control of pollution from the legislative level, in order to adapt to the new concept and principles of the system under the law shall be properly modify and perfect, has not yet been involved field, can through the legislation perfect, It can also be regulated in principle by establishing the basic law of ecology.

Natural resources law is the general term of laws and regulations regulating the development, utilization, protection and management of natural resources. It is classified according to the constitution, including land resources, water resources, Marine resources, forest resources, grass resources, wild resources and mineral resources. From the perspective of current legal system construction, it is urgent to introduce new ecological civilization construction concepts and principles to modify and improve the existing laws. Of course, the blind area of natural resources also needs to be improved through legislative means, and the compensation mechanism and standards for the use of natural resources still need to be clarified by law. The revision of the environmental protection tax law on October 26, 2018 is also the confirmation of the environmental compensation mechanism in the tax system by the legislature, which plays a positive role in promoting the improvement of the whole legal construction of ecological civilization.

Ecological protection law is more a general term for the legal norms occurring in the process of protecting and utilizing the environment, protecting and managing various social relations from the perspective of biological diversity. For example, the law on desertification control, which was

revised and implemented on October 26, 2018, and the law on soil and water conservation, which was implemented on March 1, 2011, are all sub-laws under the ecological protection law. From the current legal system construction and practical needs, ecological red line legislation, gm ecological safety law, wetland protection law has not been established, also need to be improved as soon as possible.

Suitable climate is the cornerstone of human survival. The emergence of haze phenomenon makes people pay more and more attention to the climate field, and greenhouse gas emission has become the focus. China signed the Paris agreement, the Kyoto protocol and other international legal documents, greenhouse gas emissions has become all mankind to face and solve problems, deal with global challenges, we are looking for development at the same time to reduce greenhouse gas emissions, we need to the field of climate change law adjust the problem. For the time being, the fundamental law on climate change is the one we need to overcome.

The special region law refers to the special law that adjusts the limited region or region in all fields in the construction of ecological civilization. China's vast territory, complex ecological environment, ecological reserve structure is complex, in order to better protect the local ecological, adjust measures to local conditions the development of ecological economy, in the special area can appropriate legislation, but still need to pay attention to is, not in violation of the ecological environment in the basic law, more do not violate the constitution, to stick to the legislative purpose, perfect the specific area of legal supervision, set up a list of rights, in some areas of the law absolutely, in order to prevent the abuse of specific area special hazards of ecological civilization construction in our country.

Ecological problems is not only a problem of a country, is also needed to consider of our big home, international law is not, according to China's national conditions, put the construction of the ecological environment of the international treaty to transform, to establish such a child of the law department, law to supplement for the whole ecological field, improve the legal system of ecological civilization construction.

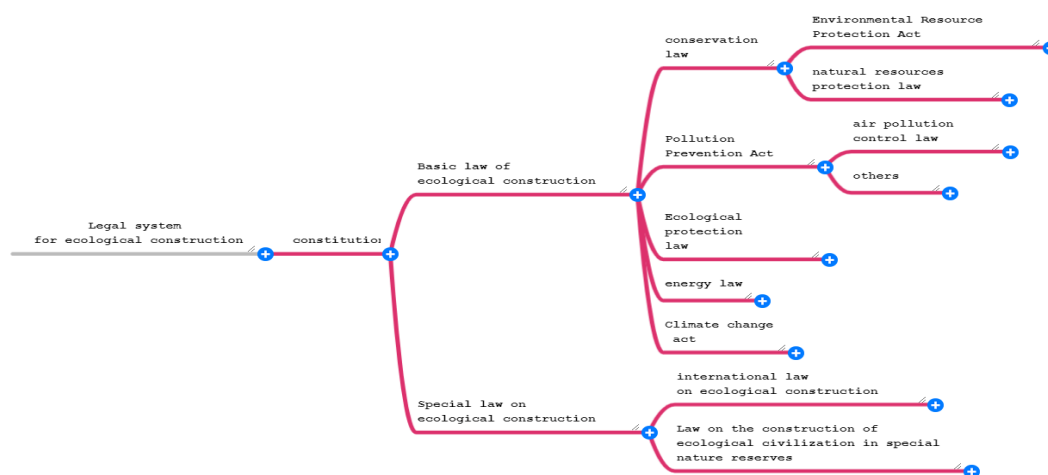


Fig. 1.Example of legal system for ecological construction

### 4.3 Implementation of laws on ecological progress

Law enforcement consists of law enforcement, judicature and supervision. The construction of ecological civilization in China cannot be improved only by legislation. The creation of any law requires the compliance of all subjects, otherwise it is difficult to achieve the legislator's legislative purpose, if not effectively implemented, the law will become a dead letter.

#### 4.3.1 Ecological civilization construction is law-abiding

To improve the existing legislative techniques and means of ecological protection and develop it in the past 40 years, our country should select the essence and discard the dregs. Through scientific, reasonable and rigorous legislation and the earnest implementation of these laws, the expected goal

of ecological civilization construction will be achieved. Increase public awareness and participation. This should be reflected and reinforced in future ecological "basic law" principles. We will introduce market competition, encourage innovation, promote ecological progress through science and technology, phase out backward production facilities, and give awards or subsidies to enterprises or individuals that are good at environmental protection and abide by the law.

#### 4.3.2 *Law enforcement for ecological civilization construction*

In the field of law enforcement, the subject and division of law enforcement should be clearly defined. The law enforcement department should be streamlined, and comprehensive law enforcement should be carried out in the field of complex ecological construction. Law enforcement departments are specialized, and ecological environment is no joke. We should strengthen the construction of professional talents in the field of ecological construction, and professional people should do professional things.

#### 4.3.3 *Construction of ecological civilization and judicial supervision*

The environmental public interest litigation system still needs to be improved, especially for the legal confirmation of natural person or citizen's environmental public interest litigation right should be confirmed. The environmental supervision and evaluation system should be linked to the social credit system, strengthen supervision by public opinion, and expose the construction of ecological civilization to the sunlight. Maintaining fairness and justice is the basic principle of judicature, but in the process of judicature, the balance between economic benefit and ecological benefit, national interest and ecological security should be considered. We cannot improve the ecological environment without development, still less can we follow the old path of "development first, treatment later". In the judicial process, we need to find a balance point.

## 5. Conclusion

China's ecological rule of law has also gone through nearly 40 years, from scratch, from the establishment to the development to the final improvement, all need a process. The construction of ecological civilization was proposed in 2012, only six years ago, and great progress has been made. Many laws have been improved from scratch. Among many ecological and environmental laws, it is difficult for us to find the "basic law" in the construction of ecological civilization. As our country enters a new era, people's thinking on ecological environment gradually deepens. We need to adjust and modify the relevant laws in the field of ecological construction to adapt to the development of ecological environment in the new era. For the new problems in the field of ecology in the new era, we can gradually improve the legislation, fill the gaps, and better establish and improve the legal system of ecological civilization construction.

In addition to the previously insisted on in the field of environmental legislation, on the basis of sustainable development and rational utilization of development, the improvement of the ecological civilization construction law also should insist on ecology center theory as the main line of human interests of give attention to two or more things principle, the principle of intergenerational equity, democracy, public participation principle, ecological compensation mechanism, and can access the principle of combining enterprise mechanism. Based on ecological law, legal principle as the guidance, construction of ecological civilization is based on legal framework, wide public participation as the foothold, harmonious and unified, complementary advantages, harmonious perfect organic unity, better meet the needs of the people for a better life, better construction of ecological management, the harmony among the economic development and people's survival.

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