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The Structure of Practice and Quality of the Objective Law

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Abstract

The quality of objective law significantly affects the legality and law and order in the society and the state. One of the factors for improving the quality of law is theoretical knowledge about the regulated practice structure. The article contains a theoretical description of the practice structure elements in statics and dynamics, their influence on the quality of content and form of objective law. The material presented in the article enriches and complements the modern concept of socially significant practice. The conclusions contained in the article contain a number of theoretical and methodological provisions. It is pointed out that any socially significant practice represents a local social system (a subsystem of the society) even at the formation stage and especially in the developed state. The authors also emphasize that new legal institutions and relevant practices of the exercise of law are emerging, and the non-traditional branches of law are crystallized on the basis of existing or newly emerging institutions. The authors argue that in order to provide the necessary and sufficient normative basis for the exercise of the rules of law, the content of a certain legal institution (branch and substantive law in general) should correspond to the social content and structure of the regulated practice. In addition to the above, the authors believe that it would be wrong to identify the social-substantive content of law only with the positive facts existing in practice.

Keywords: Practice Structure in Statics; Practice Structure in Dynamics; Quality of Law; Stability and Dynamism of Law

Introduction

The substantive law regulates various socially significant practices-objects. Specific practices, such as elections, consumer lending practices, become socially significant and serve as a material basis - a source of law, if it:

a) affects the interests of at least some part of the society and the state, therefore, it has quite certain private and public subjects and relevant organizational structures;

b) has its own socially-objective content and values created in the limit of this practice;

c) has an ideology localized in a specific practice and the policy formed on its basis, which is obligatory for the practice participants, since the policy of a specific practice is fixed in the form of law as the political decisions;

d) is subject to social and legal regulation;

e) may be subject to control by the institutions of the civil society and the state.

The procedural norms regulate the resolution of conflicts and the elimination of deformations that occur in practice regulated by the substantive rules. As a result, the jurisdictional law enforcement practice is formed in a particular socially significant practice-system as its subsystem. The social-subject specificity of regulated practice is primary in its genesis in relation to law; it cannot but is reflected and manifested in the form and content of law. Theoretical knowledge of this specificity, especially knowledge of the regulated practice structure, is a necessary condition and prerequisite for the creation of a quality objective law with a minimum number of defects.

Methods

In the society and the state - this is an indicator of the development dynamics - new practices are constantly arising (and the existing ones are filled with new content or stopped). When people begin to actively pay attention to the new practice, the state immediately tries to give it a legal basis [1, 32]. For example, a surrogate motherhood has appeared in modern Russia. The legislative regulation of this practice confirms its high degree of maturity and relative independence. Ideally, the law should also be constantly enriched and updated after the development of the socio-objective specifics of the objects of regulation. Here we can see a functional connection: the more dynamic and diverse the life of society and its system-forming component (the exercise of law) is, the more dynamic and more complex the law is. Therefore, it cannot be given in terms of volume, structure or quality once and for all. In contrast to the views of the XIX century, which argued that the law was justice, therefore, since justice was an unchanging quantitative indicator, it could not allow any changes in the direction of increase or decrease [2, 50]. Today, the contradiction between the stability of the objective law and the need for its constant updating in accordance with the dynamics of the legal practice of the society development (the dynamism of law) is aggravated as never before. This is a problem not only of effective law-making and the

exercise of law, but also a fundamental task for legal science, first of all for the theory of state and law. This contradiction is impossible to overcome without a thoughtful legal policy. However, "if the legal policy does not respond to the challenges of the legal practice dynamics, does not respond to its quantitative changes affecting social development, rights, freedoms and legal interests of citizens, such a legal policy is deprived of logic and social meaning" [3, 125].

A traditional practice division into political, economic, social, spiritual and moral is more suitable for legal analysis at the macro level, it does not contribute to the creation of a qualitative objective law. The meaning of this division was that the modern (at that time) societies created a complex system of differentiation, depending on the spheres, each of which had the strictly defined social tasks [4, 17]. That is why the classification of socially significant practices and the analysis of a specific practice structure seem topical.

Results

However, the law conditionality on the part of the social-object specificity of a relevant practice-object is not absolute. And it is clearly shown a relative independence of the objective law in relation to the regulated practice in this. Firstly, any practice is heterogeneous and contradictory. It includes latent positive and negative phenomena, relationships, processes, trends along with open positive and negative ones. It is a positive component of practice and knowledge of its structure that predetermines the quality of law. The regulatory strategy and tactics depend on a specific subject rule-maker of the abstract-general rules, and there is always the problem of choice and the associated freedom of will before it. In essence it should choose one regulatory practice from several alternatives of knowledge, then fix this knowledge in the abstract-general rules and thus solve the problem: what and how to legalize in a particular socially significant practice, what and how to fix and limit, for what and for which institution and subject to create the status of the most preferential treatment.

Secondly, the subject, in the order of outstripping general regulatory and legal regulation, should use the experience of advanced countries, the achievements of science (the ideological source of law) in the period of instability (pre-crisis state, crisis, recovery from the crisis) and the need for modernization of practice.

The objective law is, first of all, the substantive law. It is built on the basis of the practice structure.

In turn, the legal institution is structured according to the practice structure. Using the theory of activity as a theoretical basis (each practice is also a kind of social and legal activity), developing it creatively, it is possible to distinguish the following elements in the practice structure:

- the local ideology in the form of goals, principles, ideas, values, guidelines, rational justifications for the need of practice, as well as a project for its development in the foreseeable future (the ideology of surrogate motherhood, the ideology of organizing and conducting elections, etc.);
- the policy of a specific practice in the form of political and legal decisions, according to which it should function and develop. These system-forming solutions for practice are formed on the basis of ideology and are fixed, first of all, in the form of Law and, therefore, are mandatory for all participants in the practice;
- private and public entities with an appropriate level of legal awareness and socio-legal culture. These are not only the direct participants of a particular practice (for example, the voters in the practice of elections), but also the representatives of the state or municipality - specific officials with the authority to participate in practice in a particular quality, as well as the representatives of certain institutions of society;
- organizational institutions (organizations) that are formed in the process of social activity and ensure its stable functioning, for example, electoral commissions for holding elections, testing centers for the unified state examination, law enforcement and judicial bodies;
- a variety of material and non-material (virtual) objects-values that are created, exchanged, modified and even destroyed independently by one or another subject or together with other subjects within the institutions of practice and which constitute its subject-substantiated result;
- material and other resources of social-objective activity, including various means-tools, technologies, etc., optimizing and increasing the efficiency of the activities of subjects and institutions;
- external forms, including legal forms-documents, fixing of practice and its results;
- non-legal social norms-regulators of practice and others.

These elements form a static structure of practice (practice in statics). The dynamic structure (practice in dynamics) is formed by a variety of public and private relationships. The problem of defining the difference between the "law in statics" (indicating the way the law should be) and the "law in dynamics" (indicating the way the law actually is) is one of the key in modern researches [5, 94]. If the interaction of public and private relations is a complex constantly renewed process-activity and therefore a dynamics indicator of a particular practice, its actions and reality of existence in the life system of society and the state, then the remaining elements, without which public relations cannot function, are the practice indicator in statics. From here one can make a conclusion, which is fundamental for the creation of a qualitative law. The object of normative legal regulation includes not only the public relations, it is practice in dynamics, but a specific socially significant practice is a synthesis of socially significant practices (macrolevel) as a whole. The object of normative legal regulation, which is manifested in the objective law in more detailed analysis, has dynamic and static components. It is not accidental that the law-making subject orders (1) various private and public social relations - the dynamic side of practice (the regulatory-dynamic function of law); 2) and what is a prerequisite, the external environment - conditions and at the same time

a kind of building material for the formation and functioning of social relations - the static side of practice (the regulatory-static function of law).

Discussion

How and to what extent are the above listed elements involved in the structure of objective law? Much depends on the degree of complexity and significance (social resonance) of a particular practice. At the theoretical level, if one abstracts from the specifics, all the components of the regulated object are included in the social-objective content of law to some extent [6, 9].

For example, social norms and relations. The social norms, especially customs, socially appropriate and deviant behavior patterns are formed in practice (as it grows and develops). As soon as it acquires qualities of public importance and undergoes regulatory and legal regulation, then the normative subject cannot fail to take into account the role and significance of these regulators. These rules can strengthen the regulatory potential of legal norms, but can compete and even block their action. Therefore, the social norms are manifested in the content of law, one way or another, for example, in the form of their prohibition, restriction-adjustment, etc. In some cases, a particular social norm becomes the basis of the legal norm [7, 251] or the establishment of legal responsibility for deviant behavior in the public sphere [8, 10].

Relations. In the state of dynamics, a specific socially significant practice represents a complex or less complex system of interpersonal relations, a kind of socially expedient activity. The leading role here is played by the relations, which are functionally necessary and therefore defining the practice specifics.

Within the functional relationships, the individual persons with dispositive capacity interact with each other, use resources, tools and instruments, including technologies, create objects-values, exchange them, achieve specific results and thereby satisfy their interests and needs, and ultimately generate a practice, fill it in accordance with legal regulations and procedures with real socio-objective and socio-psychological content, form or deform the mode of legality and law and order in it.

These relations are the system core, its system-forming elements, around which the systems of complementary and system-supporting structures are built up. For example, procedural legal, control and supervisory legal relations. Along with and in parallel with the social and legal relations (social relations regulated by legal norms), each practice has simple extra-legal social relations, that is, the relations that are regulated by the non-legal social norms, for example, customs, principles and norms of morality. Customs still play a particular role in terms of law, but it is very small [9, 111].

In terms of the number of subjects involved in particular relationship, it is possible to distinguish public and private relations. In the first case, the parties or at least one of the parties acts (should act) in a foreign (collective) interest and, as a rule, represents a non-state (for example, a legal entity) or state institution, municipal entity or public legal entity. In the second case, the parties represent themselves and act in their own interest.

With the help of the rules of conduct, prohibiting norms, incentive norms, norms of principles, norms of terms, norms of definitions and other legal norms, a normative model of a particular public or private functional relationship is created, the most significant system-completing and system-auxiliary relations are regulated, and, if necessary, the new relationships that are designed to modernize practice are constructed (developed) at the rule maker's discretion [10, 18].

Summary

The analysis conducted makes it possible to formulate a number of theoretical and methodological provisions and an in-depth understanding of how to improve the quality of objective law on this basis:

1. Any socially significant practice represents a local social system (a subsystem of the society) even at the formation stage and especially in the developed state. It has a stable structure in the stability phase: in the statics, it consists of various functionally interdependent elements, and in dynamics - of public and private social relations, among which the leading role belongs to the functional relations that determine the practice specificity.
2. In the modern dynamically developing society and the state, the content of law and the exercise of law are constantly being changed, in particular, it is distinctly traced the processes-trends of differentiation and integration: the new legal institutions and relevant practices of the exercise of law are emerging, and the non-traditional branches of law are crystallized on the basis of existing or newly emerging institutions.
3. To ensure the necessary and sufficient normative basis for the exercise of the rules of law, the content of a particular legal institution (industry and substantive law in general) should correspond to the social-subject content and structure of the regulated practice, that is, the objective law, in the textually expressed form, includes those practice components that are regulated by various norms of this institution.
4. In It would be wrong to identify the social-substantive content of law only with the positive facts existing in practice. The subject-rule maker introduces new elements into it and this is also an integral part of the legal institution and the law as a whole. In a nutshell (within the problem settlement), these innovations depend on the social practice resonance, and even more on the legal awareness and discretion of the subject. Ideally, they (innovations) are aimed at optimizing practices, increasing its effectiveness and stability.
5. The socio-substantive content of the material legal institution, especially in its ideological part, there is a project or normative model of what can and should be a regulated practice today and in the short term. This is an ideal that does not coincide with

the realities of reality, and individual elements of the model seem generally inaccessible.

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