

Study on Due Procedure of Local Legislation of Marine Fishery Management

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Abstract: Based on the local legislation of marine fishery management, this paper takes the process of local legislation of marine fishery management in Liaoning Province as the main object of study, to explore the advantages and existing problems of the process of local marine fishery management. From the perspective of theory and practice, this paper analyzes the local legislative process deeply and discloses some problems, especially analyzes the main steps deeply in order to discover problems in the whole process from drafting to acting and proposes the corresponding solutions.

Key words: Marine fishery management, legislative procedure, legitimacy.

1. Introduction

In the present study, the academic circles have different opinions on the definition of the legislative procedure. However, from the relevant provisions of the Legislation Law and generally academic point of view, the legislative procedure refers to the institutionalized and proper process that state organs with legislative power need to enact, amend or repeal normative legal documents. It is the system settings to restrict the lawmakers from unscrupulous behavior and make the legislative activity manifest and achieve the fairness and justice in procedures. It is also the legal route and justifies a legal procedure that the state coordinates the conflict of interest, regulates social orders and configures social resources through legislative activities [1]. American philosopher of law Bodenheimer argues that justice and order are the two basic constitutive concepts of the legal system, treating law as a complex of justice and order [2]. The order here can be understood as the order of the law itself as well as the order in which the law must be followed.

Therefore, it can further illustrate the importance of the program to the entity.

2. “Department Legislation” Still Exists, Resulting in Thick Administrative Color in Laws and Regulations

In the practice of legislation in our country, the drafting and modification of marine fishery management regulations are almost in the charge of the Ocean and Fishery Department of all provinces. The work was then sent to the Ocean and Fishery Administration of all cities for investigation and discussion, collecting research information and then proposing draft by using this information with reference to the upper law and other relevant laws and regulations. Theoretically, the quality of legislation has been improved due to the drafting of laws and regulations by the government departments. The relevant departments have long been engaged in front-line work, have a better understanding of the specific situation, more familiar with the relevant business and legislative funding is also guaranteed. However, there are also a lot of limitations. Department legislative traces are obvious and they put their own interests in the first place which make the quality of the draft regulation not high. Regardless of the

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establishment of power and the equitable distribution of interests, many regulations drafting departments are only focusing on expanding their own power or considering their own department's interests [3]. The biggest drawback of departmental legislation is that some executive branches seek benefits through the implementation of the law [4]. Once some special executive power is set out, the administrative department will charge a variety of administrative fees relying on this executive power. Taking the existing Regulations of Liaoning Province on the Administration of Fishing Vessels as an example, it shows that legislation is more biased towards administrative management with more punishment clauses. The chapter legal liability in the regulation provides how to implement administrative punishment, ignoring the supervision and restriction of administrative organ and lacking the security relief to the administrative counterparts. Only one clause tells the administrative counterpart that he or she has the right to reconsider and prosecute, but lacking the material regulations [5]. At the same time, almost all the members of the legislative council come from the relevant administrative organs. Although they work in the forefront of this field and are familiar with the management of marine fisheries, it is impossible to avoid department interests. Therefore, as for the drafting of laws and regulations, and suggestions for revision, the competent departments can take the lead, but cannot be dominant. Other non-interested departments should be involved and the institutions of higher learning and research institutions may be entrusted to complete the drafting, regulating and modifying.

3. Incomplete Hearing Procedure and Lack of Local Characteristics in Regulations

At present, almost all of the local regulations on the management of marine fisheries have the corresponding upper laws and regulations without differences. The reason is that the local laws and

regulations are mainly to detail and supplement the national laws. It is more straightforward to say that the small law copies the large law simply and directly draws from the upper law and even directly indiscriminately imitates the regulations of other provinces and cities. Acting blind rather than mastering the legislative technique, plus the insufficient professional level of legislative workers and local research, demonstration and hearing make the local regulation difficult to reflect the local characteristics.

Most of the local legislation on marine fisheries management in Liaoning was enacted before 2004. Modification in the relevant regulations did not carry out research in the provincial coastal cities or hold a forum [6]. Therefore, the local information cannot be fully obtained, and the laws and regulations formulated lack local characteristics and comprehensiveness. Thus it can be seen that only by improving the hearing system, strengthening the participation of people all over the city, carrying out local investigations and staying close to the grassroots, and inviting scholars with professional knowledge to hold seminars and demonstration sessions, can make the process be regarded as a true local legislation.

Whether local laws and regulations have local characteristics, sees whether something with local characteristics is written into laws and regulations first. Because of the differences in geography, social structure, and economic development levels, each coastal city must have its own unique features in the management of marine fisheries. If legislators can adjust measures to local conditions, then local laws and regulations on marine fisheries management will surely blossom and bloom with unique splendor.

4. Deliberation of Draft Regulations

Deliberation of the draft regulations is the core process of local legislation. It is the key stage to determine whether certain draft regulations finally become local regulations. It is also a special activity that the legislative body applies the deliberative right to

determine whether the draft enters the agenda and whether it should be modified and how to modify it. In practice, it is generally divided into two ways: NPC (National People's Congress) deliberation and NPC Standing Committee deliberation. They are usually considered by the NPC Standing Committee. It mainly considers the draft legitimacy, feasibility, and necessity. The result was obtained by more than two deliberations. In the procedure, local legislation is carried out in accordance with the relevant laws and regulations, but there are many problems in the process of deliberation.

4.1 National People's Congress Standing Committee Intervenes Late and the Meeting Agenda Is Unreasonable

The relevant information of the meeting shall be sent to the Committee members seven days before the meeting of the Standing Committee, but in practice, members may obtain relevant information before the committee meeting begins. However, the Standing Committees of the provincial people's Congress are held every two months with a duration of no more than five days. Members should fully understand the legislative purpose and other legislative ideas. Seven days seem like enough, but the Standing Committee is not held solely for the consideration of a regulation. There are more materials to read, and only an hour or so during meetings is spent on deliberations on a draft regulation [7]. Such a small amount of time is clearly insufficient for the accurate and comprehensive understanding of the draft regulations, and it is more unlikely to propose constructive suggestions [8].

4.2 "Third Reading" Is Ambiguous and Cannot Ensure Quality of Laws and Regulations

Legislation Law provides that after the draft law has been deliberated by the Standing Committee for the three times, there are still serious issues that need further consideration, which will be submitted by the Council of Chairmen. It can be said that although China did not write the "third reading" review into the law,

the practice was carried out in accordance with this model. Our country calls it "three-trial system". However, the three-trial system in China is not entirely based on the "third reading" in the West. Every review does not have a clear target of deliberation, and it is a deliberate discussion. Where the commissioners want to go, they talk about it. The case that the latter consideration denied the former often occurs, while the final consideration discusses the regulation title and framework.

4.3 Committee Members Are Not High Enough in the Professional Degree and Deliberation Is Difficult to the Point

For example, there are over 60 NPC Standing Committee members in Liaoning Province, while only four members engaged in legal affairs. Especially, less are educated in higher law education. Although other members have studied some common sense of legislation, they are only limited to the understanding of the basic principles of legislation, and not enough to make any contribution to the substantive issues of laws and regulations. However, the draft legislation they have considered will apply to more than 48.39 million people in Liaoning Province [9] which shows the importance of the deliberations. As for the legal issues, if the drafter may be willing to take advice from the academic groups and renowned scholars before making conclusions, it will be beneficial to improve the draft quality [10]. This indirectly reflects the lack of professionalism among legislators and members of the Committee. Although the Standing Committee has a special department such as the legal committee, after all, the Standing Committee is not a meeting of the special committee, which is discussed by all members of the committee and makes it difficult to unify the opinions. Therefore, the deliberation is difficult to point out the crucial point.

It is unavoidable that there may be various mistakes in the draft regulations before submitting to NPC Standing Committee, but these mistakes could be

detected. The current review of the draft regulations still pauses in the principle level deliberation. Only the principle problems that whether the draft regulations conform to the constitution, whether the conflict with the upper law and whether obey the public policy are deliberated. There are few suggestions or opinions on substantive issues of regulation.

5. Draft Regulations Voting and Laws and Regulations Publishing

The Standing Committee of the Local People's Congress voted to adopt a draft regulation according to Legislation Law, Organic Law of the National People's Congress, Rules of Procedure of the National People's Congress and Rules of Procedure of the Standing Committee of the National People's Congress. The regulations for voting and passing draft regulation are similar to Rules of Procedure of the Standing Committee of the National People's Congress, so do the problems. First of all, the voting mechanism is not scientific enough and too simplistic, secondly, there is no reasonable time limit for publication of the regulations and the entry into force of the regulations. Referring to the relevant regulations on the administration of marine fisheries in all provinces, there is basically one provision: "these regulations shall come into force as of the date of promulgation." This article looks very strict, but from the administrative relative person's point of view, it may unknowingly be in violation of the provisions of the new regulations, which may make the psychological conflict of local government laws and regulations. Such behavior violates legislation law and procedure law and is not conducive to social stability. Therefore, the laws and regulations should be published in advance and leave certain period of adaption period for administrative counterpart and the administrative organs. From a jurisprudential point of view, it is also reasonable. At the same time, special terms may be adopted, such as, "the measures come into effect three months from the date of promulgation."

Some special mechanisms can be set up on the original absolute majority as for the voting mechanism of the regulation. For example, separate voting is conducted on individual provisions of the draft regulations, because there are certain clauses that cannot be agreed upon inevitably when the draft regulations are deliberated. However, because of the absolute majority voting mechanism, the draft of the original laws and regulations that have not been decided can be adopted. If a special clause is adopted individually, the question of the special clause can be further explored. If it can never be agreed upon, the draft can be shelved and a process of investigation and research initiated to make a more scientific demonstration of the draft regulations.

6. Conclusions

From the enactment of the local organization law, local laws and regulations are quickly enacted in China and have made outstanding achievements. However, in the specific legislative practice, there are still various problems. Because the level of legislation is not high and the process is not strict, it results in poor quality of laws and regulations, which will not only influence the legal system construction but also inhibit the development of social economy. Therefore, we should combine marine fisheries management practice and local legislation theory knowledge to analyze and perfect the legislative process, legislation technology and regulations, so as to build a scientific and reasonable local regulations system.

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