

State Management and Legal Regulation of Subsoil Use: Theoretical and Legal Aspects

Gestión estatal y regulación legal del uso del subsuelo: aspectos teóricos y legales

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ABSTRACT

The article is devoted to the theoretical and legal relationship disclosure between the concepts of state management and legal regulation in the field of subsoil use. While the legal aspect of the problem has been analyzed, the issues of subsoil use are coupling with the issues of legal regulation; the study is conducted from the standpoint of theoretical and legal science as well. It has been concluded that both the of state management subsoil use and the legal regulation of subsoil use are inextricably linked, and the ultimate goal of them both is the law formation in society. There are some practical conclusions given as the results of studying the theoretical and legal relationship between the concepts of state management and legal regulation in the field of subsoil use. As a result, it has been concluded that the state management of subsoil use in the Russian Federation must be determined by law.

Keywords: state management, subsoil use, legal regulation, legal regulation mechanism, rule of law.

RESUMEN

El artículo está dedicado a la divulgación de la relación teórica y legal entre los conceptos de gestión estatal y regulación legal en el campo del uso del subsuelo. Si bien se ha analizado el aspecto legal del problema, los problemas del uso del subsuelo se combinan con los problemas de la regulación legal; el estudio también se realiza desde el punto de vista de la ciencia teórica y jurídica. Se ha concluido que tanto el uso del subsuelo por la administración estatal como la regulación legal del uso del subsuelo están inextricablemente vinculados, y el objetivo final de ambos es la formación de leyes en la sociedad. Hay algunas conclusiones prácticas dadas como resultado del estudio de la relación teórica y legal entre los conceptos de gestión estatal y regulación legal en el campo del uso del subsuelo. Como resultado, se concluyó que la gestión estatal del uso del subsuelo en la Federación de Rusia debe determinarse por ley.

Palabras clave: gestión estatal, uso del subsuelo, regulación legal, mecanismo de regulación legal, estado de derecho.

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1. Introduction

The subject of state management and legal regulation in the field of subsoil use is currently relevant for natural science, economic and legal research (Boyarko, Zolotnikov, 2016; Volkov, Lyutyagina, 2011; Karchevsky, 2017; Pashkevich, Tarabarina, 2017; Pashkevich, Iseva, 2017; Salieva, 2014; Sigitova, 2016; Skyner, 2006), due to the economic importance of this sphere for modern Russian society and the state. The problems arising in the field of subsoil use state management are of an interdisciplinary nature and, of course, have practical natural-science, economic and legal significance. In modern legal literature, the problems of subsoil use state management and its legal regulation are studied in the sections of the legal science of Mining Law (Izyumov et al., 2010; Lagutkin, 2017; Melgunov, 2018; Melgunov, Gorokhov, 2017; Perchik, 2002; Yakovlev, 2012). At the same time, insufficient attention is paid to this topic from the position of the theoretical and legal substantiation of subsoil use coupling with the legal regulation of subsoil use.

Research methods: dialectical (processes of state administration and legal regulation in the field of subsoil use are considered in their progress and interaction), analysis, deduction, comparative legal, formal legal, interpretation of law.

2. State Management of Subsoil Use

The concept of state management defined from the standpoint of numerous scientific approaches (Bainova, 2016). We believe that it is possible to consider state management as being carried out on the basis of laws and other normative acts as organizing, executive and administrative activities of state bodies, local self-government bodies, public and other non-state formations endowed with the relevant state-authority powers. State management is state-imperious in nature, is an organizing, direct activity and is carried out by specially authorized entities (Bainova, 2016).

The concept of subsoil use is considered in the legal, natural science and economic literature in various aspects. For research purposes within the framework of this article, we consider it possible to define subsoil use as “regulated by the norms of law activities of business entities (subsoil users), aimed at studying and rational development of the Earth’s bowels for various purposes to obtain certain benefits” (Volkov, Lyutyagina, 2011, p. 45).

State management of subsoil use is carried out in the framework of the state’s activities in the power organization of society. In state and society relations, the state acts as a subject of management, and society as its object. The state uses a law as its power in order to manage society legally. State management is carried out in various directions, concerning the industry criteria, it is possible to single out one of the aspects of governance administration process; it is the state management of subsoil use.

3. State Management, Content and State Essence

State management is the state imperious activity, aimed at organizing the state by society. At the same time, state management is the main power. The state functions also have a state-power nature. The state management of subsoil use is a power-organizing activity and it is carried out within the framework of the environmental function. However, the state function concept differs from the state bodies function concept.

State bodies carry out the functions of the state. This provision is fully applicable to state management activities in the field of subsoil use carried out by a set of executive and administrative state bodies (i.e. Ministry of Natural Resources and Ecology of the Russian Federation, Federal Agency for Subsoil Use of the Russian Federation, Rosprirodadzor of Russia, Rostekhnadzor of Russia, Ministry of Energy of the Russian Federation).

State management of subsoil use is carried out within the framework of the state economic function. The state functions are a dynamic element of its content, which in its turn, is determined by the state essence. In this regard, the “philosophical basis” of the Russian Mining law concept, is viewed as a combination of interests of the Russian present and future generations (Perchik, 2002, p. 134) and it acquires a special status.

The state essence (i.e. the will of society) the state content (state machine and state functions) state management (in the field of subsoil use).

4. State Management and Legal Regulation in the Field of Subsoil Use: Concepts Relationship

The state exercises state power through the state machine. At the same time, state power is “supra-public” nature.

The law is the instrument of state management.

Subsoil use (public relations) State (state machine) Law (regulatory legal acts) Subsoil use.

Thus, state management and legal regulation in the field of subsoil use are inextricably linked. The legal relationship of subsoil use is constructed in such a way that subsoil use does not exist outside the legal framework, which further strengthens the relationship we have determined.

The literature determines that it is necessary to develop a unified Concept in the field of state and legal management of subsoil use in the Russian Federation (Melgunov, Gorokhov, 2017). It should be noted that, from our point of view, it is more efficient to determine the main directions of state policy in the field of subsoil use management not only as a concept or strategy, but to consolidate the concept and directions of state subsoil use management in the main legal act regulating Mining relations - the Russian Mining Code Federation (for example, Melgunov V. D. developed the structure of the Mining Code of Russia (2018, p. 321-325).

The purpose of the legal regulation process is the formation of the rule of law. At the same time, legal regulation is a purposeful process, which is a type of legal impact with the aim of forming the rule of law in society. The legal theory defines the concept of the legal regulation mechanism as a system of interconnected legal means, with the help and based on which

legal regulation is carried out. The mechanism of legal regulation is considered in several stages, at each of which certain legal phenomena operate and individual means of legal regulation are used. It seems interesting to consider the stages of the legal regulation mechanism in relation to the process of state management and legal regulation in the field of subsoil use, which are as follows:

1. The general regulation stage. At this stage, the norms of mining law, determined by the legislative framework for subsoil use, are “selected” from the entire mass of people, who may become subsoil users, i.e. potential subjects of subsoil use relations.
2. The individualization stage. At this stage, mining law relationship arises. It should be noted that the relation of subsoil use is formed exclusively in a licensing, licensing order; law determines the subjects of subsoil use in an exhaustive way.
3. The legal requirements implementation stage. The rights and obligations of subsoil use subjects are realized in their mutual actions. At the same time, the state, as the obligatory subject, always acts as an authorized entity performing governance and subsoil users, in the first place, are obligated entities.
4. The law enforcement stage. It occurs only in the case of an offense in the field of subsoil use, the purpose of the stage is to restore the violated law and order.

We believe that the ultimate goal of state management in the field of subsoil use is to achieve the law and order in this area. Seeing this, it is possible to talk about state and legal regulation of subsoil use as a process whose goal is to achieve the rule of law.

5. Practical Aspects of the Relationship Between the Concepts of State Management and Legal Regulation of Subsoil Use

It should be noted that currently the legislative basis for state management of subsoil use in Russia is the Law of the Russian Federation known as “The Subsoil Law” (*The Subsoil Law of the Russian Federation*, 1992). Section IV of the Subsoil Law defines the State regulation of subsoil use relations, article 35 of the Subsoil Law specifically defines the tasks of state regulation of subsoil use relations. Thus, the Subsoil Law does not provide a definition of state management of subsoil use; however, it gives the following correlation: state regulation of relations of subsoil use is carried out through management, licensing, accounting and state supervision (*The Subsoil Law of the Russian Federation*, 1992, Article 35). It is possible to conclude that the legislator defines state management of subsoil use as one of the directions of state regulation of subsoil use relations.

In this regard, a conceptual justification of state management and systematization of the subsoil use legal regulation is necessary, taking into account the practical significance of this subject. We believe that it is legislatively necessary to consolidate the concept of state management of subsoil use, with the definition of the directions of such regulation, and the definition is necessary on a systematic legal basis in the text of the Mining Code of the Russian Federation.

6. Conclusion

The article formulates a theoretical and legal justification for the concept of state management of subsoil use coupling with the concept of legal regulation of subsoil use. During the study, it has been determined that the state management of subsoil use is interconnected with the legal regulation of subsoil use, the interconnected processes can be defined as the state and legal regulation of subsoil use, and the goal of the state management and legal regulation of subsoil use is the law formation within the scope of subsoil use. As a result, it is possible to conclude that the state management of subsoil use in the Russian Federation must be determined by a systematic legal basis, the concept and directions of state management of subsoil use should be fixed in the Mining Code of the Russian Federation.

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