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# Қазақстан Республикасы Заңнама Институтының Жаршысы

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## ENERGY LAW OF THE REPUBLIC OF KAZAKHSTAN: PROBLEMS AND PERSPECTIVES

### 1. Introduction

The study of energy sector legal framework of Kazakhstan's economy shows that currently there is a process of dynamic development in the energy legislation of the country. This is due to the fact that the energy sector provides vital interests of the society and state. We cannot imagine our modern life without the modern benefits of civilization, gas and electricity, without gasoline, etc. On the other hand, global trends in energy policy will require a flexible and well-coordinated organization of life and energy complex of the country and their legal registration respectively. As we know, currently there is a need for large-scale investments in the energy sector, which is associated with increasing energy demand and infrastructure aging of the energy industry. Increasing demand for energy, constant fluctuation of rising prices for oil and gas on a global scale - it is also the reality of today. It is significant to note that the energy sector is closely linked with the use of natural resources, and the state, on the one hand as the owner of these resources, and on the other hand, as the guarantor of the public interest, must fulfill the environmental and other obligations of the country, in other words, the norms of international legal conventions and directives, ratified by our country. All the above suggests that the problems and prospects of energy law of Kazakhstan require thorough study and justification of theoretical concepts.

### 2. Main research results

In Kazakhstan the process of stirring up the power legislation development is observed, more than 10 regulations have been adopted in recent years. For instance, Laws of the Republic of Kazakhstan "On Energy Saving", "On Gas and Gas Supply", "On Support of Renewables Use", "On the Main Pipeline", etc. Process of activization of law-making activity is objective necessity, and modern world

challenges as before both the countries suppliers and the countries consumers of energy demand cardinal revision of earlier operating priorities. Acceptance of more than 30 international conventions related to only ecological character and directives of EU by our country demands the execution. Therefore the Kazakhstan juridical science has to focus on power branch problems of the legislation properly, which is aimed at assisting entrance of Kazakhstan to the top 30 competitive countries of the world on the basis of advancing state-of-the art technologies and services that will allow to provide transition from raw to innovative type of economy. Actually, mining law, oil law and law on subsoil use are to be drawn to the attention by legal support of raw sector of economy whereas the modern energy sector of economy has to develop in an innovative way. In this plan practice of the developed world countries, which went on other way where the emphasis is placed on mobilization of alternative energy sources use. «For instance, Germany has the state program "One Hundred Thousand Solar Roofs" for several years, while the USA has the similar program, entitled "Million Solar Roofs". For instance, in 2011, Germany developed 20 percent of the electricity from the renewable power, and in 2050 it plans to increase this level to 80 percent. Renewable energy, compared with the traditional, creates 3 times more job vacancies. This proves that the development of renewable energy sources is not only economically and environmentally beneficial, but also socially. If we talk about the use of wind resources, the annual growth of global wind energy is 30 percent. In Germany the cost of wind energy in 2011 was below the coal. Today, the share of wind energy in the energy mix of Asian region is about 34 percent. The best results have been achieved by China. Every year, in the period from 2006 to 2011, China has doubled its wind power capacity

and will continue to build capacity at the same pace in the next few years» [1]. A special law “On support of renewable energy” was adopted in 2009, Kazakhstan, which is criticized by both scholars and entrepreneurs due to the accumulated problems of its application in practice. This is explained with the fact that our juridical science is behind the practice and does not give clear answers on what legal algorithm to develop this industry. We can agree with the opinion that the practice shows “special convergence of legal regulation of relations in the field of primary non-renewable mineral and energy resources use, primarily oil and gas, because they, as subjects of legal regulation (in respect of which legal norms are established), basically have a simple chemical formula of oil mixture and range from simple gaseous methane, consisting of a standard set of molecules - one carbon atom and four hydrogen atoms, CH<sub>4</sub>, to more complex octane C<sub>8</sub>H<sub>18</sub>, a component of crude oil” [2]. And we came to know that it is the right time to implement both primary and secondary non-renewable energy resources as the necessity of complex regulation, exercised by other countries in the field of law, taking into consideration Kazakhstan law.

Taking into account the current realities of RK energy complex development, it is vital to use alternative and renewable energy sources, development of private ownership of energy resources, trends in the convergence of legal regulation of non-renewable and renewable energy sources, it is also necessary to expand the boundaries of the “mining law”, which is based on relations within the use and protection of natural resources of the Earth. As we can see, the mining law, or law on subsoil, has its own circle of regulated relations, and it cannot provide the regulation of relations, associated with the operation of the entire energy sector, including wind, solar and other renewable energy. But at the same time, there is a close connection and interaction between these areas of law. Firstly, subsurface use, which results in the exploration and production of minerals such as oil, gas, coal, ultimately aims at the extraction of energy. Secondly, it is the mining law to regulate the use of critical energy resources such as oil, gas and coal. However, each of these sectors has its own goals and objectives, principles and system, legislation.

All this demonstrates the need for careful study and analysis of a range of public relations in the energy sector and theoretical study of the energy law, as a branch of Kazakhstan law. “Kazakhstan has significant reserves of fossil energy sources. Proven oil reserves are estimated at 30 billion barrels,

putting Kazakhstan on the 10th place in the world on this indicator. Reserves of uranium (more than 800 thousand tons) Kazakhstan ranks the second in the world after Australia, and in terms of its production - the first. The accumulated potential in the mining and metals sectors creates the opportunities for expansion of added value chains and development of related services.

There is a high potential for developing the renewables (further – R). In particular, the potential of wind energy development is estimated at more than 900 billion kWh a year. Feasible power of solar energy development in Kazakhstan makes from 1 300 kWh to 1 800 kWh per square meter. Also there is a considerable potential for bioenergy production. Possibilities of the hydroenergy sector development are estimated approximately at 22 GW, about 10% of which are mastered now» [3].

A logical question arises: can we talk about the formation of energy law as a branch of law? According to the majority scholars’ point of view, formation of independent law branch is set to the following conditions: «a) degree of originality of any relationship; b) their share; C) inability to resolve the relationship with the rules in other sectors; d) necessity of using a special control method» [4].

According to N.B. Mukhitdinov the principles, functions, industries are of a particular value in the question of recognition of group norms as law branches, as well as two interrelated factors: first, internal ordering of the rules, allowing them in their unity to act as an independent element of the legal system in general; secondly, ability of this group of legal norms to interact with similar elements of a single system of law [5].

In our opinion, energy law can be recognized as a branch of law, because it meets the above criteria. First, it is the existence of relations in the sphere of the power complex functioning in the country, starting with production and ending its delivery to a consumer. It is a huge conglomerate of the energy relations arising concerning energy. What is energy as an object of law? “Energy as a subject of legal regulation is characterized by the unique features and signs, distinguishing it from other subjects and phenomena of the material world. These features in many respects predetermine the need of independent regulation of the energy relations, including all the complex of problems, connected with natural resources energy transformation into the mankind benefits. And not accidentally in the theory of law it is postulated that many of the problems, associated with the regulation, are rooted not in the act of regulation, but in the regulated object - in our case,



it is the energy and power. As the importance of energy, including electrical energy, to ensure all the aspects of life in modern society is quite significant, we need the independent comprehensive legal regulation of the relationships, associated with the production (generation), purchase and sale, transfer (transportation) and energy consumption» [2, p. 5].

The legislation of Kazakhstan does not contain a definite answer to what energy is. The Civil Code of RK contains a number of articles, regulating the order and conditions of implementing the contract of power supply, in other words, civil law considers energy as a transaction subject, as goods. The law on power supply provides the definition only for energy resources as a combination of natural and manufactured carriers of energy, stored energy of which is currently used or may be used in future economic and other activities, as well as the forms of energy (nuclear, electrical, chemical, electromagnetic, thermal and other forms of energy), (Article 1 of the law “On energy saving and energy efficiency”) [9]. In the legislation on renewable energy the following definition is introduced[8]: these are the sources of energy, continuously renewable due to natural processes, including the following types: solar radiation, wind energy, hydraulic energy of water; geothermal energy: heat of soil, groundwater, rivers, ponds, as well as anthropogenic sources of primary energy resources: biomass, biogas and other fuels from organic wastes, used for the production of electrical and/or thermal energy.

If we consider the relations in the sphere of the energy complex functioning, they are diverse. In a broad sense they include the relations, arising in the sphere of exploration, extraction and use of minerals, the final processing of which is aimed at energy production. Secondly, these are the relations in the sphere of nuclear, atomic energy use. Thirdly, these are the relations, arising in the process of using alternative energy sources, and finally, the relations, arising in the field of electricity, gas and others. Fourth, these are ownership, other laws and contractual relations. The most basic combines all these relations, which is the production and use of energy as “special” goods, “goods”, without which we cannot imagine our life activity, its presence indicates the stability and sustainability of economic, and if you want, political activities of the country in regional and global scales. Existing Kazakhstan legislation regulates the entire range of these relations, but without taking into account their main unifying beginning. Just the same, it complicates the process of effective legal

regulation of the whole complex of power relations. We support the position that “we do not regulate power, relations, associated with the production, generation, use and consumption of energy; we regulate separate primary energy sources, energy resources, mineral and energy resources and their use”. Actually, Kazakhstan legislation is based on the principle of regulating relations in the sphere of subsoil use, use of nuclear and alternative energy. The use of services in the energy sector often remain outside the attention of a legislator, “therefore, further improvement of legislative regulation of activities in the energy sector should be based on strategic options industry development, and on the experiences of law enforcement” [2].

Can we talk about the presence of energy legislation in Kazakhstan? Definitely, we can, because all these relations are regulated by the complex regulations. For instance, relations in the sphere of exploration, extraction and use of minerals in the Earth bowels are governed by the law “On subsoil and subsoil use” [6]. The public relations in the field of atomic energy use are governed by the law “On atomic energy use” [7]. Along with it there are laws “On support of renewables use” [8], law “On power supply and energy efficiency” [9], law “On gas and gas supply” [10] and others. All the above suggests that in the legislation of Kazakhstan energy legislation is established and steadily growing, which includes normative legal acts of different levels.

In general, the system of legal regulation and energy complex includes several levels in itself. Namely, elements of common law and special legislation, which contains special provisions, reflecting the specifics of this sphere of relationships. General legislation is represented by: RK Civil Code; RK Land Code; RK Tax Code; RK Budget Code; RK Customs Code, etc. But there is also special laws – on subsoil, on renewable, on power supply, on gas supply, on atomic energy, etc. Thus, we see there are several levels of legal regulation: general and special legislation, as well as developed technical regulation, and, finally, regulation of international legal in the form of, firstly, international agreements.

It is an objective and logical process, which is typical for all countries, due to the fact that power relations are regulated by the state to the desired extent, what is testified by the history of energy development of the society and state, especially after the energy crisis and the “Arab Oil Embargo” of 1973 [11]. The degree of originality of power relations, their specific weight and inability to resolve relationships with norms of other law

branches require such legal mechanisms of legal regulation of these relations, which would correspond to the modern principles of energy security of the country, which were first used in the USA in 1947, when the legislative document was adopted, “regulating actions of the state in the sphere of national security” [12]. I.S.Shchepanskiy writes that “energy security is an important part of national security and is closely linked with environmental, resource, economic, industrial, radiation and other types of security. Its provision should be on the local (production), regional, national, and international (global) levels, taking into account the principles of sustainable development, involving the right of citizens to favorable environment, rational use of natural, including renewable resources, more rapid adoption of effective measures to prevent environmental degradation, environmental and technological disasters” [13]. It is important not to confuse the concept of “energy security” and “security of power engineering”. If in the first case we are talking about warranty for energy delivery to consumers; secondly, it is only about the domestic stability of the functioning of energy complex in the country. For Kazakhstan, and as for Russia, energy security in many manifestations has sharp interrelated environmental, economic, social and political character [14].

Now there are three approaches to energy security [15]. Kazakhstan should choose its own path of energy security, not forgetting its international obligations, for instance, the EU Directive on renewable energy, which provides a number of mandatory national targets for the share of renewable energy [16].

As we see, new tendencies of ecological and power policy of the EU required the review of Kazakhstan power policy principles and maintenance of the relations with the EU. Since 1996 Kazakhstan began preparing for accession for the Kyoto Protocol; on March 26, 2009 Kazakhstan ratified it, within which the measures for creating national system of monitoring and reporting on greenhouse gas emissions, state register of carbon units, national plan of quota distribution, and also creation of the quotas trade market are taken [17]. After signing of Kyoto Protocol, Kazakhstan started creation of a standard basis for supporting the renewables [18]. The positive result of state regulation in this area is creating favorable conditions for construction and operation of objects on the use of renewables and stimulating production of electric and (or) thermal energy with the use of renewables [8].

As the statistics shows, according to the volume

of greenhouse gas emissions in the atmosphere the main pollutant is the country’s energy sector. The ecological legislation of the Republic of Kazakhstan holds a policy of tightening environmental requirements in this area. Following the policy of “green” development, in 2013 Kazakhstan introduced serious innovations in the system of state regulation in the sphere of emissions and removals of greenhouse gases into the Ecological Code [19]. As a primary method of reducing emissions by more than 20% in the EU the Emissions Trading System was proposed, allowing “to urge” energy market participants by the market methods to introduce innovations and widely use possibilities of alternative power engineering. Kazakhstan successfully adopts positive European experience and introduces the trade market in quotas for greenhouse gas emissions and other market mechanisms, directed on reducing greenhouse emissions. For instance, National Plan of distributing quotas for greenhouse gas emissions for 2014-2015 is approved [20], in which the total amount of quotas for greenhouse gas emissions economic branches and volumes of quotas for nature users are established.

Regulation of the relations in this sphere involves almost all the branches of law, which is explained by the fact that power relations are complex in their content. For instance, ownership and contractual relations are governed by the civil law, responsibility - administrative, criminal and civil laws, etc. All of the above suggests that we are dealing with a new and rapidly developing area of law - energy law, which has its own subject of legal regulation, its own system of law, principles of legal regulation of these relations. And, most importantly, it has the state will and interests in the regulation of energy relations.

It should be noted that there is a close relationship between environmental and energy law, which is due to the dynamic interaction and interdependence between the environment and its components, on the one hand, and energy, on the other hand, the main sources of which are natural resources themselves. Environmental standards and requirements for energy complex activities are established in the environmental legislation, which tends to constant tightening. It is, in general, a global trend. Ensuring environmental security requires to be considered when determining the energy strategy of each state, and, vice versa, in order to ensure energy security for the future we should be find out forms and methods of ensuring rational use and protection of mineral resources of the country at the legislative level, involvement in the market of alternative

energy sources. The European experience of solving problems in this area clearly demonstrates above mentioned.

### 3. Summary and Conclusions

The energy law should be considered as a branch of law, which is characterized by the existence of subject unity of public relations, specific legal principles, and independent sources of law.

In the market conditions energy relationships underwent cardinal changes which affected the level and parameters of their legal regulation. In the sphere of the energy relations it is observed simultaneous strengthening and interaction of imperative (public) and dispositive (private) beginnings in legal regulation, which testifies that the modern energy law represents public and private branch of law. According to the Constitution of RK subsoil is a state ownership, and the state as the owner on the one hand and as the representative of interests of RK people, on the other hand, defines a legal regime of subsoil, namely the order and conditions of carrying out operations on subsurface use [21]. In the regulation of energy relations it is necessary to use private and public, proceeding, starting from the combination of enterprise freedom to the state regulation by means of laws, but not individual acts. The state has to ensure stability, safety, availability of power sources, profitability in their use, ensuring our national interests. As we noted above, state interests in the field of energy security are public. This is because during the formation of "public interest" concept must proceed from the fact that: 1) interest as a phenomenon is closely linked to the needs, specifics of which determines, ultimately,

the content of interests; 2) basis of public interest forming lies in needs, perceived as their own subjects (by people, state and society). It is the scale of needs does the interest public; 3) means of meeting these general requirements should be legal and assume overall construction of the rule of law. [22].

It is essential to utilize energy relations in terms of private and public needs, on the basis of a combination of entrepreneurial freedom in accordance with the state regulation through legislation rather than individual acts. The state is obliged to ensure the stability, security, availability of energy sources, efficiency in their utilization ensuring our national interests.

The energy legislation of sovereign Kazakhstan underwent serious changes. First, under the influence of power market transformations its normative base is updated and enriched: there are new directions of legal regulation (for instance, alternative sources of energy, renewables, fixed tariffs, about production sharing agreements, about power industry, about gas supplies, about nuclear power, etc.) . Secondly, the structure of power legislation has been changed. Establishing and developing of legal norms on alternative renewables, power industry, gas supplies, nuclear power is observed. Thirdly, the legislation emphasizes complex specialized contracts, which contain not only private-legal, but also public beginnings. Considering close interrelation of the energy legislation and law, it is possible to note that development of the first has impact on development of internal structure of the power right that leads to changes in it.

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*Бұл мақалада энергетика қатынастарын құқықтық реттеу мәселелері қарастырылып, Қазақстанның заманауи жағдайында өз өзектілігін жоғалтпаған, сондай-ақ елдің энергетикалық кешені мен табиғи ресурстарының деңгейін көрсеткен. Энергетикалық заңнама, энергетикалық құқық ұғымдарының өзара байланысы мен қарым-қатынасын автор өз жұмысында көзқарасын көрсеткен. Мақалада осы аумақтағы ұлттық заңдарды және тәжірибелерді қолдануды талдап, теориялық тұжырымдар мен ұлттық заңнаманы жетілдіру жолдарын ұсынған.*

**Түйін сөздер:** энергетика, энергетикалық заңдар, жаңартылатын энергия көздері, табиғи ресурстар және қоршаған ортаны қорғау туралы заңдар.

*В данной статье рассматриваются проблемы правового регулирования энергетических отношений, которые не теряют своей актуальности и особенно важны в современных условиях для Казахстана, как страны с наличием серьезного энергетического комплекса и потенциалом природных ресурсов. Работа показывает авторскую точку зрения в соотношении понятий энергетическое законодательство и энергетическое право. Статья содержит детальный анализ национального законодательства в энергетической области, теоретические выводы и предложения его совершенствования.*

**Ключевые слова:** энергетические, законодательство энергии, возобновляемые источники энергии, природные ресурсы и экологическое законодательство.

*The problems of legal regulation of energy relations are covered in this article. The actuality of the research is focused on the energy complex and serious potential of natural resources of the country, emphasizing the significance in modern state of Kazakhstan. It is paid attention to the author's point of view related to crucial issues, such as correlation of energy, natural resources and environmental laws. The article also provides a detailed analysis of national legislation and practice of its application in the study area and proposes concrete ways for their improvement.*

**Keywords:** energy, energy legislation, renewable energy, natural resources and environmental laws.

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**Қазақстан Республикасының энергетикалық заңдары: проблемалары мен перспективалары**

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**Энергетические законы Республики Казахстан: проблемы и перспективы**

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**Energy law of the Republic of Kazakhstan: problems and perspectives**

