

Research on the Legislative Purpose of Ecological Protection Compensation

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ABSTRACT

From the perspective of national and local policies and regulations, the legislative purpose of ecological protection compensation is pluralistic, in theoretical research, there have always been different understandings of the legislative purpose of ecological protection compensation, from the perspective of foreign and domestic evaluation and reflection on the legislative purpose of ecological protection compensation in the existing theory, focusing on the legal text, enhance the ability to study and serve the practice of the rule of law. This study aims to rationalize the relationship between the multiple interests of ecological protection compensation protection or adjustment, clarify what value should be protected in theory, clarify the direct value and fundamental value of ecological protection compensation, and set the proper purpose expression of ecological protection compensation legislation.

KEYWORDS: *ecological protection compensation; legislative purpose; ecological civilization construction, incentive system; sustainable development*

1. INTRODUCTION

From the perspective of national and local policies and regulations, the legislative purposes of ecological protection compensation are diverse, and the purposes and provisions in relevant documents are inconsistent. In theoretical research, there have always been different understandings of the legislative purpose of ecological protection compensation. The purpose of this study is to clarify the direct value and fundamental value of ecological protection compensation by clarifying the direct value and fundamental value of ecological protection compensation and protection by clarifying the relationship between the multiple interests of ecological protection compensation protection or adjustment, and to set the proper purpose expression of ecological protection compensation legislation.

Specifically, the path of this paper is as follows: First, through the actual text of the ecological protection compensation system and relevant provisions, the expression of the legislative purpose of ecological protection compensation in the current normative system is objectively described and analyzed. Secondly, the views and disputes on the legislative

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purpose of ecological protection compensation at the academic level are sorted out and examined. Finally, from the perspective of what should be, the legislative purpose of how to define ecological protection compensation is explained and demonstrated.

2. EXPRESSION AND EVALUATION

The legislative purpose of ecological protection compensation is the main embodiment of the purpose of ecological protection compensation in the normative text. Through the search of periodicals, works and other literature related to the existing legislative purpose of ecological protection compensation in China, there are few special studies on the legislative purpose of ecological protection compensation, and the existing research is mainly to discuss the purpose of ecological protection compensation, and it is discussed in how to define ecological protection compensation.

2.1. Foreign Views

The theoretical research of "ecological protection compensation" in foreign countries is lagging behind in its practice, however, with the continuous and in-depth development of the theory, the international

community has basically reached a consensus on its conceptual cognition, that is, the compensation of ecological demanders to service providers that embody the requirements of "beneficiary compensation". This point shows that in terms of the scope of compensation and the normative interest relationship, it is consistent with the core essence of "ecological protection compensation" that is currently recognized by the mainstream of China's official academic circles.

Although there is no special ecological protection compensation legislation in the international community, it can be deduced from the relevant provisions that foreign ecological protection compensation legislation has four purposes, namely, to protect the ecological environment, to stimulate the ecological protection behavior of ecological protectors, to implement relevant laws and regulations, plans, and to promote the development of the ecological protection compensation trading market.

2.2. Representative Views in China

At present, the domestic expression of the purpose of ecological protection compensation mainly involves two types of views.

2.2.1. The Purpose of Compensation for the Externalities of the Dual Ecological Environment

Most of the names of "ecological compensation" are used in the understanding of the purpose of "double externalities", which believes that ecological protection compensation is aimed at compensating for the two behaviors of positive and negative ecological environmental externalities. Among them, the purpose of negative externality compensation is to compensate for the damage caused by a certain act to others or society while bringing its own benefits, such as environmental pollution and ecological damage, etc., in order to compensate for the spillover damage of the cost. The purpose of compensation of a positive external nature is to have a beneficial impact on the environmental ecosystem by an individual or organization in environmental remediation and restoration activities, and is intended to be compensated by the value of the beneficiaries. This view of the "purpose of ecological compensation" was first proposed in the mid-to-late 1980s and is still held by many scholars today.

2.2.2. The Purpose of Compensating for the Positive Externalities of the Ecological Environment

In China, the compensation concept of "positive externality behavior internalization" still uses the title of "ecological compensation", which believes that

ecological compensation behavior only includes the "protection" compensation of positive externalities, in fact, the compensation concept of "positive externality behavior internalization" has been close to the connotation of "ecological protection compensation" put forward by this study, with the color of "ecological protection compensation" in the substantive sense, which was first proposed in 2006 and gradually developed and improved.

2.3. Evaluation and Reflection

By examining the existing institutional practices, the purpose of compensating for the externalities of the dual ecological environment is that because of its all-encompassing scope, it has been unable to adapt to institutional reality and mainstream views. To this end, the purpose of compensating for the positive externalities of the ecological environment is relatively reasonable. The reasons are as follows: First, protection compensation is born out of new interest relations and is encouraged by policies and systems; second, most of the provisions and main documents currently involved in ecological protection compensation in China emphasize compensation for encouraging positive external behavior of ecological protection.

3. BASIC REQUIREMENTS

3.1. Embody the Special Basis of the Constitution and Laws

The general principle of the Constitution to "protect and improve the living environment and the ecological environment" lays the most basic constitutional basis for the legislation of ecological protection compensation. At the same time, combined with the relevant requirements of the Legislation Law, the State Council may formulate operational administrative regulations in accordance with the basic system of ecological protection compensation in the Environmental Protection Law, which is a systematic explanation of the implementation of the basic system in the Basic Law. To this end, the specific legislative purpose of the regulations on compensation for ecological protection is defined, and the constitutional and legal basis is fully respected, which is to refine the compensation system for ecological protection in the Basic Law of the Environment.

3.2. Reflect the Essential Characteristics of the Ecological Protection Compensation System

Promoting the coordination mechanism of green water and green mountains and golden mountains and silver mountains going hand in hand is the mission of ecological protection compensation legislation, which is the characteristic of the ecological protection compensation system. In dealing with the relationship

between man and nature, the coordination of the relationship between man and nature should be taken as the basic criterion. We cannot follow the old road of just gold and silver mountains, nor can we blindly seek protection and give up development. The purpose of ecological protection compensation legislation should be to reflect the connotation of coordinated development in the new era, with the internal protection motivation of ecological protectors as the starting point, so as to guide the development of ecological protection compensation legislation.

4. LEGISLATIVE PURPOSE

4.1. Fundamental Purpose: to Protect and Improve the Ecological Environment and Promote the Construction of Ecological Civilization

A good ecological environment is the fairest public good and the most inclusive people's livelihood and well-being. From the perspective of its title and institutional practice, ecological protection compensation takes the protection and improvement of the ecological environment as the fundamental purpose, and there is no dispute, which is also a consensus at the practical and theoretical levels. The problems exposed at the practical level also ultimately point to how to better solve practical difficulties through legislation. Combined with the situation of ecological protection compensation in various regions of China, all localities are actively carrying out pilot practices, but inevitably encounter some problems in the implementation process, such as the use of ecological protection compensation funds is not accurate enough, the intensity of local protection investment is insufficient, the interests of different regions are different, coordination is difficult, and it is difficult for farmers and herdsmen to change their production and lifestyle. Due to the lack of unified legal guidance, friction is prone to occur between various entities, and the rights and interests cannot be fully protected by law. Therefore, the promotion of ecological protection compensation requires not only rich theoretical knowledge, but also depends on the corresponding legal system.

4.2. Direct Purpose: to Guide the Beneficiaries to Fulfill Their Obligations and to Motivate the Protectors

The direct purpose of ecological protection compensation legislation is to guide beneficiaries to fulfill their compensation obligations and encourage ecological protection entities to protect the ecological environment. The implementation area of ecological protection compensation in China is extensive, most of which are located in restricted and prohibited development zones, involving the production and life

of many farmers and herdsmen and other subjects. Ecological protection compensation legislation takes the protection of the rights and interests of ecological protectors as one of the important legislative purposes, and at the same time clearly requires that compensation directly involving ecological protectors restricting development and utilization requires the signing of an agreement, and the signing of an agreement is a statutory obligation for the government and must be fulfilled. Practice has shown that most of the government and other public power entities do not sign or do not sign ecological protection compensation agreements, resulting in damage to the rights and interests of farmers and herdsmen. To that end, it was necessary to strengthen the Government's obligation to conclude treaties.

4.3. Other Purposes: to Build a Benign Interactive Relationship Between Ecological Beneficiaries and Protection Subjects

The core problem to be solved by ecological protection compensation is the externality of ecological services in the process of supply and consumption. Ecological services are a typical cross-regional ecological products, with the characteristics of public externalities, one-way externalities and spatial externalities, when the behavior of ecological protectors improves the value of ecosystem services, there will be positive external effects, however, these measures in the protection and improvement of the ecological environment at the same time, but also increase the cost of ecological protection in the region, and even lose the development of opportunity costs, objectively also caused the interest development of the main functional areas uneven, further aggravating the imbalance of interests between regions. Of course, if you blindly carry out "blood transfusion" compensation for ecological protection sites, it is also easy to stimulate the inertia of the area, which is not conducive to the smooth development of ecological protection compensation work. Therefore, in order to coordinate the sharing of ecological protection costs and ecological benefits in the main functional areas, reduce the contradictions and conflicts between various regions, and develop and improve the ecological protection compensation mechanism is an effective way to solve this problem, but in the process of ecological protection compensation, ecological protection and ecological compensation need to have full participation rights, and taking into account the heterogeneity of different regions, the country or region should also adapt to local conditions when implementing compensation policies, and cannot be "one size fits all".

5. CONCLUSIONS

This paper systematically studies the legislative purpose of ecological protection compensation, and looks forward to providing suggestions for the design of legislative purpose clauses in the Regulations on Ecological Protection Compensation. Specifically, the following conclusions are mainly drawn.

First, the research on the legislative purpose of ecological protection compensation is of great significance.

Second, at the level of theoretical research, the purpose of compensation for the positive externalities of the ecological environment is relatively reasonable, but there are also limitations that cannot respond to the particularity of ecological protection compensation.

Third, the legislative purpose of ecological protection compensation should meet the basic definition requirements and be carried out in a scientific and logical manner.

