

Research on the Legislative Power of National Autonomous Areas

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ABSTRACT

Legislation on national autonomous areas is a significant component of China's legal system and a key element with unique features of the system of regional national autonomy. The nature of the legislative power in national autonomous regions has the dual nature of power legislation and authorized legislation, and the concept and attributes are relatively complex, and there are problems such as unclear division of authority and confusion in the application of power in the division of authority and operation practice. Comprehensively considering factors such as the goal of establishing the legislative power of autonomy, the adaptation of autonomous regulations and the nationality of national regions, the improvement measures are put forward from the perspectives of the approval power system and the principle of adaptation.

KEYWORDS

National Autonomous Areas; Autonomous Legislative Power; Approval Power; Autonomous Regulations; Separate Regulations.

1. INTRODUCTION

As a multi-national country, in order to safeguard national stability and the unity of sovereignty, China has put in place the fundamental political framework of national autonomy for its regions. The legislative power of national autonomous areas is precisely to protect the autonomy of national minorities and is stipulated in response to the basic state policy. The laws governing national autonomous territories are a crucial component of China's legal system and have a noteworthy effect on the social, financial, and cultural advancement of all national groups. However, national autonomous territories have unique and complicated legislative authority, and there are many controversial issues in theory and practice. Through the study of controversial issues, it is necessary to provide ideas for national autonomous areas to actively and effectively exercise their legislative power of self-government, integrate national characteristics, promote the formulation of the legal system in national areas, and give play to the fundamental role of law in the behavior of national societies and national individuals.

2. THE CONCEPTUAL FRAMEWORK OF NATIONAL AUTONOMOUS TERRITORIES' LEGISLATIVE AUTHORITY

2.1. The Meaning of National Autonomous Territories' Legislative Authority

The general regional power to legislative is one aspect of the legislative authority of national territories, but it is not the only one. Articles 80 and 81 of the Legislation Law of the People's Republic

of China clearly provide that local regulations may be created by the people's congresses of the provinces, autonomous regions, municipalities directly under the Central Government, and their standing committees. As long as municipal rules are not in conflict with the Constitution or other legislation, these authorities are free to enact them. And they are tailored to the particular needs and operational requirements of the administrative regions in question, while also defining the authority of autonomous prefectures and district cities to create local regulations subject to certain limitations and requirements. Autonomous regions and autonomous prefectures belong to national autonomous areas, and the above stipulates that national autonomous areas may create local ordinances and use general local legislative authority. But national autonomous territories also have autonomous legislative authority in addition to regular local legislature power. The autonomy's legislative authority refers to the power of national autonomous areas to formulate autonomous regulations, special regulations, alternative provisions, and supplementary provisions on matters involving the autonomy of their own national groups and localities. And the people's congress of the national autonomous areas-which include the autonomous regions, autonomous prefectures, and autonomous counties-is the primary body that exercises this authority.

2.2. The Characteristics of Ethnic Territories' Legislative Authority

The power of autonomous regions and autonomous prefectures to formulate local laws and regulations belongs to the statutory legislative power of local legislatures, because the Constitution and laws' basic provisions about the primary body of power's ability to create local laws and regulations, so the nature of the exercise of general local legislative power by autonomous regions and autonomous prefectures is that of general functional legislative power. However, the legislative power of autonomy is a special power granted by laws to the legislature of ethnic autonomous areas to make adaptation provisions on laws and administrative rules, and to manage national affairs through the formulation of autonomous regulations, special regulations, alternative provisions, and supplementary provisions. Essentially, the entirety of the real work involved in modifying laws and administrative rules constitutes the adaptation of legislation in national autonomous zones. And is not a specific form of legislation, hence it is obvious that it is outside the purview of functional laws [1]. The power of legislative adaptation exercised in the form of autonomous regulations and special regulations is a delegated legislative power separated from the legislative power of authority; Enactment authority is basically a delegated legislative power that is used to implement modifications or additional provisions based on the sectoral law's provisions being authorized. As a result, national autonomous zones' self-government's legislative authority is a form of delegated legislation.

3. ISSUES WITH THE DELEGATION OF LEGISLATIVE AUTHORITY IN NATIONAL AUTONOMOUS REGIONS

Clarity of legislative authority is a prerequisite for the smooth progress of legislation. Despite the fact that national autonomous territories have unique local legislative authority, the clarity of legislative authority is still a prerequisite that must be met for reasonable legislation. However, neither the Legislation Law nor the Law of the People's Republic of China on Regional national Autonomy clearly stipulates the legislative authority of autonomy legislation, but only makes general provisions in principle. The issue of the ambiguous allocation of legislative powers is therefore raised.

3.1. The Precise Allocation of Legislative Authority between the National Autonomous Zones and the Central Government is Not Evident.

The Legislation Law and the Law on Regional national Autonomy, as the basic laws that specifically provide for legislation and regional national autonomy, only stipulate the preconditions for autonomous legislation in accordance with actual conditions on the ground and fail to narrow the area

of issues for using the autonomy's legislative authority, resulting in the problem that it is difficult to exercise this special right of enactment. Moreover, the central authorities' power of approval is also not clear, and the Fundamental Law and the Basic Law provide that the autonomous region's autonomy regulations and special regulations shall take effect after they are submitted to the Standing Committee of the National People's Congress for approval, which shows that the legislative power of autonomy of ethnic areas is constrained by the central authorities, but there is no clear stipulation on the scope of the central authorities' authority to exercise the power of approval, that is, there is no provision on the circumstances under which the NPC Standing Committee shall approve the autonomy legislation of the national autonomous areas and under what circumstances it shall not approve the autonomy legislation. To a certain extent, this kind of provision shows that in the process of formulating legislation on autonomy, organs of power in ethnic areas only enjoy the right to draft bills. This obviously does not conform to the purpose of "making certain that the regional national zones' institutions of self-government effectively use their autonomy rights, considering the demands and features of diverse national regional autonomous territories, and enabling the organs of self-government to have greater autonomy than ordinary localities."

3.2. The Division of Authority between the Legislative Power of Ethnic Autonomous Areas and the General Legislative Power of Local Governments is Unclear

National autonomous zones has two types of legislative authority: the power of self-government and the power of ordinary communities. The "Legislation Law" solely contains particular requirements pertaining to the creation of local rules by autonomous prefecture standing committees and people's congresses. However, as far as the national autonomous areas are concerned, neither the Constitution, the Legislation Law nor the Law on Regional Autonomy for Ethnic Minorities distinguishes between the competence to legislate in autonomous areas and that of local legislation in general. Matters to which autonomous regulations, separate regulations and applicable local regulations apply are unclear. Judging from the actual situation of national autonomous areas, the boundary between the autonomy legislation of ethnic areas and ordinary local legislation is very complicated, and the national autonomous areas are characterized by a diversity of subjects and customary rules, and it is difficult to distinguish between national autonomy matters and general matters. However, national autonomous areas do not have the ability to accurately define the criteria for the division of powers, which leads to the problem of confusion in the exercise of power [2]. Further, the legislatures of national autonomous areas are inclined to exercise ordinary local legislative powers, which are not constrained by the approval power of the central government, in order to achieve the goal of true national autonomy, while the legislative power of autonomy that is bound by the approval power is idle.

4. ISSUES WITH HOW LEGISLATIVE AUTHORITY IS REALLY USED IN NATIONAL AUTONOMOUS REGIONS

4.1. The Application of the Power to Approve Autonomous Regulations and Special Regulations is Confusing

According to Article 85 of the Legislation Law, the unique and autonomous rules of the autonomous area will take effect after being approved by the National People's Congress Standing Committee. When autonomous prefectures' and autonomous counties' special and autonomous rules are approved by the standing committees of their respective people's congresses-which are led by the central government-they become operative. If the autonomous rules and special regulations created by the autonomous region's people's congress align with the terms of the administrative guidelines created by the State Council as well as the laws created by the central authority, the Committee naturally enjoys the right to approve them. If the people's legislatures of self-governing areas and autonomous

counties adopt local laws made by legislatures at the province level, approval may be granted by standing committees of people's congresses at the provincial level. However, theoretically, autonomous prefectures and autonomous counties also have the right to adapt the laws formulated by the Central Legislature and the provisions of the administrative regulations formulated by the Central Administration, and the independent norms and special regulations have to be approved by the authorities at the provincial level.

4.2. Conflict in the Application of the Power of the Power to Adapt Criminal Legislation

4.2.1. Conflict of Legislative Subjects of Criminal Adaptation Legislation

Article 90 of the Criminal Law of the People's Republic of China says that in cases where this Law's provisions cannot be implemented in all national autonomous areas, the people's congresses of the provinces or autonomous regions may create new provisions based on the fundamental ideas outlined in this Law and the unique political, economic, and cultural traits of the local national groups. On the basis of this provision, if there are situations when the Criminal Law cannot be implemented to the national autonomous territories under its authority, the province people's congress may create modifications or additional laws. However, this clause does not grant the legislative organs of municipalities immediately under the government at the central level the authority to modify the laws pertaining to crimes [3]. Chongqing Municipality has eight counties under its jurisdiction, four of which are four self-governing counties that are ethnic areas. And if the provisions of the Criminal Law cannot be applied to the ethnic minority areas under the jurisdiction of Chongqing Municipality, The Chongqing Municipal People's Congress lacks the authority to create new or different provisions under the Criminal Law based on the unique circumstances of the various national regions. This has resulted in inequality in the application of law in national autonomous areas.

4.2.2. Conflict of Competence in Criminal Legislative Variation

According to Article 10 of the Legislation Law, state legislative power in China can only be exercised by the organs of State power and their permanent organs. The power to make and modify laws related to civil rights, criminal justice, and other essential state institutions rests with the Congress. It can also give its Standing Committee permission to enact pertinent laws. Furthermore, the Legislation Law's Article 11 states that issues pertaining to state sovereignty and the basic civil system, only the central legislature and its committee are authorized to enact laws on crimes and penalties. This article clarifies the criteria for general reservations and sets out the principle of legal reservations. However, The Legislation Law's Article 12 states explicitly that crimes and penalties are matters of absolute reservation in our country and can only be determined in the form of law. The Criminal Law is a law that regulates crimes and punishments, only the central legislative body may enact relevant provisions of the Criminal Law. No other local people's congress at any level has the power to make relevant provisions. According to the principle that the higher law takes precedence over the lesser law, the Criminal Law, as a subordinate law, shall apply the provisions of the Legislation Law, which has the status of "legal law"[4], nevertheless the authority granted by the Criminal Law to provinces and autonomous areas to create additional or substitute Criminal Law provisions when the provisions of this Law do not apply in national autonomous areas conflicts with the Legislation Law, which is of a constitutional nature, and conflicts with the exclusive legislative power of the State in matters relating to crimes and punishments.

4.2.3. Conflict between the Excessive Application of Criminal Policy and the Development of Additional Provisions for Criminal Law Adaptations

Since the Criminal Law was really enacted in 1979, the legislative provision declaring that "national autonomous areas cannot apply the provisions of the Criminal Law" has been in effect. However, despite having the authority to do so granted by this clause, organs of legislative power at the provincial and local levels in ethnic autonomous areas have not yet introduced any new or modified

permutations to the penal code. The reality in ethnic minority areas is that legislatures of the provinces and autonomous territories have renounced their authority to enact additional or modified criminal law, and have opted for judicial adaptations [5]. It is impossible to fully serve minorities' interests without specifically tailoring penal code regulations. Judicial organs in national minority areas should handle criminal cases on the basis of the criminal policies of national minorities, rather than formulating clear legal adaptations at the legislative level. Based on the reality that there may be a large number of ethnic minorities in the same national autonomous area and the diversity of cultures among the various ethnic groups, conflicts over cultural practices are bound to be unusually intense. The legislatures of the provinces and autonomous territories, as the highest authorities in the ethnic regions, are the main bodies exercising the right to amend criminal legislation. And the complex realities of the situation make it more difficult to adapt criminal legislation. However, the application of judicial adaptation by the judiciary is more flexible and operable than the application of the adaptation provisions of the criminal law, which can alleviate the customary conflict between different national minorities to a greater extent. Due to the very difficulty in legislative practice, once there is a conflict between the actual situation and the law in the national autonomous areas, the use of judicial adaptation means to evade legislative adaptation has led to the abuse of the alternative means with the application of criminal policy as the main alternative.

4.3. The Application of the Power to Adapt Administrative Punishments to Autonomous Regulations and Special Regulations is Confusing

Articles 9 to 16 of the Administrative Punishment Law of the People's Republic of China clearly stipulate the statutory system of the right to set administrative penalties in China. There are different types of laws in the country: laws, administrative rules and regulations, local ordinances, self-governance ordinance, special regulations, sectoral regulations and local government regulations. Other normative texts may not establish administrative penalties. Only laws, administrative and municipal ordinances and norms have the authority to impose administrative punishments. However, according to the provisions of the "Legislation Law" and the "Law on Regional National Autonomy", laws and administrative regulations may be modified to conform to the autonomy requirements and special regulations. And they are effective if they do not contradict their basic principles. By modifying the Administrative Punishment Law's requirements while adhering to their fundamental principles, regulations on national autonomy and separate regulations are granted the authority to impose administrative punishments. The Constitution and the Administrative Punishment Law do not prohibit the power to set administrative penalties in autonomous regulations and special regulations. Because of this, it is now unclear how the legislation should be used to determine whether national autonomous territories have the indirect authority to impose administrative sanctions through other channels.

5. MEASURES TO IMPROVE THE LEGISLATIVE POWER OF REGIONS CLASSIFIED AS NATIONAL AUTONOMOUS

5.1. Improve and Perfect the System for Approving Autonomous Legislation

The purpose of establishing the legislative power of self-government in national autonomous regions is to distinguish them from the general legislative power of ordinary localities, so that national autonomous areas can enjoy greater autonomy. However, in practice, since the ratification system was established, national autonomous regions' ability to enact local laws is now less powerful than that of regular municipalities. The central authorities shall appropriately delegate power to national autonomous areas, improve and perfect the system for approving autonomous legislation, and change the approval system into a system for filing and review. The autonomous region's autonomous regulations and special regulations shall take effect after being collectively deliberated and adopted

by the autonomous region's people's congress, but they must be filed with the National Individual's Congress Permanent Committee. If the permanent body of the highest State authority believes that the rules are in violation of fundamental legal and administrative norms, it may exercise the right of revocation as a means of remedy after the fact.

5.2. Adaptation of the Provisions of the Penal Code and Customary Rules of the People

To truly carry out the work of adapting criminal legislation in national autonomous areas, it is necessary to comprehensively consider the local political, financial, and cultural features of national minorities, and take national customs as a key factor to consider [6]. Article 90 of the Criminal Law provides that in the case of non-application of national autonomous areas, i.e., there is a conflict between the customary rules of national minorities and the penal code, which is the basic law of the State, the provincial and autonomous regional people's congresses shall give preference to the actual situation of the local national groups in view of the conflicting issues and matters, and the degree of inclination and adaptation shall be combined with the consideration of the stability of the national society, the consideration of the development of the national society, and the collective assessment of human society under the legal system. It also pays attention to the differences in the customs, cultures, and customary rules of different national groups, and studies the adaptation of the criminal law applicable to all national minorities in the same ethnic district under the requirements of balance of advantages and disadvantages and fairness and justice.

5.3. Reasonably Divide the Power to Modify Administrative Punishments between Independent Rules and Unique Restrictions

Judging from the nature of the autonomy regulations of national autonomous areas, "The fundamental rules on the basic organization and system of the autonomous areas" is what the autonomy regulations refer to. In terms of the characteristics of legal norms, like constitutional norms, they are only political and principled, and do not have the nature of setting specific legal responsibilities (including administrative punishments). However, the people's legislatures of the national autonomous areas draft the special regulations in accordance with the Autonomy Regulation, the Constitution, and the special approval of the appropriate state agencies, and take into account the societal, financial, and cultural traits of the regional national groupings. If it is necessary to set administrative penalties and legitimize the administrative penalties imposed by the special regulations, the right of flexibility in the autonomy should first be exercised through legal procedures, and the power to set administrative penalties in the Administrative Punishment Law should be adapted, so that the separate regulations can have the function of setting administrative penalties.

6. CONCLUSION

The legislative authority of ethnic territories has resulted in a number of issues with an unclear division of power and barriers to practical operation in the process of exercising such power, based on the ambiguous nature of power, specific legislative provisions, and complex reality. By characterizing autonomous legislative power as authorizing legislative power, the issues that arise are examined, and solutions are suggested for enhancing the ratification process, incorporating customary provisions, and controlling the use of the right to vary administrative penalties. This will support the establishment of the rule of law in China and ensure that the legislative authority of the national autonomous territories is applied correctly.

REFERENCES

- [1] Zhang, P. (2018) An Analysis of the Legal Attributes of the Adaptive Legislative Power in China's Ethnic Autonomous Areas. *Guizhou Ethnic Studies*, 2: 28-32.
- [2] Zheng, Y. (2018) Research on the relationship between the general local legislative power and the autonomous legislative power of the autonomous prefecture after the revision of the Legislation Law. *Law Review*, 4: 126-141.
- [3] Zhang, D. (2009) Reflection and Reconstruction of Criminal Law Adaptation in China's National Autonomous Areas. *National Studies*, 1: 11-20+108.
- [4] Zhang, Q. (2004) *Introduction to Constitutional Law*. Law Press, Beijing.
- [5] Liang, H., Shi, Y. (2001) On the Adaptation of Criminal Law in Ethnic Minority Areas. *Political and Legal Forum*, 2: 29-33.
- [6] Zhang, H. (2011) The Law Must Take Custom Seriously - On the Spirit of Custom and Its Legal Significance. *Modern Jurisprudence*, 2: 16-25.