

## Formation of Law in Water Sector

*Dmitriy Olegovich Sivakov*

Non-State Higher Educational Establishment

“Institute of the Professional Innovations”, Moscow, Russia

---

**Abstract:** Issues of law formation attract attention of more and more scientists. It is presumed that evaluation of law formation phenomena should be systematically made in the sphere of environmental law. Scientists underline various factors of law formation, offer different stages of law formation (movement to the law), bring forward optimal schemes of interaction between subjects of law in the process of law formation, reveal the character of legal impact and finally, occasions of social rejection of legal regulation (due to legal nihilism and etc.) Experts propose to mark out different stages of “movement to the law”: following of lawforming regularities, appearance of social interests that have legal significance, formation of legal ideas, lawmaking process itself, adaptation of law to current conditions of social life. In ecology social interest in environmental protection begets legal institute of environmental expertise with presumption of ecological harmfulness of any economical activities, relevant laws were adopted, but their action sphere was diminished after. The reason of such metamorphosis is an intention of the state to protect wealthy investment projects by any means. Therefore, business interest appeared to be the most powerful factor of law formation.

**Key words:** Water objects • Natural rent • Water rent • Environmental law • Water law • Environmental politics

---

### INTRODUCTION

Issues of law formation attract attention of more and more scientists [1]. It is presumed that evaluation of law formation phenomena should be systematically made in the sphere of environmental law [2].

Population has ever been depended upon Nature. Watching the ecological law formation through the centuries, we have sincerely been combining the principles of morality, natural and positive law in our minds. It has been so, because the legal basis of the ecological law is a merge of these components. Taking this into consideration, we might say, that the ecological law is born by the natural (moral) law and it is one of the most precious elements in each law system. According to the scientific doctrine, “the natural law provides a name for the point of intersection between law and morals” [3]. An awareness of the development of ecological law theory is therefore so important nowadays.

**Methods of Researching:** In this article the author uses the model and the comparative law researching methods. The theoretical scientific aspects of state and law development viewpoint is to be expertized through the main principles of ecological law.

**The Main Part:** Formation of law is formulated by the scientific community as “a double process of spontaneous (social) and rational (lawmaking) formation of system of legal norms, that ensures the order of social relationships and is performed under influence of social development and is reflected in social interests and legal ideas [4]. Moreover, formation of law is a “double (social and lawmaking) process of law building which makes society and legislator’s mind develop themselves together”.

By using such definition, we proceed from necessity of satisfaction of social interests and needs of social development in general. Two sources and two models of law formation are linked together tightly and together

they ensure common level of lawforming activities of society and state. Therefore, the term formation of law (or law formation, legal formation as well) is more extensive than lawmaking [5], it connects increasingly the state with the source of state power – the people, that has social organization. In the modern social conditions rational formation of law prevails, but in different spheres of social life traditions, that came from increasing legitimization are secured.

Scientists underline various factors of law formation, offer different stages of law formation (movement to the law), bring forward optimal schemes of interaction between subjects of law in the process of law formation, reveal the character of legal impact and finally, occasions of social rejection of legal regulation (due to legal nihilism and etc.)

Experts propose to mark out different stages of «movement to the law: forging of law forming regularities, appearance of social interests that have legal significance, formation of legal ideas, lawmaking process itself, adaptation of law to current conditions of social life. In ecology social interest in environmental protection begets legal institute of environmental expertise with presumption of ecological harmfulness of any economical activities, relevant laws were adopted, but their action sphere was diminished after. The reason of such metamorphosis is an intention of the state to protect wealthy investment projects by any means. Therefore, business interest appeared to be the most powerful factor of law formation.

It is notable, that society rejects legal regulation exactly in cases of insufficient account of some factors of law formation, “allergy” of privileged society members, lack of special knowledge, physical impossibility of complying legal orders. For example, voluntary approach of legislator and incomprehension of environmental crisis lead to such a targeting, as if it is possible to cease environmental pollution completely. It is, however possible, but only provided reconstruction and re-equipment all manufacture to waste free technologies, which won't be achieved soon.

Seeing law formation as a jointed development (co-evolution) of natural and artificial, formal and informal, positive and negative in single flow of legal life is applicable to environmental sphere. Great influence on mentioned factors comes from a legal reform, that is performed in one or another state. So called legal politics also has its influence on formation of law, that is, opposed to legal reform, is a permanent activity of a state

(including some other subjects of lawmaking process). Legal politics should be conceptual, oriented on a positive result. In cases of conceptual and system mistakes of legal politics or legal reform, the real result may be reversed and compose huge ecological side effects.

Food supply problems and environmental issues of modern society ran so deep, that they are threatening social existence. Environmental crisis consists of aggravation to the limit contradictions between careless developments of natural resources and degeneration of environment which is caused by such activities. Scientists mark out two sides of environmental crisis: natural and social. Natural side consists in degeneration of environment, while social – in inability of the state to stop this process and to recover the environment.

In industrial society due to development of manufacture environmental crisis is aggravated and in some post-industrial countries it is possible to decrease the crisis at the expense of other countries. 90% of produced energy in the world continues to be absorbed by the manufacture and 9 out of 10 of absorbed energy supports the wellness of 1/5 of overall earth population.

Levels of development of environmental (including water) crisis are different in various countries. Because of transfer of harmful manufacture into developing countries, western society was able to diminish the crisis at the cost of its increase in BRICS countries. Even so environmental problems were not solved completely at west. Finally, environmental crisis in planet scale (its composing elements) is being planted deep inside while its most negative consequences are being removed in developed countries. Mankind may come to a wrong conclusion based on temporary success, while root reasons of environmental crisis are not dealt with yet.

Character and paradox of environmental crisis spreads over exhaustion of land and subsoil, degeneration of fresh and sea water, deforestation, deplantation, degeneration of fauna, accumulation of atmosphere problems. Environmental crisis can be structured on different elements, among which there is water, forest crisis and hypoxia.

Exhaustion, pollution, obstruction of nature objects, caused by anthropogenic impact, creates objective social necessity to mend sparing, economic usage of natural resources. It is necessary to secure flora and fauna, agricultural sites and objects, clarity of water and air according to social interest.

Some environmental conceptions existed in social mind during all mankind history. Traditions used to regulate total economic life (including natural resource usage). Sometimes they controlled nature users and prevented them from overwhelming loading of the nature. It is typical for industrial and post-industrial society to relate in an exploitative manner to natural resources.

At late XXs-early XXI world's economic system attempts to develop new energy sources and implant environmental friendly technologies while saving basic features of industrial society. Today we may see solar and wind devices are functioning, cars and motorbikes are running on environmental friendly sources of power as well as some water vehicles and even cable railways. For business circles, however technological re-equipment is still an expensive project. Only a few activities (ecological tourism and etc) are intensively practiced in business.

While environmental situation is still strained and gasoil complex with construction business both affect environment negatively, specialists and environmental society put forward ideas concerning "greening" of economics and "green democracy". Such social models leave no place for oligarchs and corruptioners, who rob the nature. In latest decades leading western countries proceeded far forward in converting economical sectors on "green mode" (including agriculture)[6]. This process was assisted by transfer of harmful manufactures and relevant environmental risks from west to BRICS countries [7].

Nowadays in some countries (including BRICS countries) a new task arises – formation and support of social interest of businessmen in using waste-free or low-waste technologies. It is important to make nature protection profitable and so law formation must pursue a preemptive tactic. Such interest may be ensured by tax and custom modes, insurance and credit benefits, full or partial reduction of payment for nature usage if nature users performed recovery and conservation of the object.

Thereby the character of environmental relationships stipulates law formation. It is impossible to manage without legal regulation in this sphere. Increase of anthropogenic impact on environment requires extension of legal regulation and a task to coordinate environmental interests with social and economic interests leads to instability of legal borders[8].

In some countries (including Russia) after intensive development of environmental law and extension of borders of legal regulation, reverse process

of de-ecologization initiates. This process consists of denial of environmental requirements in sphere of making law and also of their neglecting in sphere of legal application. In condition of de-ecologization, borders of legal regulation retreat towards business interests. And besides, the real anthropogenic impact upon environment didn't decrease, consequently, de-ecologization is not justified.

Global social interest in ensuring of rational, sparing water usage, rational recovery of water fund, affected by negative human impact has formed long ago in the sphere of water relationships. One more social interest is the prevention of negative water impacts (flood, underflooding and etc).

International conventions, special legislation, system of competent bodies are aimed on solution of mentioned tasks for years, but their results are different.

An important source of financing protection and recovery of water objects and water fund is the realization of European legal principle: "water pays for water". This principle means that payments for water usage should be used as a financial source of protection and recovery of water. The owner state of the water fund should do it as a matter of care about its ownership object, while the sovereign state does it in frames of its environmental functions. At the same time due to outer and artificial reasons, Russian financial system does not ensure targeted usage of water payments. Such negative financial factors decrease the efficiency of environmental politics.

Process of formation of environmental and water law is deformed and slowed in Russia. Due to weakness of institutes of civil society, ecological society has no such influence as foreign green movement. As Russian economics has natural resource character, dependence of large nature users' lobby defines the vector of development of natural resource and nature protection law. That is why institutes and subinstitutes of environmental law assemble slowly and have no proper "response" on practice.

Other facts indicate deceleration of environmental law development. Some legal categories stipulated creation of associations of legal norms, without reaching the creation of subinstitute.

Great attention was paid to norms concerning usage of natural resources and objects in first decade of the new century. Measures to decrease administrative barriers and excess state functions were taken during an administrative reform. By such means there was made an attempt to give

more freedom to economic subjects and to decrease corruption risks. Independently of success these measures didn't and could not ensure the solution of the main task – to motivate nature users (from rich companies to simple citizens) to protect nature including water fund. It is not necessary to force economic subjects to pay for background concentration of substance in water objects, that naturally existed and weren't brought in by the user. Instead, it is logical to make all environmental politics work for implanting green technologies (waste free and low-waste), reorganize all natural rent received by government, on aims of development, approbation and implant of new green technologies.

Natural rent, however needs special study [9]. From economic science we know, that natural rent is an income of an owner of a natural resource (object) without capital investment. Along with land, mining and forest rent, there also exists a water rent [10]. Majority of Russian water objects, especially in areas, difficult to access never was an object of investment. But in other cases related to integrated deepwater system, water objects are the objects of investment. Firstly, it is the construction of reservoirs and ponds by the means of hydrotechnical building and construction of channels. Many rivers and lakes designed as waterways for transport were bottom deepened, riverbed straightened and etc. Due to colossal capital investments that were made in Russia for decades and even centuries, it may be affirmed, that the state receives income not only from the natural rent, but also as an income of previous investments. Thereby before ecologization of natural rent (here – water rent), it is necessary to define the rent by economic methods and separate it from other income [11].

## CONCLUSION

Although the income of a state comes from investments, made by public (in times of transfer into state), there are grounds to go further in our conclusions. All income of the state-owner of the water fund independently of their variety is a potential basis of greening of water sector: purification of water objects, their recovery, implementation of new technologies and finally implant of waste-free or low-waste technologies. Thereby in order to green the water sector, it is necessary to green the income of public subject (state, or possibly municipal formation) from water sector. Possibly, resurrection of budget aimed funds of federal regional and municipal level will be required.

Because of before mentioned reasons borders of environmental legal regulation should cover distribution of income of state-owner and partial ecologization of finance law is necessary. However, even such radical reorganization of legal and financial mechanisms will be single-sided without the mentioned system of tax, custom, credit and insurance motivation of private business to implant green technologies in water sector.

Necessity of ecologization of income of state-owner of natural resources is an important factor of legal formation.

**Some Special Summarizings:** In this connection, the positive experience of the Norwegian State Governmental Petroleum Fund functioning is undoubtedly of both a great interest and in a consequent demand [12].

Being established in 1990, this Fund is constantly having a profound, stable and promising income, consisted of a coal, gas & oil natural resources sale percentage.

The Fund has both a stabilizing and a protective function. It is also aimed at solving either pension or medical problems[13].

Besides this the Fund is engaged in settling ecological tasks. That is why it goes without saying, that the most profitable sphere of its activity is the so called "Ecological set" [14].

As it is underlined in the scandinavian newspapers, magazines and issues, the Norwegian State Governmental Petroleum Fund (nowadays it is called the Social Fund) is fully justifying its own activity. Sponsoring the humanitarian assistance activity of the Kingdom, it neutralizes a great number of the crisis phenomena in the economics [15].

This analytic article is a logical continuation of the author's researching in the ecological law sphere and it can be estimated as a next in turn attempt to amplify the creative level of the author's ideas, described in his monographical manuscript "The tendencies of the legal regulations in the aquatic sphere activity" (published in the Institute of legislation and comparative law under the Government of the Russian Federation" in 2012, Moscow, Russia, the publishing house "Jurisprudence").

## Notes:

- M. Moore, 2003. Objectivity in Ethics and Law. Aldershot Dartmouth Publishing Company, Ashgate Publishing limited, pp:13.

- Rorty, R., 1990. *Philosophy and the Mirror of Nature*. Oxford, Basil Blackwell Press, pp :56.
- Finnis, J., 1991. *Natural Law*. Aldershot Dartmouth Publishing Company, Ashgate Publishing limited, pp: 3-4.
- Pridvorov, N.A. and V.V. Trofimov, 2012. *Legal formation and its factors in law*. Moscow Norma Infra-m Publishing House, pp: 367.
- Bogolyubov, S.A., 2010. *Lawmaking process in the ecological sphere*. Moscow Eksmo Publishing Company, pp: 528.
- Abalkin, G.A., 2012. *Colour of future economic is green*. *Journal Ecology and Life*, 11(12): 18-21.
- Think Again, 2012. *The BRICS Foreign Policy Digest* press.
- N.I.Khludeneva, 2011. *Borders of legal regulation of environmental protection*. *Journal of Environmental law*, 6(12): 20-24.
- Lvov, D.I., 2008. *Moral economics*. *Journal Voice of Conscience*, 1(65): 1-2.
- Ushakov, E.P., 2008. *Rent relationships in Russian water usage*. Moscow Science Publishing House, pp: 303.
- Sivakov, D.O., 2012. *Tendencies of legal regulation of watersectoral activities*. Jurisprudence Publishing Company, pp: 352.
- Bergo, J., 2003. *The Governmental Petroleum Fund and its influence on the Norwegian Economy*. Norwegian Bank Press Publishing Company, pp: 35.
- *The Governmental Petroleum Fund Annual Report, 2002*. Norwegian Bank Press Publishing Company, pp: 427.
- *The Norwegian Governmental Petroleum Fund and a National Strategy for Investing Resource wealth*. Currently renewed Norwegian Bank Investment Management Kint [http://www. bsich/ ganmaf/ conbem.klear.part](http://www.bsich/ganmaf/conbem.klear.part).
- Gjedrem, S., 1999. "Monetary policy challenges", the Foundation for Research in Economics and Business Administration Yearbook pp: 360.

## REFERENCES

1. Moore, M., 2003. *Objectivity in Ethics and Law*. Aldershot Dartmouth Publishing Company, Ashgate Publishing limited, pp: 13
2. Rorty, R., 1990. *Philosophy and the Mirror of Nature*. Oxford: Basil Blackwell Press, pp: 56.
3. Finnis, J., 1991. *Natural Law*. Aldershot Dartmouth Publishing Company, Ashgate Publishing limited, pp: 3-4.
4. Pridvorov, N.A. and V.V. Trofimov, 2012. *Legal formation and its factors in law*. Moscow: Norma Infra-m Publishing House, pp: 367.
5. Bogolyubov, S.A., 2010. *Lawmaking process in the ecological sphere*. Moscow: Eksmo Publishing Company, pp: 528.
6. Abalkin, G.A., 2012. *Colour of future economic is green*. *Journal Ecology and Life*, 11(12): 18-21
7. Think Again, 2012. *The BRICS Foreign Policy Digest* press. pp: 8-10
8. Khludeneva, N.I., 2011. *Borders of legal regulation of environmental protection*. *Journal of Environmental Law*, 6(12): 20-24
9. Lvov, D.I., 2008. *Moral economics*. *Journal Voice of conscience*. *Journal Voice of conscience*, 1(65).
10. Ushakov, E.P., 2008. *Rent relationships in Russian water usage*. Moscow: Science Publishing House, pp: 303.
11. Sivakov, D.O., 2012. *Tendencies of legal regulation of water sectoral activities*. Jurisprudence Publishing Company, pp: 352.
12. Bergo, J., 2003. *The Governmental Petroleum Fund and its influence on the Norwegian Economy*. Norwegian Bank Press Publishing Company, pp: 35.
13. *The Governmental Petroleum Fund Annual Report, 2002*. Norwegian Bank Press Publishing Company, pp: 427.
14. *The Norwegian Governmental Petroleum Fund and a National Strategy for Investing Resource wealth*. Currently renewed Norwegian Bank Investment Management Kint. Date Views 25. 07. 2013 [www.bsich/ganmaf/conbem.klear.part](http://www.bsich/ganmaf/conbem.klear.part).
15. Gjedrem, S., 1999. *Monetary policy challenges*. The Foundation for Research in Economics and Business Administration Yearbook, pp: 360.