SOME ASPECTS OF THE LEGAL REGULATION OF THE USE OF ALTERNATIVE ENERGY IN THE REPUBLIC OF KAZAKHSTAN AND FOREIGN COUNTRIES



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Introduction

The Republic of Kazakhstan with the adoption of the principles of the Declaration "Rio-92" [1] pointed the ecological principles of a sustainable development in the Article 4 of the Environmental Code [2]. In some literature the concept of a sustainable development is known as a constant development. As for its Wikipedia definition, Constant development is a kind of development that meets the needs of the present time but does not threaten the ability of the future generation to meet their own needs. (Brundtland Commission, the United Nations, 1987 [3].

In order to ensure the sustainable development of the Republic of Kazakhstan the Concept of Transition to Sustainable Development for 2007-2024 has been adopted. The goals and objectives of the transition to sustainable development, the order of the prerequisites for sustainable development and the associated relations were listed in this program. One of the tasks of the transition to sustainable development is the development of alternative forms of energy.

In this regard, the issue of green energy today is one of the key issues in the society and many countries as their strategic goal aims to introduce effective green energy resources. Today the alternative energy has been included into the society as a new sector of the economy.

Alternative and renewable sources and materials are the ones of strategic priorities of the issue of saving natural resources. Its most important area should be the nuclear energy, hydrogen energy of alternative sources and renewable energy sources, including solar, wind, hydropower, biofuels. Such change should take place in construction, transport, housing and utility and, thus, improve the quality of life by improving the economy [5, 57].

The Republic of Kazakhstan tries to develop its opportunity in the field of alternative energy. For this purpose scheduled the international exhibition EXPO on "Energy of the Future" in 2017. There are the possibilities to use a renewable energy

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due to natural geographical features of the country. We should take into account that the use of alternative energy sources has economically and also environmentally beneficial aspects. So we see that the introduction and the use of alternative energy, legal relations in alternative energy need an integrated study. Scientists consider the reasons for the introduction of alternative energy apart from environmental, economic, legal, technical reasons.

In accordance with one of the main methods of law - the dialectical method - a state and a right is in constant motion and closely related with economical, political and spiritual conditions, an objective reality phenomena in the development. [6,78]. That is, an alternative energy relation is an actively developing relation.

Therefore, in order to improve the alternative energy legal relation of the Republic of Kazakhstan we should conduct a research by analyzing some alternative energy legislation of foreign countries and on the basis of effective recommendations.

The four main factors that can effect the development of alternative energy:

1. To prepare a national strategic document in the field of alternative energy;
2. Accordingly, to form the regulatory framework;
3. To improve its competitiveness together with traditional energy;
4. To increase the investment volume

Thus, one of the prerequisites for the development of alternative energy is the legal basis for the development and use. It should be based on a foreign legal experience as an effective way to solve this problem. Therefore we are interested in the analysis of foreign law.

Methodological basis of scientific research. The legal regulation of alternative energy has not been researched in domestic legal science in comparison with a foreign legislation, but there are scientific articles about putting them into practice and legal regulation. Scientists involved in the issues of energy law:[Mukhitdinov N.B. Fundamentals of mining rights. - Almaty, 1983. - 248 p .; Mukhitdinov N.B. Frost and SP Mining rights in the Republic of Kazakhstan. Almaty, 2004. -223 p.] Subsurface rights [Yelyubayev J.S. Problems of legal regulation of subsoil use: domestic experience and foreign practice. Monograph Almaty: Printing House "Koleso", 2010.- 452 p .; M.K.Suleymenov. Oil law of the Republic of Kazakhstan; Chentsova O.I., Brainin N.V., Chumachenko Yu.G. Energy legislation of the Republic of Kazakhstan - an overview. "Energy Law". 2007. № 2.] [Z.ғ.d., Erkinbaeva L.К.Environmental and legal issues of energy security in the republic of kazahstan// "Science, Education and Innovation" - "The most important factors for the execution of Kazakhstan-2050 the strategy " international scientific - practical conference materials.-Taldykorgan: of ZhSU, 2014. Page 558], [Ph D Sylkina S.M., international

- legal regulation of rational use of alternative energy // Report. II International scientific-practical seminar. Almaty, 2006. -10 p], [Ph.D., G.T.Aygarinova. To ensure energy security environmentally and legally - an innovation development mechanism // Science and Innovation of the young: the strategy of choice and updates: collection of articles of the International Scientific Conference (Almaty, May 13, 2011.). - Almaty, 2011-278s.], scientists who have studied the technical point of the energy security issue [Dr. B. Aliyarov, Ph.D., Aliyarova M.B., Analytical study of Kazakhstan: energy security, energy effeciency and steady development of power (state and prospects) - Almaty: 2010-278p. Foreign law scientists are actively involved in the issue of legally ensuring of energy security. Szczepanski I. Ecological and legal problems of energy security of Russia: diss. - Moscow, 2013. - 250 pp., Lakhno PG, Zekker F. Yu. Energy right of Russia and Germany: a comparative legal research / - Moscow: Lawyer, 2011. - 1075 s, Gorodov O.A. Introduction to Energy right. Study guide / - Moscow: Prospect 2012. 224p. Zhavoronkova N.G. Environmental legal problems of energy and environmental security. // Scientific researches. Social sciences №3 (17), - Moscow., 2011.

The main results of the research. Scientists believe that the development of renewable energy will help to solve a number of problems for the government: to save energy, security efficiency and fossil fuel, to solve the problems of the local energy security, to improve the quality of life and to ensure the employment of the local population, to ensure the sustainable development of remote areas, fulfillment of international obligations to ensure the protection of the environment [7].

The legal basis for the development of alternative energy as a result of the analysis of the legal regulation of alternative energy that still needs to be improved. The government promotes the development of non-traditional renewable energy sources. On July 4, 2009, the Law on supporting the use of renewable energy sources was adopted [8].

As for the analysis of alternative energy legislation in the Republic of Kazakhstan, according to the existing legislation on renewable energy sources – there are continuous renewable energy sources at the expense of the natural processes which include the following species: beam energy, wind energy, the energy of the flow of water; geothermal energy: soil, groundwater, rivers, and the warmth of the water bodies, as well as the primary anthropogenic sources of energy resources: biomass, biogas and electricity and (or) used for the production of thermal energy from organic waste and other fuels.

Some problems of renewable energy are regulated by other laws and regulations, in particular, the Land Code, the Water Code, Administrative Violations Code, the law on natural monopolies, tax code and Investment Law.

In purpose of RES (renewable energy sources) further development and international experience exchange the Republic of Kazakhstan joined the International Agency for renewable energy sources and its charter was ratified on January 29, 2009 [9].

Since November 2014 the authority to run the introduction of renewable energy into the social policy was given to the Ministry of Energy from the Ministry of Industry and New Technologies [10].

The current legislation contains a number of measures to stimulate the introduction of alternative energy: reservation and the priority of delivering a land for the construction of renewable energy sources, the energy organizations' obligation to purchase the energy produced by RES, Energy transportation must be free off payment during producing energy by RES, to have investment preferences according to the RK legislation.

Regarding the laws of the Russian Federation in the field of alternative energy, the main regulatory act is a federation law "about energy" adopted on February 23, 2013 at the State Duma of the Russian Federation[11]. This is a definition of renewable energy sources due to this law. Renewable energy sources are solar, wind, water, waste water, energy, river, water, sea, ocean energy, low potential energy of the earth, production waste and plants energy, gas in the coal production. Together with this law the federation subjects have certain normative legal acts about the RES introduction in use.

In addition to these legislative acts the following regulations provide the promotion and development of renewable energy sources:

- The resolution of the Russian Federation «About the classification of the generating objects that function on the basis of the use of renewable energy sources» [12];

The Resolution №850 of the Russian Federation on October 20, 2010 «About the determination the criteria for the Federal budget subsidy of the generating facilities of the 25 MW capacity which are classified as objects, working on the basis of the use of renewable energy facilities[13];

- № 1executive order of January 8, 2009 «About the main directions of the state policy in the energy efficiency improvement based on the use of RES by 2020» [14];

- The Order of November 17, 2008 of the Ministry of Energy of the Russian Federation «About the issue and cancellation of certificates proving that the energy is produced on the basis of the generating facilities classification based on the use of RES» [15].

So, in order to increase the efficiency of the use of renewable energy in the Russian Federation, first of all, we consider it correct to organize the regulatory legal act and the government bodies regulating the range of the use of RES. However, the Russian Federation's purpose in the organization of the energetic legislation has a scientific attention. Russian legal scholars consider the energetic legal regulation as one of the tools in energy security. For this reason, the project of the Russian Federation Energy Code is being prepared. The above-mentioned project has a special section that regulates the use and properties of alternative energy [16].

We are interested in the foreign countries' legal practice in alternative energy relation. Especially in regard to the experience of the United States, the feature is that this country has a regulatory legal act closely related to the state energy security. The use of renewable energy sources is regulated not only by the federation but also by the certain states. №13514 Decree of the President of the United States «On the activities of the federal agencies in the field of energy and environmental protection». On the basis of this decree federal subjects must give reports on greenhouse gas decreasing in their own area [17].

In the promotion of renewable energy sources was adopted the legislative act "on energetic policy" in 1992. In accordance with this legislative act, we see the following forms of motivation:

- Expansion of investment in the use of renewable energy sources on a regular basis, 10 percent investment loans are planned for use of solar and geothermal energy;
- Tax incentives are planned for use of renewable energy;
- Subsidy of the subjects that implement the use of RES [18].

The main regulatory document is the Energy Independence and Security Act of 2007 (Clean Energy Act of 2007). This law aims to provide the US energy independence from oil energy and to develop renewable fuels. By the year of 2020 at least 36 billion of halon biofuel are expected to supply through the introduction of mandatory renewable fuel standards shown in this document and through the use of fuel energy alternatives [19].

Another important document in the field of alternative energy is the Green Jobs Act of 2007. Accordingly, US $ 125 is spent annually to train alternative energy specialists. This project has been accepted as a legal act in 2007. Title X of the

Energy Independence and Security Act of 2007 (Green jobs. Training the specialists to use renewable energy and its efficiency). Accordingly, through the legal platform formation the United States is trying to combat the production of clean energy and climate change. Moreover, the pace of the production development ensures the implementation of this goal. However, the main problem for the development of this field is a lack of specialists for the construction, the introduction of wind generating installation and the construction of new infrastructure [20].

Interestingly, it would be advisable to consider this issue from the legal point of view. Grants are allocated for an educational program on the basis of the law and a work organization is provided in the clean sector.

Another important document is The Food Conservation, and Energy Act of 2008. (2007 year. Energy and soil fertility, food products Protection Act). This act formed the basis of the US agricultural policy in the developing of alternative energy in the agricultural sector in purpose of the state energy supply diversification. This law is a priority for the development of a new direction called a bio-energy. According to the act, the United States will organize a tender of 30 percent payment for the construction of a new bio-energy plants, the introduction of the first experimental model. In addition, the government organizes the investment credit for the bio-energy production development [21].

So, the US government uses economic, legal and technical means to incentive alternative energy legal relations, the main problem is that the US considers alternative energy in relation with energy security and also as one of the main reasons to create favorable conditions for the environment.

The United Kingdom of Great Britain and Northern Ireland take different measures in alternative energy use development. The most important of the normative documents is the Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC. The main objective of this Directive is to ensure the competitiveness of the internal energy market, to support for renewable energy sources (the stability of the energy supply), energy import protection (energy security), to increase the ratio of use (energy efficiency). Although the implementation of the Directive is difficult from the economic point of view, the main argument of its implementation is a clean environment. There the sustainability criteria is shown, it is the measure limit of environmental, social and other characteristics in the biofuel production process and delivery. In accordance with Article 17 of the Directive, biofuel energy can be delivered from the renewable energy sources independently from the producing state

when it meets the criteria of sustainability. The sustainability requirements provided in the Directive are related to all the effects associated with the use of biofuel: the release of greenhouse gases, the change of use of land, employment and the biofuel social impact like food. The local authorities of the EU member states have the right to set targets On the promotion of renewable energy [22].

The 2001/77 / EC directive may be viewed on the support of electricity from renewable energy sources. On the basis of this document, the EU has set the following goals by 2010: - to increase renewable energy sources from 6 percent to 12 percent; - to increase green electric power from 13 percent to 21 percent. The two main issues are the actual problems of getting electricity from renewable energy sources. The first is a financial aid, the second is energy networks administrative obstacles. Approved the scheme of financial assistance to support renewable energy sources, its main important component tariff concessions and the system of green certificates. At the present time the discount rates are used in the EU countries. Discount rates are the following mechanisms: - a guarantee of access to the network, a contract for electricity on the basis of the use of renewable energy sources, a high purchase price. Such charges usually can be related to different types of renewable energy sources. On the basis of "Green Certificate" system the electricity is sold on the energy market price. As for the production of green electricity and to ensure its expected production, all consumers (in some countries producers) must buy the actual volume of “Green Certificates” from the entities producing electricity from renewable energy sources, so they close a percent or quota of the produced or consumed electricity. As consumers and producers try to buy cheap certificates, they improve the quality of the service by competing with each other for the production of electricity renewable energy sources.

As we can see, the "Green Certificates" system takes into account the regulatory mechanism for the establishment of objective market. Thus, the energy from renewable energy sources not only increase, but also reduces the cost of production of such energy [23].

The current energy market of the Republic of Kazakhstan provides an opportunity to enter the system in stages.

Conclusion

Ensuring the alternative energy as a sector that meets the requirements of the economy is an important issue to provide the sustainable development. A clean environment is the main idea of using alternative energy sources.

The introduction of renewable energy sources in the Republic of Kazakhstan is a historical process. In purpose of using the renewable energy there are stimulation

affairs are held in our country. However, the development of renewable energy sources is not only important component for the energy legislation of the Republic of Kazakhstan, it is also important for foreign countries. The legal basis for the legislation of the Republic of Kazakhstan in this area has not been set as a single system. Therefore, the energy legislation of the Republic of Kazakhstan requires a development from the juridical point. In particular, the energy legislation of the Republic of Kazakhstan must be organized. The legal regulatory act should be adopted to ensure energy security. For example, the state uses a variety of approaches to stimulate the use of energy from renewable energy sources. However, there must be the regulatory legal act to take this stimulation as a goal. This law may be called as "On the stimulation of the introduction of alternative energy sources"

As an alternative energy industry is a new industry for the Kazakhstan society, it needs the special experts to construct the objects to use renewable energy sources and to start them. From this point of view as well as the United States' experience the Republic of Kazakhstan need a special legal instrument to train the specialists. In addition, the innovative research news in the field of alternative energy should be on the legal basis.

In our opinion, for the introduction of alternative energy production we should plan to use in each sector of economy. For example, the use of alternative energy in the agricultural sector, or the use of alternative energy in the field of defense while remote military training.

The list of sources used:

1. The Environment and Development in Rio de Janeyr Declaration adopted on July 3-14, in 1992 by the United Nations Conference on Environment and Development. http://www.un.org/

2. Environmental Code of the Republic of Kazakhstan on January 09, 2007. http://online.zakon.kz/

3. http://kk.wikipedia.org/.

4. The concept of transition to sustainable development of the Republic of Kazakhstan for 2007-2024 in order to ensure the sustainable development of RK http://online.zakon.kz/

5. Nursultan Nazarbayev Global Energy Strategy for Sustainable Development in the XXI century / Nursultan Nazarbayev. - Moscow: Economy, 2011. - 194 c.

6. Ozbekuly S., Kopabaev P. Theory of State and Law: Textbook. Almaty: Seven Laws, 2006. 264 pages.

7. A.E. Kopylov. Further development of legislative support for renewable energy in Russia // Energy Law. 2010. N 1. S. 39 - 44,173

8. The Law of the Republic of Kazakhstan "On support the use of renewable energy sources" adopted on July 4, 2009.

9. The law of the Republic of Kazakhstan №82-V ZRK on March 22 in 2013 “On confirming the Decree of the International Renewable Energy Agency”

10. The Decree of the President of the Republic of Kazakhstan №875 on November 6, 2014 about the reforming the management system

11. The federation law “On energy” adopted February 21, 2013 by the State Duma of the Russian Federation.

12. The Resolution of the Russian Federation “On the classification of generating facilities on the basis of the use of renewable energy sources”

13. The Resolution №850 of the Russian Federation on October 20, 2010 «About the determination the criteria for the Federal budget subsidy of the generating facilities of the 25 MW capacity which are classified as objects, working on the basis of the use of renewable energy facilities

14. № 1executive order of January 8, 2009 «About the main directions of the state policy in the energy efficiency improvement based on the use of RES by 2020»

15. The Order of the Ministry of Energy of the Russian Federation on November 17, 2008 «About the issue and cancellation of certificates proving that the energy is produced on the basis of the generating facilities classification based on the use of RES»

16. The Energy Code project of the Russian Federation.**http://zakon.ru/**

17. Executive order. federal leadership in environmental, energy, and economic performance // URL: http://www.whitehouse.gov/assets/documents/2009fedlead

18. One Hundred Second Congress of the United States of America // URL: http://www.ferc.gov/legal/maj-ord-reg/epa.pdf

19.The Energy Independence and Security Act of 2007 (Clean Energy Act of 2007.) http://www.gpo.gov/fdsys/pkg/PLAW110publ140/html/PLAW-publ140.htm

20. Green job vacancies. Training the specialists to use renewable energy and efficiency [E-resource]: http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/html/PLAW-110publ140.htm

21. Energy and soil fertility, food products Protection Act adopted in 2007 [E-resource]: http://www.gpo.gov/fdsys/pkg/PLAW110publ234/html/PLAW-110publ234.htm

22. Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC. [E-resource].:ttp://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001L0077:20070101:EN:PDF

23. The Directive 2001/77/EO on the support of electricity from renewable energy sources [E-resource]: http://eur-lex.europa.eu

В пропонованій статті автором досліджуються питання правового регулювання альтернативноі енергетики Республіки Казахстан і деяких зарубіжних країн. На підставі наукових досліджень аналізуються причини впровадження альтернативноі енергетики в Республіці Казахстан. Вивчаючи зарубіжний правовий досвід, автор пропонує низку заходів з вдосконалення вітчизняного законодавства.

***Ключові слова**: альтернативна енергетика, енергетика, енергетичне законодавство, стійкий розвиток, відновлювальні джерела енергії*

В предлагаемой статье автором исследуется вопросы правового регулирования алтернативной энергетики Республики Казахстан и некоторых зарубежных стран. На основе научных исследовании анализируется причины внедрения альтернативной энергетики в казахстанской энергетики. Расскрывается пробелы правового регулирования альтернативной энергетики в Республике Казахстан. Изучая зарубежный правовой опыт, автор предлагает ряд мер по совершенствованию отечественного энергетического законодательства.

***Ключевые слова**: альтернативная энергетика, энергетика, энергетическое законодательство, устойчивое развитие, возобновляемые источники энергии,*

In this article the author explores the issues of legal regulation of alternativ Energy of the Republic of Kazakhstan and some foreign countries. On the basis of scientific study examines the causes of the introduction of alternative energy in Kazakhstan's energy sector. Reveals the gaps in the legal regulation of alternative energy in the Republic of Kazakhstan. Studying foreign legal experience of the author proposes a number of measures for improving domestic energy legislation.

***Keywords**: alternative energy, energy, energy legislation, sustainable development, renewable energy.*