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CERTAIN LEGAL ISSUES OF DEVELOPMENT OF RENEWABLE ENERGY IN THE REPUBLIC OF KAZAKHSTAN

The relevance of the research is determined by the low level of development of renewable energy in the Republic of Kazakhstan and the need for effective legal regulation of relations in this area. This is especially acute against the backdrop of the active use of renewable energy sources in the world. In this regard, this article is devoted to identifying legal regulators that could contribute to the active development of renewable energy in the Republic of Kazakhstan. The leading approach to the study of the posed problem is the analysis of regulations in the field of renewable energy in the Republic of Kazakhstan and in the world in order to identify shortcomings and acquire best practices in the legal regulation of the use of renewable energy sources, which made it possible to substantiate a number of proposals for improving the current legislation. Despite the introduction of current preventive mechanisms and innovations to stimulate a reduction in the level of emissions of pollutants into the environment, the need to increase the share of renewable sources in the economic system of the state is present. The practical value of the results obtained lies in providing recommendations in the form of effective mechanisms and consistent measures for their further implementation into the current legislation of Kazakhstan in order to develop the economy and eliminate environmental problems.

Key words: energy, energy resources, alternative energy, renewable energy, renewable energy sources, legal regulation.

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Қазақстан Республикасында жаңартылатын энергетиканы дамытудың кейбір құқықтық мәселелері

Зерттеудің өзектілігі Қазақстан Республикасында жаңартылатын энергияның даму деңгейінің төмендігімен және осы саладағы қатынастарды тиімді құқықтық реттеу қажеттілігімен түсіндіріледі. Бұл әсіресе әлемде жаңартылатын энергия көздерін белсенді пайдалану аясында өткір болып отыр. Осыған байланысты бұл мақала Қазақстан Республикасында жаңартылатын энергия көздерін белсенді дамытуға ықпал ете алатын құқықтық реттеушілерді анықтауға арналған. Қойылған мәселені зерттеудің жетекші тәсілі жаңартылатын энергия көздерін пайдалануды құқықтық реттеудегі кемшіліктерді анықтау және озық тәжірибені алу мақсатында Қазақстан Республикасында және әлемде жаңартылатын энергия саласындағы нормативтік құқықтық актілерді талдау болып табылады. Бұл қолданыстағы заңнаманы жетілдіру бойынша бірқатар ұсыныстарды негіздеуге мүмкіндік берді. Қоршаған ортаға ластаушы заттардың шығарындыларының деңгейін төмендетуді ынталандырудың ағымдағы алдын алу тетіктері мен инновацияларының енгізілуіне қарамастан, мемлекеттің экономикалық жүйесінде жаңартылатын көздердің үлесін арттыру қажеттілігі туындайды. Алынған нәтижелердің практикалық құндылығы экономиканы дамыту және экологиялық проблемаларды жою мақсатында оларды Қазақстанның қолданыстағы заңнамасына одан әрі енгізудің тиімді тетіктері мен дәйекті шаралары түріндегі ұсыныстарды беруде.

Түйін сөздер: энергетика, энергетикалық ресурстар, баламалы энергетика, жаңартылатын энергия, жаңартылатын энергия көздері, құқықтық реттеу.

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Некоторые правовые вопросы развития возобновляемой энергетики в Республике Казахстан

Актуальность исследования обусловлена низким уровнем развития возобновляемой энергетики в Актуальность исследования обусловлена низким уровнем развития возобновляемой энергетики в Республике Казахстан и необходимостью эффективного правового регулирования отношений в указанной сфере. Это особо остро ощущается на фоне активного использования возобновляемых источников энергии в мире. В связи с этим данная статья посвящена выявлению правовых регуляторов, которые могли бы способствовать активному развитию возобновляемой энергетики в РК. Ведущим подходом к исследованию поставленной проблемы является анализ нормативных актов в сфере возобновляемой энергетики в РК и в мире с целью выявления недостатков и приобретения передового опыта правового регулирования использования возобновляемых источников энергии, что позволило обосновать ряд предложений по совершенствованию действующего законодательства. Невзирая на введение актуальных превентивных механизмов и нововведений для стимулирования снижения уровня выбросов загрязняющих средств в окружающую среду, необходимость увеличения доли возобновляемых источников в экономической системе государства присутствует. Практическая ценность полученных результатов заключается в предоставлении рекомендаций в виде эффективных механизмов и последовательных мер для их дальнейшей имплементации в действующее законодательство Казахстана с целью развития экономики и устранения экологических проблем.

Ключевые слова: энергия, энергоресурсы, альтернативная энергетика, возобновляемая энергетика, возобновляемые источники энергии, правовое регулирования.

Introduction

Sufficiently sharp and rapid development of the economy in the world, as well as the current population growth rate, which in turn is accompanied by an increase in demand, lead to a significant increase in electricity consumption. According to various estimates of researchers, the volume of demand for energy resources will increase by 40% by 2030 (Efimtseva 2019: 91).

As A. Razmjoo writes, a change in technological structures is characterized by corresponding shifts in the raw material base of the economic system (Razmjoo 2021: 46). Based on this, during the first 10 years, certain steps will need to be taken in the electricity sector and it will be necessary to decide whether the problem of commissioning new capacities will be solved by building new power plants based on renewable energy sources or at the expense of nuclear and/or other fossil-based power plants (Kutafin 2017: 38-40).

It is generally accepted to divide all types of energy into renewable (alternative, non-exhaustible) and non-renewable (fossil, exhaustible). The latter in the general sense includes the so-called natural materials and substances that can be used for energy production. These include oil, gas (natural and associated), coal (brown and hard), peat, shale, etc. Today, it can be assumed that over the past few decades, the level of consumption of the above types of energy is far ahead of the time it takes for their formation. In other words, if the level of oil and coal production in Kazakhstan remains at the level that we have today, then the reserves will last no more than 50 years. At the same time, climate change on the planet and an increase in natural disasters are also directly related to the active use of traditional non-renewable hydrocarbon sources, which entails ever-increasing emissions of harmful pollutants into the atmospheric air.

Consequently, nature no longer makes it possible to replace one mass hydrocarbon energy carrier with another, and scientific and technological progress, which significantly leveled in the twentieth century. The factor of limited resources, now no longer copes with this role. In this regard, there is every reason to talk about the patterns of maturation in the modern world of an energy crisis that has a systemic character.

One of the ways to solve this problem is the energy revolution. This means a change in philosophy: the belief in the inexhaustibility of fossil energy sources is being replaced by the understanding that they are still not endless, and it is necessary to look for other ways in order to satisfy the needs of the economy and, accordingly, people

in energy resources (Broslavsky 2020: 126). The leader in the transition to sustainable energy is the European Union (hereinafter referred to as the EU), while developing countries are implementing this process much more slowly (Lowitzsch 2019: 122).

Accordingly, the decrease in the level of reserves of non-renewable energy sources, the increase in the economic costs of their production, as well as environmental pollution, forced people to look for new types and methods of obtaining energy. As a result, the demand for renewable energy sources is increasing day by day.

In 2013, the Decree of the President approved the Concept for the transition of the Republic of Kazakhstan to a "green economy". It lays the foundations for deep systemic transformations with the aim of transitioning to a new economy by improving the welfare, quality of life of the population of Kazakhstan and joining the country among the 30 most developed countries in the world while minimizing the burden on the environment. In addition, in 2015, the Republic of Kazakhstan, within the framework of the Paris Agreements, joined the fight against climate change. In this regard, the country is taking active steps aimed at the development of renewable energy sources.

As of July of 2023, there are 133 renewable energy facilities with an installed capacity of 2527 MW:

- 48 objects of wind power plants with a capacity of 1107.5 MW;
- 43 solar power plants with a capacity of 1148 MW;
- 39 hydroelectric power plants with a capacity of 269.605 MW;
- 3 objects of biogas power plants with a capacity of 1.77 MW.

According to the results of the 1st half of 2023, the volume of electricity generated by renewable energy facilities amounted to 3.35 billion kWh (wind farms – 1910 million kWh; SPP – 976.3 million kWh; HPPs – 461.8 million kWh; BioPP – 1.8 million kWh) or 5.8% of the total electricity production.

Since 2018, the selection of renewable energy projects has been carried out according to the auction mechanism. This made it possible, on the one hand, to make the process of selecting projects and investors transparent and understandable, and, on the other hand, to rely on more efficient technologies and projects that allow minimizing the impact on tariffs for end consumers from the commissioning of renewable energy facilities.

In order to achieve the adopted target indicators for the generation of electricity from renewable energy sources – 6% in 2025, by 2030 – 15%, by 2050 – 50% (taking into account alternative sources), the Ministry of Energy of the Republic of Kazakhstan has formed an Auction Sales Plan for 2024-2027 years, as well as the Schedule of auctions for 2023, according to which until 2027 for renewable energy projects it is planned to put up 6720 MW.

Methodology

The problems and issues of the use and development of renewable energy sources and the energy industry as a whole were dealt with by many scientists in the Republic of Kazakhstan. Energy legislation deals with the issues of increasing the efficiency of the energy sector and energy saving issues. But even taking into account all the theoretical and practical studies proving the need for the introduction and use of renewable energy sources, little attention was paid to the legal regulation of relations in the field of the use of renewable energy sources.

In accordance with the position of H. Husin, the current period of development of society at this stage is usually called Industry 4.0 or the Fourth Industrial Revolution (Husin 2021: 6). In this regard, it is necessary to identify legal regulators that could contribute to the active introduction of renewable energy sources in the economy of the Republic of Kazakhstan based on the analysis of legislation, scientific works, including foreign ones, and suggest options for improving legislation. Based on the foregoing, in relation to this, some questions arise on the legal regulation of RES, namely: What is a renewable energy source, and what types of it exist? What are the consequences of introducing renewable energy sources? At what stage is the legal regulation of renewable energy sources in the Republic of Kazakhstan? The analysis of these issues from a legal point of view is relevant and is comprehensively considered in the course of the article.

The purpose of this article is to provide a comprehensive analysis of the formation of the legal regulation of renewable energy sources in the Republic of Kazakhstan, namely, to find out the shortcomings and features of the legal regulation of renewable energy sources.

In order to increase the practical value of the article, methods of description and comparison are used.

Results

Today, Kazakhstan has significant renewable energy resources in the form of hydro, solar and wind energy. However, in the conditions of the existing electricity market, renewable energy sources are practically not mastered. There are a number of barriers to the use of renewable energy in the electricity market. One of the main reasons is the non-competitiveness of renewable energy sources in the electricity market, because due to high capital costs, in many cases, renewable energy technologies turn out to be much more costly than traditional energy technologies. In this regard, the long-term cost of electricity from small HPPs, taking into account the return on investment, can average about 17–19 tenge/kWh (Tariffs and payment), the cost of electricity from wind power plants is 21–22 tenge/kWh (Money down the drain).

This situation with the competitiveness of renewable energy sources in the market takes place not only in Kazakhstan, but also in other countries.

In addition, the serious disadvantages of RES, which limit their widespread use, include the low density of energy flows and their variability over time and, as a result, the need for significant costs for equipment that ensures the collection, accumulation and conversion of energy. RES by their nature are unstable sources of energy, and, as a rule, have a small capacity, which also prevents their demand in the electricity market, where it is much more profitable for energy supply organizations to conclude an agreement for the supply of electricity from a large electricity generating organization.

Based on the foregoing, RES installations cannot yet compete universally and fully with centralized power supply systems. However, for dispersed consumers, especially for those whose life support is carried out at the expense of imported fuel, RES in many regions are extremely important, competitive and sometimes the only sources of energy supply.

Kazakhstan lags far behind the main developed and many developing countries, both in terms of volume and pace of development of renewable energy sources. The total contribution of RES to the energy balance of the Republic of Kazakhstan, according to expert estimates, does not exceed 4% (Akchulakov, 2021a).

Barriers to the use of renewable energy sources in Kazakhstan are:

- imperfection of the legislative regulation of the legal framework for the functioning of the subjects of the renewable energy market;
- non-competitiveness of renewable energy sources in the electricity market;
- the absence of long-term contracts for the purchase of electricity as guarantees for investments in a free market;
- the absence of real, economically supported initiatives on the part of the state for the use of environmentally friendly energy sources and contribution to the preservation of the environment.

The main sectoral legislative acts may include the Laws of the Republic of Kazakhstan dated July 9, 2004 No. 588 “On the electric power industry”, dated July 4, 2009 No. 165-IV “On support for the use of renewable energy sources” and dated January 13, 2012 No. 541-IV “On Energy Saving and Energy Efficiency”.

The existing Law of the Republic of Kazakhstan “On Energy Saving and Energy Efficiency Improvement” pursues the goal of efficient use of fuel and energy resources, which, among the regulated norms, provides for support for the use of renewable energy in the development of programs for the development of energy and the environment. The law also recognizes the need to create conditions for the involvement of renewable energy in the energy balance and the development of energy facilities on this basis. According to Article 15 of the Law, the use of renewable energy is recognized as a priority for the development of energy and the solution of environmental problems in the country. However, the mechanisms for implementing the article of this Law are not provided. Thus, the subject of legal regulation of the Law of the Republic of Kazakhstan “On Energy Saving and Energy Efficiency” are both traditional sources of energy – electricity, and non-traditional – renewable energy sources (“On Energy Saving and Energy Efficiency Improvement” Law of the RK, 2012). At the same time, in order to regulate the legal relations of energy producing, energy supplying, energy transmission organizations with energy consumers, there is a special legislative act – the Law of the Republic of Kazakhstan “On Electricity” (“On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of supporting the use of renewable energy sources” Law of the RK, 2013a).

A special legislative act in the field of the renewable energy market in Kazakhstan is the Law of the Republic of Kazakhstan “On Supporting the Use of Renewable Energy Sources”, adopted on July 4, 2009.

The Law of the Republic of Kazakhstan “On Supporting the Use of Renewable Energy Sources”

of 2009 was developed and adopted in order to implement the tasks set by the Head of State to join the WTO and become one of the 30 most competitive countries in the world. As noted in the rationale for the bill, prepared by the state body-developer – the Ministry of Energy of the Republic of Kazakhstan, the adoption and implementation of the bill will contribute to:

- legislative regulation of the mechanism for the use of renewable energy sources for the production of electrical energy for energy-producing, energy-supplying organizations and consumers of electrical energy;
- involvement of RES in the competitive market;
- attraction of investments in the development of renewable energy sources for the production of electrical energy;
- development of new technologies and industries, small and medium-sized businesses in the field of renewable energy;
- reduction of emissions of greenhouse gases and harmful substances into the atmosphere ("On supporting the use of renewable energy sources" Law of the RK, 2009a).

At the same time, the legislation of the Republic of Kazakhstan contains some developed tools to support renewable energy sources and reduce the energy intensity of the economy of Kazakhstan. In order to create conditions for achieving the level of use of renewable energy sources specified in the Strategic and program documents of the Republic of Kazakhstan, and to expand the scope of activities to attract potential investors, measures have been taken to increase the attractiveness of investments in the generation of electricity through renewable energy sources. One of the most important measures of state support for the use of such sources is a long term for the purchase of electricity at the established tariff for 15 years. This provision was enshrined at the legislative level in 2013 ("On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of supporting the use of renewable energy sources" Law of the RK, 2013b).

In order to implement these innovations, in November 2013, the Settlement and Financial Center for the Support of Renewable Energy Sources (hereinafter referred to as the RFC) LLP was established under KEGOC JSC, which is intended for the centralized purchase and sale of electricity produced by facilities for the use of RES and supplied to the electrical networks of the unified electrical system of the Republic of Kazakhstan.

Discussion

The objective situation that has developed in our country indicates that the energy sector of Kazakhstan is one of the most important and priority areas of economic stability in the context of the transition of the economy to sustainable development. The Republic of Kazakhstan is rich in fuel and energy resources, the share of which is about 4% of the world's fuel reserves. The intensification of development leads to the dynamics of growth in consumption and production of electricity. Thus, electricity generation in Kazakhstan in 2021 exceeded 114.4 billion kWh (Akchulakov, 2021b). Meanwhile, in a number of regions of the country there is a shortage of electricity. According to forecast data, the level of electricity consumption in the coming years will only increase. As a result, fuel consumption will increase significantly, as well as the environmental impact on the environment.

Thus, the development of the energy sector solely on the basis of traditional energy leads to the depletion of non-renewable fuel resources and significant environmental pollution. An economic and environmental alternative to traditional energy is the use of local energy sources based on renewable energy sources.

The term renewable energy sources (hereinafter referred to as "RES") is used in relation to those energy sources, the reserves of which are replenished naturally, primarily due to the energy flux of solar radiation entering the Earth's surface, and in the foreseeable future are practically inexhaustible. This is, first of all, solar energy itself, as well as its derivatives: wind energy, plant biomass energy, water flow energy, etc. Renewable energy sources also include geothermal heat that comes to the surface of the Earth from its bowels, low-grade environmental heat that can be used, for example, using heat pumps, as well as some energy sources associated with human life (thermal "waste" of dwellings, organic waste from industrial and agricultural production, household waste, etc.) (Popel, 2008: 95).

At the same time, the concept and types of renewable energy sources are enshrined in the Law of the Republic of Kazakhstan "On Supporting the Use of Renewable Energy Sources": renewable energy sources are energy sources that are continuously renewable due to naturally occurring natural processes, including the following types: solar radiation energy, energy wind, hydrodynamic energy of water; geothermal energy: heat of the

soil, groundwater, rivers, reservoirs; as well as anthropogenic sources of primary energy resources: consumer waste, biomass, biogas and other fuel from consumer waste used for the production of electrical and (or) thermal energy ("On supporting the use of renewable energy sources" Law of the RK, 2009b).

The energy potential of most of the RES listed above on a global scale and in individual countries is many times higher than the current level of energy consumption, and therefore they can be considered as a possible source of energy production. Known scenarios for the development of mankind suggest the need for widespread development of renewable energy in the coming decades, both due to the inevitable reduction in production and the increase in the cost of oil, gas and coal, and for environmental reasons (CO2 emissions and other harmful effects of traditional energy on the environment).

Despite the significant benefits, the introduction of renewable energy entails a number of difficulties and dangers. Let's consider the main ones.

For the development of wind energy, large areas are needed for the construction of wind turbines. They cannot be located close to each other in order to avoid mutual interference in operation and reduce the efficiency of the entire wind turbine as a whole. Environmental problems include noise and infrasound pollution that is dangerous for people. In addition, wind turbines scare away birds and animals and disrupt their natural way of life. With a large concentration of wind turbines in one area, they can significantly change the natural movement of air masses and cause unpredictable consequences. An obstacle is also the variability of the wind speed, which leads to unstable energy production (Teodorovich, 2016: 3).

Technologies for using solar energy are also imperfect. The use of solar batteries is possible only due to lead and cadmium, which are dangerous for nature and humans. In the places of their installation, shading of the lands occurs, leading to changes in the soil, the death of vegetation and, as a result, a negative impact on the animal world.

Biofuels use industrial crops cultivated as raw materials for its production. They displace food and fodder crops from the fields, contributing to the rise in food prices, deforestation to free up sown areas. Biofuel crops use fertilizers that are much more polluting and harmful to human health than petrol or diesel.

Geothermal energy (groundwater energy) is strongly tied to the geographical and geological features of the area. In addition, the flow of waste water back into the aquifer is necessary, since it contains a large amount of salts of various toxic metals and chemical compounds, which prevents the discharge of these waters into surface water bodies. These processes are associated with significant technical and economic costs (Beck 2010: 35-37).

Conclusion

The market review allows us to state that the effectiveness of the ongoing policy to achieve strategic indicators in this area is at a high level.

The current legislation in the field of energy does not have sufficient mechanisms to overcome investment unattractiveness, both for foreign investors and for domestic producers.

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