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Studies on Problems in the Construction of Legal System in New Countryside of China

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Abstract The construction of legal system since the reform and opening up of the rural areas in China was reviewed in this study from the perspective of agricultural laws and regulations as well as the legal system of rural social governance. Prospects were put forward for the legal system construction in new countryside, and the characteristics that such a legal system should have were analyzed; firstly, a relative perfect system for laws and regulations; secondly, obvious social consensus of laws; thirdly, the factuality of laws unceasingly proposing new legal demands. Problems that should be placed more attention in the construction of new countryside were discussed so as to provide references for relevant policy making; firstly, legal issues in the scale agricultural production; secondly, rural financial law issues; thirdly, legal system for agricultural social services; fourthly, construction of the integrated urban-rural household registration system; fifthly, legal system for rural land property rights and benefits, social security law system; sixthly, legal issues in the rural network construction.

Key words Legal system construction in new countryside; Rural development; Problems; China

Since the reform and opening up in 1978, China has achieved remarkable success in various fields of social and economic construction, which owes not only to the implementation of CCP's (Chinese Communist Party) guidelines and policies, but also to the promotion and guarantee provided by legal systems. As the vanguard of China's economic reform, the vast rural areas can not only push the reform of cities, but also provide experience for the smooth implementation of various reform activities in China. However, the rural development has not achieved the expected level on the whole, and some rural areas are even being marginalized. Therefore, the attention to and the promotion of rural development should certainly be taken as the focus of policy-makers and all walks of life. On the whole, there are many universally existing problems in the rural areas of China, such as extensive agricultural development mode, laggard infrastructures and technological equipment, decreasing arable land, frequent natural disasters, serious food security problems, underdeveloped rural images and so on. Thus, to greatly develop modern agriculture, narrow and eliminate rural-urban gap, balance and integrate the rural-urban development as well as realize the great goal of constructing a new socialist countryside should be paid much more attention in the social reform and rural development of China. Over the past 30 years, the Central Committee of CCP and the State Council have always attached much importance to the rural issues, and about 20 conferences were held to specifically study the problems of "agriculture, rural areas, peasants", such as the Central Rural Work Conference and the National Agricultural Work Conference. Since 1982, 10 "First Document" about the "agriculture, rural areas, peasants" have been signed by the central government; and 9 of the 42 plenary sessions were spe-

cially for "agriculture, rural areas, peasants" problems. *The Proposals of the Central Committee of CCP on the Eleventh Five-year Program for National Economy and Social Development* passed at the Fifth Plenary Session of the 16th Central Committee of CCP clearly stated that the construction of new socialist countryside was a significant historical mission in the process of China's modernization. The construction of new countryside, which is a magnificent social engineering, involves various fields such as politics, economy, culture, education, healthcare, environment, legal construction and so on, and is also related to the further reform and opening up as well as the implementation of the Scientific Outlook on Development. The author studied several hot issues like the rural legal system and prospects of the legal system in new countryside in this study, so as to attract more attention from all walks of society, especially lawmakers, to enhance the legal system construction in new countryside.

1 Legal system construction status in rural areas of China

Over the past 30 years, rural legal system construction has been paid much attention, and various laws and regulations were issued for land use, self-governance of villagers, family planning, agricultural development, enterprises in towns, social security, environment and sanitation. In agricultural development, besides regulations made by the *Constitution*, *Property Law*, *General Principles of the Civil Law*, those special laws and regulations have been adjusted, such as *Agricultural Law*, *Land Administration Law*, *Law on Land Contracted Operation in Rural Areas*, *Seed Law*, *Law on the Promotion of Agricultural Technologies*, *Law on the Promotion of Agricultural Mechanization*, *Regulations on the Protection of Basic Agricultural Land* and so on. The issue and implementation of these laws and regulations played a significant role in promoting the fulfillment

of basic rural policies and social progress.

1.1 Agricultural laws and regulations Agricultural laws and regulations mainly involve with agricultural land use, agricultural planning and control, agricultural production management, agricultural products circulation and processing, agricultural fund supply, agricultural technological and education training, protection of agricultural environmental resources, international trade of agricultural products and so on. Among which the most influential ones are: *Regulations on Water and Soil Conservation* issued in 1982; *Land Administration Law of the People's Republic of China* made in 1986 and revised 3 times afterwards; *Water and Soil Conservation Law of the People's Republic of China* made in 1991; *Notice of the State Council on Further Promoting the Circulation of Agricultural Products* issued in 1991; *Agricultural Law of the People's Republic of China* made in 1993 and revised in 2002; *Law on the Promotion of Agricultural Technologies in the People's Republic of China* made in 1993; *Implementation Regulations on Water and Soil Conservation Law*, the State Council's *Suggestions for Effectively Promoting the Construction of New Socialist Countryside by Actively Developing Modern Agriculture*, and *Suggestions for the Policies of Promoting Comprehensive Agricultural Production Capacity by Enhancing Rural Works*, the Supreme People's Court's *Interpretations of the Applicable Laws on Dispute Cases Involving with Rural Land Contract* issued in 1993; *Decisions of the State Council on Rural Financial System Reform* issued in 1996; *Law on Promoting the Transformation of Scientific and Technological Fruits in the People's Republic of China* made in 1996; *Water Law of the People's Republic of China* made in 1998 and revised in 2002; *Regulations on the Protection of Basic Farmland and Regulations on Grain Purchase* issued in 1998; *Implementation Regulations on Land Management Laws* issued in 1999; *Seed Law of the People's Republic of China* made in 2000 and revised in 2004; *Regulations on Pesticide Management and Regulations on the License Control for Crop Seeds Production and Management* issued in 2001; *Sand Prevention and Treatment Law in the People's Republic of China* made in 2001; *Law on Rural Land Contract in the People's Republic of China* made in 2002; *Law on Promoting the Mechanization of Agriculture in the People's Republic of China* made in 2004; *Law on Farmers' Special Cooperatives in the People's Republic of China* and *Law on Quality Security of Agricultural Products in the People's Republic of China* made in 2006 and so on.

The issue and implementation of these laws and regulations plays a significant role in promoting the development and prosperity of agriculture, maintaining the fundamental role of agriculture and protecting rural resources and environment. However, there are still many problems emerged in the implementation process of laws, for example, the legislation level is low, policies are made by various departments and even conflict with each other, which are unfavorable for the promotion of rural legal system construction; there are no laws or regulations for the new problems emerged from some significant fields, for example, rural social security system, rural labor force migra-

tion system, promotion and protection of agricultural intermediary organizations, agricultural insurance and subsidizing system and so on, which are not favorable for the long-term stable development of rural areas; no sufficient efforts are given in the implementation of agricultural laws and regulations, even totally blank in some areas, which are still far away from the goal of constructing a perfect system for comprehensively implementing laws in rural areas; judicatory difficulties in rural areas should be tackled, and the judicatory capacity of rural courts should be promoted; indifferent legal system awareness of rural residents, and lack of consciousness in cultivated land protection, cooperation, planning, environment and right protection, science and technology. All the above mentioned problems will surely hold back the modernization of agriculture, and further hinder the social development of rural areas.

1.2 Legal system for rural social management Legal system for rural social management mainly involves with self-governance of villagers, family planning, rural public security, social security and assistance. The most influential laws and regulations in this legal system are *Law on the Organization of Villagers' Committee in the People's Republic of China*, *Law on Population and Family Planning in the People's Republic of China*, *Regulations on the Management of Technological Services for Family Planning*, *Regulations on the Management of Family Planning for Floating Population*, *Decisions on Enhancing the Comprehensive Management of Public Security*, *Decisions on Further Enhancing Rural Education Works*, *Notice on Settling Issues about Comprehensive Reform in Rural Areas*, *Regulations on Assistance for Five-guarantees Households in Rural Areas* (childless and infirm old people who are guaranteed food, clothing, medical care, housing and burial expenses), *Suggestions for Promoting the Construction of New Socialist Countryside*, *Suggestions for Further Promoting the Cultural Construction in Rural Areas*, *Decisions for Further Enhancing Hygienic Works in Rural Areas*, *Decisions on the Reform of Rural Financial System*, *Notice on Improving the Management System of Rural Compulsory Education*, *Suggestions for Comprehensively Promoting the Trial Implementation of Tax-to-Fee Reform in Rural Areas*, *Suggestions for the Peoples' Court Providing Judicatory Guarantee for the Construction of New Socialist Countryside* and so on.

The implementation of the above-mentioned laws and regulations plays a positive role in promoting the realization of villagers' self-governance, improving living standards of rural residents, promoting the legalization of rural social management, fulfilling comprehensive management, improving education level and cultural quality of peasants, cultivating healthy and positive rural culture and realizing the harmonious and stable development of rural areas. However, with the emergency of various problems brought by the binary urban-rural social structure, for example, household registration reform, blind migration of rural surplus labor forces, support and assistance for "remained seniors" (migration workers' parents) as well as education for "remained children", the construction of new socialist countryside has been obstructed by many obstacles. Al-

though various corresponding policies and regulations have been issued by the state, all of them have been implemented with low efficiency, and not been known or understood by peasants with low practicability, thus those policies and regulations should be further promoted and issued as laws, then the popularization of these laws should be enhanced to achieve the desired effects.

2 Prospects of new countryside legal system construction

There are still many problems in rural areas of China, "rural areas, agriculture, peasants" have always been paid much attention to by Communist Party of China and the government, but with unfavorable effects. In fact, rural reform not only is included by economic system reform, but also involves with political system, moral and ethic construction, education system, social security and so on, thus it is a great and systematic project. However, the goal of new socialist construction will be soon realized only by recognizing rural problems from the perspective of urban-rural integration, effectively settling problems influence the rural development, innovating and restructuring systems earnestly, moreover, laws should properly play their critical role in the new countryside construction. As a matter of fact, all the essential characteristics of new socialist countryside such as "development of production, easy life, civilized rural customs, fresh village image and democratic management" need the support and guarantee from laws, thus the legal system for new countryside should be given with following characteristics.

2.1 Relatively perfect system of laws and regulations To achieve the magnificent goal of new countryside construction, legal instruments are necessary to promote the construction of material and spiritual civilization in rural areas, preferential human resources, material and financial resources should be given to rural residents, all peasants should be provided with public services, public facilities should be constructed, and modern civilization should be promoted in rural areas. Firstly, an agricultural legal and regulation system should be constructed with the capacity of promoting the transformation of traditional agriculture into modern agriculture. For example, law on promoting diversified agricultural production, law on promoting the moderate agricultural production, legal system of safe agricultural production, legal system of agro-product marketization and socialization services, legal system of agricultural support and protection as well as major disaster responses, supportive legal system of land contract operation right transference, rural cooperative law, law of promoting rural finance and so on. Secondly, laws should be made to improve the integrative competence of peasants. For example, law on the training and employment of rural labor forces, integrated rural-urban household registration system, law of rural society security and assistance and so on. Thirdly, legal system should be constructed to promote the long-term healthy development of rural areas. For example, legal system of comprehensive control over rural public security, legal system of rural environmental protection, law of promoting

public services of rural areas, law of promoting advanced culture in rural areas and so on.

2.2 Obvious social consensus of laws To construct a new and ideal socialist countryside in China, substantial breakthrough should be achieved in legal consciousness and behavior pattern, so as to construct a standard system co-restricted by laws, village's regulations and folk laws, morality and ethics, customs and habits with laws as the dominant criterion of social appraisal. China is a typical "acquaintance society" (people always attach much importance to the opinions of their acquaintance or customs but not objective laws), especially those remote rural areas, into which the influencing factors of modern society hardly can infiltrate (including culture of law), thus in those rural areas, morality and ethics as well as customs and habits are their dominant behavioral norms, and the weakening social consensus of law is actually inevitable. In view of this, besides fully considering actual conditions and legal requirements of rural areas, institutional measures should be actively adopted in the legislation, for example, the improvement of rural network construction system and rural circuit court system, attorney's voluntary assistance system, system of training local legal professionals as well as people juror system, moreover, the publicity and popularization of rural legal system should be enhanced. Among which, rural network construction is not only a significant move to popularize and apply laws, but also one of the critical means to change the backward situation of rural areas and accelerate the civilization construction in rural areas. If all these measures are implemented effectively, it will be soon that peasants have more legal consciousness and laws dominate rural life styles.

2.3 New legal requirements generated by the factuality of law As law is gradually dominating the norms that control social behaviors, people will surely re-recognize the factuality of law, and their daily activities will be influenced by law gradually and unconsciously. And as new social phenomena and problems occur, people will have new legal requirements, which is actually an ideal state of a law-governed society. As for the vast rural areas in China, the emergence of new things and conditions is inevitable, for example, the promotion of new agricultural products, the development of agricultural high-new technologies, the prevention and treatment of agricultural security problems, transference of urban pollution to rural areas, the expansion of illegal pyramid sale in rural areas. All these new problems can only be resolved with laws and regulations, by doing this, the production and social order of rural areas can be ensured to develop in a favorable direction. Therefore, all legislatures, administrative and judicial authorities should keep an eye on the new conditions and problems in rural areas at any time, so as to timely provide legal support or adjust their thinking in rural legal work, to satisfy legal requirements of rural residents.

3 Key points

Rural area is just like a great society, where legal problems cover all aspects of production and life which can not be

fully interpreted in this study. The author primarily studies several outstanding legal problems that influence the construction of new countryside, so as to provide references for relevant researches.

3.1 Legal problems in the moderate-scale agricultural production

The household contract which dominates the production modes indeed plays a critical role in breaking the "communal pot" mode of agricultural production (everyone getting an equal share regardless of the work done) and emancipating the productive forces, also complies with the national conditions in the primary phase of reform and opening up. However, with the promotion of industrial development and urban reform, the rural household contract responsibility system has not been able to keep in pace with the modernized production, and has hindered the further emancipation of agricultural productive forces. Intensive and scale agricultural production is an inevitable by-product of the socialized mass production and gradually intensified social labor division, which is also the practical demand of agriculture for achieving equal market standing and negotiating ability, and the urgent requirement of agriculture improving its capacity against market risks. Therefore, it is reasonable that modern agriculture requires corresponding legal systems. In this study, it is believed that the legal system of moderate-scale agricultural management should demonstrate the following points: the guiding concept of moderate-scale agricultural management is to eliminate rural-urban gap, improve agricultural productivity as well as realize the intensive and scale agricultural production; balancing the construction of small cities, towns and villages; allowing land contract right to be subcontracted, rented, exchanged, transferred, collective-owned in the form of cooperative shares by peasants; farm production should dominate the scale agricultural management modes, and corporatization should be promoted; the scale of farm should be controlled; agricultural structure should be adjusted on the premise of food security, and should be controlled with ratio or index according to actual circumstances; the price and procedure of transferring and renting contract right should be controlled, the crop-farming subsidies and comprehensive subsidies for raw materials of agricultural production from the government should be taken into the price assessment; the funds obtained from farmland transference and renting should be compulsorily remitted according to a certain ratio to the farmers' endowment insurance account who lose their land; the right of lose-land farmers' working on the farm should be protected, or other employment guarantee measures should be adopted; the control over the right of disposing farmland after the farm bankruptcy and relief to peasants should be managed properly; illegal land transference, rent and use as well as negligent supervision should be called to account.

During the implementation of moderate-scale land management in rural areas, the bottleneck is to ensure the full employment of peasants. Just like Professor YANG Jirui said that the full employment of peasants is the touch-stone to check the construction of new socialist countryside^[1]. Superficially speaking, the moderate-scale agricultural management directly con-

flicts with the full employment of peasants, however, from the perspective of social reform in China, it is a long-term goal of reform to reduce the ratio of peasants, change the status that China has an oversized agricultural population as well as accelerate the urbanization. In view of this, the author proposes that peasants should be given full access to urban social security system, low-rent housing and affordable housing system, recruitment system of government organs and enterprises, supportive system for private companies and individual household development and so on; family background and occupation discrimination should be completely eliminated; vocational training and service for peasants should be enhanced; labor service agencies should be greatly promoted to attract peasants, especially "surplus peasants", to live, work or start an undertaking into cities, so as to fully develop the expansionary and cohesive force of middle and small cities, which are also inevitable roads to tackle problems.

3.2 Legal problems in rural financial development

Rural finance is the core of modern rural economy, and the fundamental reason for backward agricultural development is the insufficient fund supply. Therefore, the improvement of rural financial laws and regulations should be placed on the priority of rural reform and legal system construction. Rural financial system mainly includes policy-based credit, commercial credit, rural credit guarantee and rural policy-based insurance. In the process of law making, the coordinated development of all components and the actual demands on various financial forms of rural society should be attached much importance. For example, the policy-based financial reform in rural areas should not only emphasize on the forms of organs, but should pay more attention to the multi-layered and diversified requirements of rural economy on financial resources, as well as the development of overall functions of policy-based financial system in rural areas^[2]. The author puts forward that the following points should be included in the rural financial legal system in China: the guiding principle of agricultural financial laws is to provide preferential support to agriculture; the principal agricultural financial system should include commercial banks, credit unions, policy-based banks, petty loan agencies, which will construct a fund guarantee system for modern agriculture together with fiscal expenditure increment, national debt capital cost as well as input of peasants; a loan mode with small-amount credit loan as the dominant part and large as well as middle secured loans as the supplementation with definite target groups; loans should be mainly put into productive use; compulsory provisions should be made to control the loan amount and rate of various lending institutions; special regulations should be made for loan guarantee, period, origination, use, payment method as well as default responsibility; the institutional development and internal governance of rural financial organizations, especially agricultural bank, agricultural development bank and rural credit union. Moreover, the legal liabilities in view of not providing agricultural loans according to the regulations, or intentionally raising the standards of rural loans, issuing loans illegally, embezzling or appropriately using the

funds for supporting agriculture, illegally using loans, viciously evading financial obligations and so on.

Mortgage guarantee system of traditional loans in rural areas is influenced by economic conditions of peasants, and restricted by the mobility of land and house, therefore, it is impossible to completely change such a situation in a short term since this system hardly takes effect as being compared with that in urban areas. Therefore, besides compulsory requirements for borrowing loan from those agencies could be proposed via legal instruments, proper tracking and supervision over the peasants' loan uses is also necessary to ensure loan safety and the realization of loaning goals, which is also the critical point to inspire the enthusiasm of financial institutions to explore rural market. The remote rural areas always have a vast territory and sparse population, thus it is impossible to be controlled by financial institutions themselves. A more practical scheme is to fully play up the role of grass-root organizations in rural areas with economic benefits as payment and construct a brand-new tracking system for loan security. Specifically, as the loan contract is established, 1 or 2 village cadres also sign as supervisors who should fully oversee the use of loans and timely report the abnormal conditions to lenders; supervisors also should help lenders to take legal remedial measures, then report the status in villagers' groups or even state the credit grades of borrowers; supervisors have the right to be paid and should bear their delinquency in supervision. Such a system is preferential in following aspects: the supervision difficulties are shared by internal staff, which complies with the local conditions of China and the fact that Chinese rural residents are always afraid of losing face, and also is beneficial for improving the quality and wage level of rural cadres.

3.3 Legal system of agricultural socialized services The further development of agriculture and the promotion of competitiveness, besides land and financial support, also need the back-up of social service systems like scientific research, information, market agencies and so on. Only being given with these supports, a stable and coordinated development process of agricultural scientific research, production, supply and sale can be formed, the expected profits of farmers, rural households and investors of other elements can be ensured, and the agricultural development can be pushed into a benign circulation track. Any component of agricultural socialized services system has immeasurable influence on the modernization of agriculture, for example, farmers' specialized economic cooperative plays a significant role in connecting markets and farmers, solving the contradictions between discrete rural household operation and uniform market, improving the organization degree of farmers, enhancing the capacity of rural households' resisting market risks, optimizing the allocation of funds, technologies, talents and labor forces^[3]. Therefore, it is an inevitable road for the long-term and rapid development of modern agriculture by constructing and stabilizing the agricultural socialized services system via legal instruments. The author proposes that such a system should include the following contents: the guiding concept is to motivate various forces, especially, the enthu-

siasm of agricultural scientific research and service departments; the promoting the industrialization and marketization of agriculture, achieving the sustainable development of agriculture; establishing and improving the incentive system of agricultural scientific research, the supervision system of agricultural products' quality, agricultural disasters' warning and response system; agricultural socialized services subjects include various agricultural scientific and research institutions, agricultural competent authorities, supply and sale cooperatives, farmers' specialized cooperatives, community cooperatives, specialized service companies, specialized technological societies, agricultural brokers and leading enterprises, and the legal liabilities of all these subjects should be enhanced.

The focus of agricultural socialized services is to construct a rural market system, therefore, the priority of constructing an agricultural socialized services system is to push forward the development and perfection of rural market system via laws. Throughout the 30 years of reform and development in rural areas, the regional blockage and departmental monopoly in the circulation field of agricultural products have been gradually broken through, a market pattern of multi-channels circulation and multi-subjects competition has been primarily formed, however, the circulation of agricultural products is not smooth which directly hinders the agricultural development and the balanced construction of urban-rural areas. Thus what should be done urgently are: firstly, government should make great efforts to support and construct a market system for the development of modern agriculture under its legal obligations; the guiding concept is to construct a uniform, open, competitive and orderly agricultural products market system with trade markets, retailing salesrooms, agricultural products supermarkets as the basis, and chain distribution, e-trade as well as future transaction as the direction; secondly, market intermediary organizations should be greatly cultivated with laws as guarantee, to ensure them to participate into the service for agricultural products circulation, realize the specialized labor division of agricultural products' production, circulation and service, and effectively solve the contradictions between agricultural small-scale production and great market. The present rural economic cooperatives in China can not fully play up their roles mainly due to the excessive administrative interventions, their own indefinite legal status as well as lack of the market orientation, which leads to the insufficient team consensus, management and right consciousness of farmers. Therefore, laws play a critical role in the construction of agricultural intermediary organizations.

3.4 Integrated urban-rural household registration system The present rural society is gradually formed in the development of history, most of which are fixed combinations of families with obvious characteristics of blood relationship. *Household Registration Regulations* issued in 1958 established a closed population management pattern which differs from the free-migration system, constructed and strengthened the binary urban-rural structure. However, according to the international general explanation, free migration is a demonstration of personal freedom, which shows both political and economic significance of freedom of

choice, and is also an institutional element in inspiring free competition in various fields. Just like FEI Xiaotong said, the transformation from kin-combination to geo-combination is actually the change of social nature and also a great transition in the social history^[4]. The binary urban-rural household registration management system is the bottleneck of free migration of labor forces between rural and urban areas, and also the root for various social problems in rural areas (long-term separation of rural migratory workers and their wives, remained children and seniors). Therefore, such a registration system is out of date and conflicts with the strategy of "balanced development of rural and urban areas" put forward by the central committee of CCP, which should be completely redesigned, in that case, an integrated urban-rural household registration system is necessary to be constructed. The basic content of such a system should include: the guiding concept is to open both urban and rural markets at the same time, and achieve the integration of urban and rural areas; realizing the uniform and non-distinctive household registration system, free migration of urban and rural labor forces system; accelerating the urbanization, ensuring the permanent migration of land-expropriated peasants but not the former "seasonal" migration through implementing various regulations (especially in housing, employment and social security); institutional guarantee for land-expropriated peasants' getting low-rent houses or affordable houses as well as social insurances; preferential laws and regulations for peasants' working in urban areas; legal system of popularizing various public services in rural areas; legal system of simplifying household registration and change procedures; legal system of punishing various typical discriminatory behaviors.

3.5 Rural land property right, income legal system and social security legal system Land is the most valuable property of peasants and in rural areas, and the compensation standard for land expropriation is always a hot issue. Actually, it is universal that the compensation standards for agricultural land expropriation are relatively low in practices. With the implementation of voluntary circulation of land operation rights, the compensation standard and allocation for land expropriation again become the focus of people's attention. As a significant component of social wealth, land should demonstrate its social value. Land expropriation compensation is a kind of land value transformation, which should benefit all members of collective groups; in that case, its social value can be demonstrated. Only if the "collective" in rural land collective ownership of China being expanded to the town and county level, the social status and strategic goals of urbanization in China are reasonable. The problems and contradictions in rural land expropriation compensation are serious, thus if rural land income legal system and rural social security legal system are considered comprehensively, land property right in China is reformed, and a fair land expropriation compensation and allocation system is constructed, those problems will be solved relatively easily. Main contents of rural land property right and income legal system as well as social security legal system should include the following points: expanding the subject of land ownership right

to implement county-level peasants' collective ownership and guarantee the land property right of peasants unchanged; the compensation standard for land expropriation should be greatly promoted, which should be higher than the land selling price of local urban areas; the land expropriated household of villagers' group only owns part of the compensatory payment, the rest is taken into the collective contribution to peasants' social insurance account of the county which owned by all peasants in this county; peasants' social insurance includes both endowment insurance and medical insurance, which should be as same as those of urban residents; the social insurance premium of peasants is contributed by both state and collective groups, peasants themselves do not pay for that; county-level social insurance organizations uniformly manage peasants' social insurance funds and bear the obligations of value preservation and increase; any organization and person is prohibited to embezzle or appropriate peasants' social insurance funds, otherwise, they will bear serious legal liability (three forms of responsibility: criminal, administrative and civil).

The compensation standards and allocation of rural land expropriation as well as the social security of peasants are all hot and difficult problems in rural development of China, which are also influencing factors of the overall situation. The reservation of certain-ratio land expropriation payment system put forward by the author involves with the restructuring of rural land collective ownership, the transformation of villagers' self-governance system as well as the great-leap-forward development of social security system, which are rather difficult to be implemented. However, the reform and opening up of China in rural areas has entered a crucial phase, and the rural social security has become the priority of reform which did not achieve expected results, for example, China has begun the research on rural endowment insurance system since 1986, by the end of 1998, although more than 80% counties in China joined the insurance system, the population being brought into the system only accounted for 12% of the total planned population, thus there are almost 88% of peasants still being excluded from social endowment system; from the perspective of social security cost, the social security expenditure of rural residents which account for 80% of the population only takes up 11% of the total amount, while the social security expenditure of urban residents which account for 20% of the population takes up 89% of the total^[5]. Therefore, reform in rural areas of China has entered a critical phase of "making new achievements by only breaking through old obstacles", conflicts and difficulties encountered in the reform should be tackled by greatly promoting institutional innovations and legal instruments.

3.6 Legal problems of rural network construction Rural network construction is one of the principal approaches to realize the modernization of rural areas. Specifically, network plays the following significant roles in rural society: helping realize the propaganda and implementation of national policies and laws, supervising over illegal activities, timely disclosing various social problems, acquiring market information of agricultural products, sharing advanced cultures, thoroughly eliminating musty

ideas and so on. Therefore, the construction of rural network, as an indispensable part of the new socialist countryside construction, should be carried out as a fundamental and routine work of the government. In that case, law instruments are necessary to set up regulations for the subject of liability, institution setting, financial guarantee, facility management and maintenance, personnel allocation and training, specialized services, legal liability and such aspects in the construction of rural network. The government should play the guiding role in the legislation and be responsible for implementing the network construction. In eastern coastal areas, the network construction can be organized by the government, invested by peasants and rural collective economic organizations, or all the three parties invest a certain ratio according to actual circumstances; however, in the central and western areas, all or most of the cost in the network construction should be paid by the government, such as establishment, maintenance, use, training and techni-

cian allocation and so on, rigid management is also necessary for the use and audit of fund to ensure the effective implementation of the network construction.

References

- [1] YANG JR. Exploration and thinking of establishing mechanism for agricultural industrialization[J]. Chinese Rural Economy, 1998(4): 66-69. (in Chinese).
- [2] LU P, CAI YC. Some ideas about the reform of the policy-related finance in China's agriculture[J]. Financial Theory & Practice, 2005(3):53-55. (in Chinese).
- [3] LI CQ, WU Y. Agricultural law lecture[M]. Beijing: Law Press, 2007:151. (in Chinese).
- [4] FEI XT. Rural China, fertility system[M]. Beijing: Peking University Press, 1998:75. (in Chinese).
- [5] XU HY. Problems in social security system of China's countryside and their countermeasures[J]. Rural Economy, 2006(4):81-83. (in Chinese).

中国新农村法制建设的若干问题探析

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摘要 首先,从两方面概述了改革开放30年来中国农村法制建设的发展状况。①农业法律法规方面。介绍了自1982至2006年来影响较大的一些法律法规,提出了法制实践过程中存在的一些突出问题;②农村社会治理法律制度方面。介绍了相关法律法规的颁布情况与积极作用,提出了政策、规章实施中存在的问题。其次,对新农村法制建设进行了展望,分析了新农村法律制度所应具备的特征。一是相对完备的法律法规体系。应具备有助于促进传统农业向现代农业转变和农村健康发展的农业法律法规体系;着眼于用法律改善农民的综合能力。二是法律的社会认同性特征明显。应充分考虑中国农村的现实状况与需求,积极采取各种制度措施,强化法律的社会认同性。三是法律的实在性不断催生新的法律需求。应当关注农村中出现的新问题,适时提供法律供给或调整农村法律工作思路。最后,探讨了新农村建设中应重点关注的一些问题,以期对相关政策的制定提供借鉴。一是农业生产适度规模化的法律问题;二是农村金融法律问题;三是农业社会化服务法律体系;四是城乡一体化的户籍制度的构建问题;五是农村土地产权、收益法律制度与社会保障法律制度;六是农村网络建设的法律问题。

关键词 新农村法制建设;农村发展;问题

(From page 17)

References

- [1] ZHU XB, LIN Q. Evolution differences of sources of SMEs clusters competitive advantage: the case study of the weave cluster of Shaoxing in Zhejiang Province[J]. Management World, 2008(10):75-86, 187. (in Chinese).
- [2] QIU BX. Small enterprise clusters[M]. Shanghai: Fudan University

Press, 1999. (in Chinese).

- [3] SHEN B, LIU DW. Study on processing industrial cluster of Ningxia wolfberry[J]. Northern Economy, 2009(2):48-50. (in Chinese).
- [4] Editorial Committee of Ningxia Yearbook. Ningxia yearbook (2001)[M]. Beijing: Chronicles Press, 2002. (in Chinese).
- [5] Editorial Committee of Ningxia Yearbook. Ningxia yearbook (2008)[M]. Yinchuan: Ningxia People's Publishing House, 2009. (in Chinese).

宁夏枸杞产业集群竞争优势来源模型的构建与分析

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摘要 综述了有关集群竞争优势来源的文献资料,归纳出了6个集群竞争优势的来源因素,即外部规模经济和范围经济、区域资源、政府的作用、交易成本的降低、学习和创新效应、集群的协调机制。采用访谈和问卷调查等形式,研究了中国宁夏回族自治区枸杞产业集群的发展现状,提出了其存在的3方面问题:一是加工和销售企业总体规模较小;二是企业产品定位不清晰,转化能力差;三是品牌宣传力度不够,没有形成完善的营销网络;四是中小企业投融资渠道单一;五是农户种植的组织化程度偏低。分析了区域资源、政府作用、规模和范围经济等竞争优势来源因素在宁夏枸杞产业集群形成阶段和成长阶段发挥的作用,构建了宁夏枸杞产业集群竞争优势来源模型,并将其与中国中小企业集群竞争优势演化模型进行了比较,认为两者存在显著的差异性,这是由2个模型构建基础的差异所决定的。

关键词 产业集群;规模经济;宁夏枸杞;竞争优势