

Analysis of the Current Situation of Chinese Energy Legislation in the Context of Double Carbon

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Abstract

Currently, despite China's introduction of laws and regulations governing the preservation and use of environmental resources, such as the Law on Prevention and Control of Air Pollution, the Law on Renewable Energy, the Law on Circular Economy, the Law on Forestry, the Law on Construction, and the Law on Promoting the Transformation of Scientific and Technological Achievements, the primary goals of the aforementioned legislation are to stop and reduce air pollution, safeguard forests, and encourage the transformation of scientific and technological achievements. The aforementioned laws' primary goals, however, are to safeguard forest resources, prevent and manage atmospheric pollution, encourage the application of scientific and technological advances, etc. Not addressing the issue of climate change and enhancing the regulation of greenhouse gas emissions. Therefore, in order to further advance China's energy legislation, it is crucial to understand the current state of that legislation.

Keywords

"Carbon Neutrality"; Energy Law; Legal System.

1. Introduction

China announced its intention to "strive to attain a peak by 2030 and strive to achieve carbon neutrality by 2060" in the year 2020. Utilizing the rule of law to advance the achievement of carbon neutrality has become customary in the international community. China's current environmental regulatory framework and the need to combat climate change have some inconsistencies. China clearly lags behind other countries in terms of the rule of law when it comes to carbon neutrality. There are issues like uncertainty in fundamental principles, a lack of uniform national legislation, an inadequate regulatory structure, flaws in supporting systems, and a gap between law and practice.

2. Shortcomings of Chinese Legislation

2.1. The fundamental idea and application range of carbon neutrality are not clearly defined.

According to a report issued by the Intergovernmental Panel on Climate Change (IPCC), carbon neutrality refers to the achievement of an equilibrium between a small amount of unavoidable carbon dioxide emissions through carbon dioxide uptake after the maximum possible reduction measures have been taken; net zero emissions refers to the achievement of a balance between all greenhouse gas emissions and anthropogenic uptake in an organisation in a year; climate neutrality refers to a state in which human activities have no net impact on the climate system A state of affairs. In other words, carbon neutrality focuses on carbon dioxide, net zero emissions covers all greenhouse gases, and climate neutrality considers other impacts such as radiative effects in addition to net zero emissions of greenhouse gases. However, in global

practice, the emphasis on carbon neutrality, net zero emissions and climate neutrality is on the neutrality of all greenhouse gases, not just carbon dioxide. China's proposed carbon neutrality target needs to be aligned with the relevant requirements of the Paris Agreement and should cover the effective control of all greenhouse gases. Analysis of China's greenhouse gas emissions data in recent years shows that, in addition to carbon dioxide, non-carbon greenhouse gas emissions, including methane, also account for a high proportion of total global greenhouse gas emissions, and the greenhouse effect of methane is more than 25 times that of carbon dioxide. Therefore, from the perspective of addressing global climate change, national carbon emission control measures, achieving the Paris Agreement's temperature control targets and China's "double carbon" target, carbon neutrality should be understood as the neutralisation of greenhouse gases, not just carbon dioxide.[1] However, China has not yet clearly defined the scope of greenhouse gases covered by the "double carbon" target, and some research institutions still mainly use carbon dioxide to quantify carbon neutrality research, and the pathways and recommendations put forward are mostly about the peak and effective control of carbon dioxide.[2] The policy recommendations inevitably leave out non-carbon GHG components, which may easily deviate from China's "double carbon" target. The legal definition of carbon neutrality and the scope of its application should be defined in a national document as soon as possible, so as to guide the formulation, implementation and improvement of relevant emission reduction policies and measures.

2.2. Responding to climate change legislative debris

At the national level, China has not yet enacted specific legislation on carbon peaking and carbon neutrality, and there is no national law on the implementation of the "dual carbon" strategy. In the absence of a "general law" to lead, promote and guarantee the implementation of the "double carbon" strategy, the decentralised legislation is not conducive to the overall regulation of the responsibilities of state departments, local governments, enterprises and institutions, and individual citizens to reduce greenhouse gas emissions, nor is it able to further clarify the basic policies, guidelines and systems of the "double carbon" strategy. This is obviously not conducive to the successful achievement of the 2030 carbon peak and 2060 carbon neutrality targets.

China's existing legislation related to greenhouse gas emission reduction involves pollution prevention and control law, energy law, resource law, science and technology law and other fields, which, due to the timing and purpose of their respective legislation, lack an integrated consideration of the "double carbon" target, and are divided in content, failing to achieve effective dovetailing of rules and institutional coordination in energy conservation and emission reduction. In particular, in the absence of national legislation to provide guidance and overall planning, China's climate change legislation is seriously fragmented, and conflicts of application of laws are inevitable.[3]

2.3. There is a legal deficiency in the carbon emission management system

To date, China has not yet regulated carbon emissions management at the legal level, and the legal status of the main bodies regulating carbon emissions, their main functions, the division of powers, the implementation of cross-regional regulation and the legal liability for regulatory failure have not been regulated through legislation, and the unclear regulatory mechanism has become a shortcoming of the system that affects the achievement of the "double carbon" goal. It can be said that there is also a clear legal gap in China's carbon emission management, which makes carbon emission management in reality lack of compulsory power and operability, directly affecting the efficiency of carbon emission management and the implementation of the "double carbon" strategy. Therefore, China needs to clarify and improve the management of carbon emissions through legislation, and gradually establish a carbon emission management

system consisting of carbon emission reduction plans, carbon monitoring systems, carbon budgeting systems and carbon emission standards at the legal level.

2.4. Lack of a unified coordination mechanism for the administrative enforcement system of carbon emissions

In China, laws and regulations related to greenhouse gas emission reduction are mainly based on industry laws, and there are problems such as unclear division of powers and responsibilities between various regulatory departments, lack of a unified coordination mechanism, and difficulty in forming a centralized, unified, comprehensive coverage, authoritative and efficient administrative and regulatory model. Although a leading group for addressing climate change has been established at the national level, its functions have not yet been clarified by law, and its coordination and management functions have not yet been effectively brought into play. In terms of administrative law enforcement to address climate change, China currently adopts a "one-dimensional regulation" and "divide and rule" administrative law enforcement system, resulting in conflicts of authority, fragmentation of departments, loose supervision and low efficiency among various administrative law enforcement departments in addressing climate change issues. In this regard, it is necessary to speed up the establishment of a comprehensive inter-departmental regulatory system. For this reason, it is necessary to speed up the construction of an inter-departmental system of comprehensive administrative law enforcement, and to clarify the boundaries of authority and specific responsibilities of each department by law, so as to gradually establish a new comprehensive administrative law enforcement pattern with clear authority and responsibility, information sharing and coordination, in order to adapt to the new situation and new requirements of China's carbon peaking and carbon neutrality.

2.5. Lack of legal support for policy implementation due to the relative lag in legislation

In terms of addressing climate change and controlling greenhouse gas emissions, China currently relies on a large number of policy documents and departmental regulations, which lack legally enforceable binding force and are often left in limbo in reality.[4] The relative lack of legislation to address climate change will obviously affect the authority, effectiveness and predictability of the efforts to address climate change, and will not provide long-term stable investment expectations for low-carbon investors in carbon emissions trading.

3. Conclusion

After the Paris Agreement entered the substantive implementation stage, the global legislation on climate change has been transformed and extended from international legislation to domestic legislation, and it has become the general consensus of the international community to promote the process of addressing climate change through the rule of law. For China, the lack of special legislation has become an obstacle to our country's integrated response to climate change and the promotion of the "double carbon" goal. Therefore, on the basis of our own national conditions, we should actively learn from international experience and step up the improvement of carbon neutral legislation, so as to clarify the main principles, core system and management system of China's response to climate change in the form of law, and provide a strong guarantee of the rule of law for China to achieve the "double carbon" goal.

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