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Kymyzai Ahmatovna Dehkanova
Osh state university
candidate of juridical science
assistant professor of department of theory of law and government,
Kyrgyz Republic

MINING LAW AS A BRANCH OF LAW OF THE KYRGYZ REPUBLIC

Abstract: *The article examines and analyzes the legislation on mineral resources in the Kyrgyz Republic, on the basis of which theoretical conclusions are made on the subject of the formation of mining law as a branch of law in the Kyrgyz Republic. In addition, the author pays special attention to the very large disputes among legal scholars on the issue of the legal regime of mineral resources, which should be considered within the framework of land law. The author reveals the methods of legal regulation and defines as a set of methods of legal influence on the behavior of people developed as a result of long-term human communication.*

Key words: *mining law, subsurface resources, subsurface use, legislation on subsurface resources, land legal relations, methods of legal regulation of subsurface use relations, branch of law.*

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Introduction

S. S. Alekseev believed that the branch of law is a separate set of legal norms and institutions that regulate homogeneous social relations. It reflects a higher level of system-forming relationships, characterized by a certain integrity and autonomy. Can this scientific definition of Sergey Alekseev be attributed to mining law? To answer this question, it is necessary to consult the opinion of experts in this field and analyze the legislation of subsurface use in the Kyrgyz Republic.

Not so many scientists approached the study of mining law, some of the most prominent were N. A. Syrdoev, A. I. Perchik, M. E. Pevsner, and N. B. Mukhitdinov, who used the following mutually related terms when studying the issue of mining law: subsoil and subsoil use.

So prof. N. A. syrdoev, gives the following definition of the concept "subsurface": "subsurface should be understood as part of the natural environment located under the earth's surface, as well as minerals, elements and rocks that come to the surface of the earth" [1, p.13]. From this definition, it follows that the subsurface is a three-dimensional concept, not a planar one. According to M. E. Pevsner, a more successful formulation of the concept of "subsoil" is contained in the Decree of the President of the Republic of Kazakhstan" on subsoil and subsoil use " dated January 27, 1996. No. 2828 [2], which had the force of Law: "Subsurface-a part of the earth's crust located below the soil layer, and in its absence — below the earth's surface and the bottom of reservoirs, extending to the depths available for subsurface use operations, taking into account scientific and technological progress." As it follows from the formulation of the concept of "mining" contained in the Kazakh legislation, most of it coincides with how this notion is interpreted in our Kyrgyz legislation under the new Law of the Kyrgyz Republic "On Subsoil" dated August 9, 2012 [3]: "Nedra — the part of earth crust located below a soil layer, and in its absence — below a terrestrial surface and the bottom of ponds and streams, extending to the depths accessible for geological exploration and development, including placer deposits of useful minerals".

As we can see, the concept of "subsoil" formulated by the Kazakh legislation more broadly considers "subsoil" at the end of the definition."..available for conducting subsurface use

operations, taking into account scientific and technological progress".

Scientists consider subsurface use operations to be works related to state geological resources, exploration and production, including works related to the exploration and production of underground water, therapeutic mud, exploration of subsurface resources for wastewater discharge, as well as work on the construction and operation of underground structures that are not related to production [4, p.14]. From this it follows how diverse and yet homogeneous are the relations concerning the use of mineral resources, which require a separate subject and method of legal regulation in the first place, because these relations affect the interests of a very large circle of people. But this does not mean that our concept of "subsurface resources" does not include the above-mentioned actions under subsurface use operations.

When studying mining law as a branch of law, we should be more interested in how relations on subsurface use are regulated. This issue is very controversial among legal scholars, as some of them believe that the legal regime of mineral resources should be considered within the framework of land law. Hrapanyuk, classifying the system of law of modern society, singled out land law as one of the main branches in it and claimed that it "regulates public relations in the field of use and protection of land, its subsoil, waters, forests, which is the material basis for the life support of human society" [5].

M. E. Pevsner did not agree with this approach, since he considered the legal norms used in land use to be very difficult to apply to regulate public relations in the field of protection and rational use of water resources and subsurface resources.

In our opinion, a more convincing position was defended by G. A. Aksenenko, who, considering land legal relations, noted that the subsoil is a special and peculiar object of state property, which has a number of specific features in comparison with other objects, and relations on subsoil use are regulated by special rules of mining law [6]. In the 50s of the last century, he suggested that over time, as a result of the development of these relations and the relevant legislation, they will be separated from the land law system and will become an independent branch of law.

The majority of scientists consider mining law to be one of the branches of natural resource law, which together with environmental law form one independent branch-environmental law.

In the theory of law, for the emergence and existence of an independent branch of law, four conditions must be met:

- state interest in creating such a branch of law;
- specifics of regulated public relations that constitute the subject of independent legal regulation;
- the need for a special method of legal regulation;
- availability or need for special sources of law.

After analyzing these conditions, it is possible to determine whether there is an independent branch of law in modern Kyrgyzstan that regulates public relations in the field of state regulation, use and protection of mineral resources.

1. What is the Kyrgyz Republic's interest in creating such a branch of law?

Kyrgyzstan is unique in that it is rich in its diversity of mineral resources. We have oil, gas, coal, rare earth and non-ferrous metals (antimony, mercury, tin, tungsten, molybdenum), and of course gold, which we are among the world leaders in terms of volume. As well as other natural resources. Extracted natural resources are the basis of the country's industrial production, accounting for 56.8 % of industrial production. The mining industry as a whole accounts for 21% of the country's GDP and 24% of tax revenues [7]. In this regard, globalization and global competition forces the Kyrgyz Republic to attach special interest to issues related to subsurface use, as well as to attach national significance for the purpose of sustainable development of the country and stability of public relations both in economic and political terms. The latter has been a serious threat to the independence of the Kyrgyz Republic since 2012. Based on the above, Kyrgyzstan is a developing legal state and is interested in creating an independent industry in the field of state regulation, use and protection of mineral resources, the norms of which will really reflect primarily the environmental and economic interests of the state and the population, and not individual groups of both foreign individuals and local mining entrepreneurs. Bringing everyone to a common consensus on the most effective regulation of these specific, in our opinion, public relations.

2. what is the specifics of regulated public relations in the field of subsurface use that constitute the subject of independent legal regulation of mining law?

Subsoil as an object of ownership has a threefold character. This triplicity is manifested in the fact that the subsurface:

- on the one hand, they are inseparable from the biosphere as other natural resources (land, water, forest, etc.) are national property. This allows us to consider the subsoil as an object of exclusive state ownership;
- the subsoil is also, according to the environmental legislation ,a "nature protection object", in this case, the relations arising about the protection of the subsoil are included in the subject of legal regulation of environmental law;
- on the other hand, subsurface resources (minerals, underground space, etc.) in the process of the emergence of subsurface use relations turn into goods (products, property) and become the subject of civil law transactions, and therefore the object of civil law or business relations.

However, the main specifics of the subsoil use relations, in our opinion, are manifested in:

- the probabilistic nature of the results of work on the discovery of subsurface resources;
- increased risk of the process of assigning useful properties of subsurface areas;
- the need to combine the use of mineral resources and their protection;
- special mode of work on conservation or liquidation of a mining enterprise [8, p. 32].

Some of these specific relationships are already regulated by the exclusive rules of the emerging branch of law.

3. what is the method of legal regulation of mining law?

The method of legal regulation is a set of methods of legal influence on the behavior of people, developed as a result of long-term human communication. If the subject of legal regulation answers the question of what the law regulates, then the method answers the question of how it regulates. The method combines objective and subjective aspects and has an additional (procedural) character in relation to the subject.

In the regulation of social relations, different methods are used: mandatory and discretionary, alternative, and a recommendation of rewards and punishments. Their application depends on the content of relations, the discretion of the legislator, the established law enforcement practice, and the level of legal culture of the population [9].

Speaking about the method of legal regulation of subsurface use relations within an independent branch of law, this problem has not been studied in modern legal science to date. In our opinion, there is a great need to highlight such a method. Our method of legal regulation of modern subsoil use relations should:

- first of all, to protect the economic and environmental interests of the Kyrgyz Republic and its population in the use of mineral resources;
- secondly, to provide an opportunity for a business entity to get the expected economic result in the process of assigning useful properties of the subsoil;
- third, to take into account the specifics of the subsoil, which is a natural resource, environmental protection object and the operational basis of our company's activities.

In his research, M. E. Pevsner provides a method of legal regulation of subsurface use relations that has a complex character, and in some respects is similar to the method of legal regulation of land use relations and includes a number of legal techniques:

- subordinations;
- separations;
- equalities;
- agreements;
- restrictions [10, p. 34-35].

Here is an example of the law of the Kyrgyz REPUBLIC "on subsoil" how the above legal techniques are applied and used by the state:

The subordination method is used in regulating relations of state ownership of mineral resources in the Kyrgyz Republic (see article 3 Of the law of the Kyrgyz REPUBLIC "on mineral resources" No. 160 of August 9, 2012) and is mainly related to the ownership, use and disposal of the state subsoil Fund within the territory of the Kyrgyz Republic. The state is owner of the subsoil, using the technique of subordination in the legal regulations of subsoil use, first, defines a system of shared powers (see: article 5, ibid.) and special (see: art. 6, 7, 8, 9) competence of state administration bodies of the Fund of mineral resources of the Kyrgyz Republic (see: article 10, ibid) and, secondly determines the order of use of subsoil (see Chapter 3, ibid.), rights, obligations, dispute resolution and responsibility of subsoil users (see Chapter 7, ibid.).

The method of division is used in determining the types (levels) of state ownership of mineral resources the Kyrgyz Republic, using the method of division in legal norms, has the ability to:

- maintain the State cadastre of mineral deposits and manifestations of the Kyrgyz Republic;
- maintain the State balance of mineral reserves of the Kyrgyz Republic;
- conduct State testing and registration of mineral reserves and resources;
- to form and maintain the State reserve of mineral deposits ' lands;
- publish and maintain a list of mineral deposits of national significance (see: articles 11, 12, 13, 14, 15 Of the law of the Kyrgyz REPUBLIC "on subsoil" dated August 9, 2012 No. 160).

The equality method is used when determining the procedure for obtaining rights to use the subsoil. The Kyrgyz Republic, applying the method of equality in legal norms, legally establishes equal rights of future subjects of subsoil use in obtaining a license through a tender or auction (see: Chapters 3, 4 Of the law of the Kyrgyz REPUBLIC "on subsoil" of August 9, 2012 No. 160).

The approval method is used when determining the boundaries of a mining, geological, and land allotment.

This restriction is applied when determining the duties and responsibilities of subsurface users. It also sets certain requirements for the rational use and protection of subsurface resources (see: Chapters 6 and 7 Of the law of the Kyrgyz REPUBLIC "on subsurface resources" of August 9, 2012 No. 160).

The listed legal techniques, according to the General opinion of mining law scientists, form the basis of a comprehensive method of legal regulation of subsurface use relations, which differs from the methods used and used in other branches of law.

4. Sources of mining law

Sources of mining law - are normative legal acts containing requirements for subsurface use, adopted by the authorized state body of the Kyrgyz Republic in the prescribed form and procedure provided for by law.

Modern legislation on the subsoil of the Kyrgyz Republic is based on:

- Constitution of the Kyrgyz REPUBLIC of July 27, 2010;
- Law of the Kyrgyz REPUBLIC" on subsoil " dated August 9, 2012 No. 160;
- Land code No. 46 of 2 June 1999;
- Law of the Kyrgyz REPUBLIC" on oil and gas " No. 77 of June 8, 1998;
- Law of the Kyrgyz REPUBLIC" on tailings dumps and mountain dumps " No. 57 of June 26, 2001;
- Law of the Kyrgyz REPUBLIC" on production sharing agreements for subsurface use " dated April 10, 2002 No. 49.

These regulations are the main sources of mining law that define the General principles and requirements for the use of mineral resources in the Kyrgyz Republic. Mining legislation also contains a large number of subordinate legal acts and agreements that define the procedures for using mineral resources.

From all of the above, we can state that four conditions that determine the theoretical existence of an independent branch of law regulating the legal regime of subsurface use are met.

At the beginning of the article, we asked the question: Can the scientific definition of "branch of law" by S. S. Alekseev be attributed to mining law? After analyzing the research of leading scientists in this field of law and the legislation of subsurface use of the Kyrgyz Republic, we will try to theoretically answer this debatable question of theorists. Mining law is a branch of law in the legal system of the Kyrgyz Republic, which has a set of legal norms established by the state that regulate relations arising in the field of state regulation, use and protection of mineral resources.

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