

The Path to Optimize the Authorized Legislative Power of Special Economic Zones

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Abstract:

The authorized legislative system of China's special economic zones has provided strong support for the successful implementation of reform and opening up. However, with the vigorous development of the special economic zone economy, the authorized legislative power of special economic zones also faces a series of opportunities and challenges, involving key issues such as power boundaries, legal frameworks, and scope definition. This study focuses on the legitimacy analysis of the authorization decisions made by the National People's Congress and its Standing Committee, the legitimacy analysis of the authorization of the National People's Congress to formulate regulations by the government of special economic zones, as well as the review and supervision of the authorized legislation of special economic zones. It explores the enhancement and prospects of legislative authority in Special Economic Zones, aiming to establish a theoretical foundation for the standardization of the legislative power of special economic zones in China, promote the establishment of legal frameworks and the sustained prosperity of special economic zones.

Keywords: Special Economic Zone, Authorized Legislative Power, Authorized Legislation, Legal Construction

1. Introduction

Since China's reform and opening up, special economic zones have been pioneers in exploring market economy and the rule of law construction. Their market-oriented economic system and flexible authorized legislative system have injected fresh vitality into the modernization endeavor in China and made outstanding contributions. However, the swift ascent and rapid advancement of special economic zones have put forward higher requirements for China's legal and legislative system. The legal construction of special economic zones should adapt to market demand and closely integrate with the Modernization of Countries' Governance System. Therefore, adapting to the times' needs and properly handling the relationship between reform and the rule of law has become an important and urgent issue in current legal practice. The authorization decisions made by the National People's Congress and its Standing Committee have been instrumental in addressing this issue. This paper takes this as the starting point, connecting with the practice of authorized legislation in special economic zones, to conduct a comprehensive and systematic study on the issue of authorized legislation in special economic zones. The aim is to promote the authorized legislation in special economic zones to take a more standardized, scientific, and modern legal path, promote

the improvement of legal construction, and the sustainable prosperity of special economic zones.

2. Research Method

This paper belongs to a research topic with Chinese characteristics, mainly adopting a literature research method. It aims to focus on the theme, screen and summarize relevant literature materials based on relevance, authority, and moderate novelty. By comparing the commonalities and differences in the literature, as well as the doubts and questions in the research, a deeper understanding of the essence and challenges of the authorized legislative power of special economic zones can be gained.

3. The Boundary of the Legislative Law: Challenges and Opportunities in Authorizing Legislative Power Decisions in Special Economic Zones

Looking back at the early stages of reform and opening up, the economy in coastal areas developed rapidly. At that time, China was still under the traditional planned economy system, with almost no legal basis for authorizing legislation in special economic zones. The local legal system lacked specificity, and there was a clear gap between the original legal system and modern

rule of law. The legal environment was not sound. The promulgation and implementation of the Legislative Law in 2000 marked a significant progress in China's legislative system, providing clear legal basis and norms for national legislation.

3.1 Analysis of the Legitimacy of the Legislative Decision on the Authorization of Special Economic Zones Made by the National People's Congress and its Standing Committee

Article 84 of the Legislative Law establishes a legal foundation for the National People's Congress to make authorization decisions, but it only mentions that the National People's Congress is the organ vested with the authority to make authorization decisions, which led to doubts about the legality of the 1992 National People's Congress Standing Committee's authorization decision on Shenzhen Special Economic Zone in conflict with the Legislative Law. Although there are certain flaws in the legal process of authorization decisions, it can't be ignored that the early authorization legislation exerted a beneficial influence on China's reform and opening up.

After the promulgation of the Legislative Law, the country did not abolish the law on the authorization decision, nor did it explicitly oppose it. Instead, it was assumed that the economic special zones made by the Standing Committee of the National People's Congress would continue to exercise the authorization legislative power. However, in consideration of maintaining the principles of legal governance and legislative authority, as well as providing legal protection for the special needs of the special economic zone, we should seek ways to address these issues of constitutionality and legal basis. We should evaluate the constitutionality of early authorization decisions, revise relevant laws to make up for the shortcomings of early authorization legislation, clarify the scope and procedures of authorization, and comply with the principles of legal governance and maintain constitutional authority, promoting the development of the special economic zone and the sustained success of reform and opening up.

3.2 Analysis of the Legitimacy of the National People's Congress Authorizing the People's Government of Special Economic Zones to Formulate Regulations

In the past, in the absence of clear legal basis, the Constitution became the only basis for determining whether local governments had the power to formulate regulations. The Constitution only stipulates that the ministries and commissions of the State Council have the power to formulate regulations, but does not

specify whether local governments have this power. The Legislative Law promulgated in 2000 only granted the power of the people's congresses and their standing committees of provinces and cities where special economic zones are located to formulate regulations based on authorized decisions, without involving the power of local governments to formulate regulations. However, in the past, the authorization targets for four special economic zones, including Shenzhen, included both the Municipal People's Congress and its Standing Committee, as well as the Municipal Government. The conflict between practical needs and legal gaps has led to legal questioning of the exercise of legislative power by the special economic zone government. Consequently, it is imperative to conduct comprehensive study on the legitimacy and legality of the National People's Congress authorizing the government of special economic zones to formulate regulations. This not only relates to the power of the SAR government, but also involves the improvement and unity of China's legal system. Some scholars consider that granting the government of special economic zones the power to formulate regulations is the development and improvement of authorized legislation in special economic zones [1]. In the local legislative process, administrative agencies and local power agencies usually need to work closely together to ensure the smooth formulation and implementation of laws. In the past, our country had tacitly assumed the legislative actions of the local government in the Hainan Special Economic Zone, which provided important background and support for the subsequent legislative authorization of the special zone. With the rise of other special economic zones, the government has gradually delegated authorization power to the People's Congress and its government to meet the needs of the economic and social development of the special zones. Some scholars deny the legitimacy of granting local government rule-making power, and believe that within the theoretical framework of authorization relations, there must be a clear relationship between the authorized and being-authorized organs, including leadership and being led, supervision and being supervised [2]. Unclear authorization relationships may result in the misuse of authority, confusion, and illegal behavior. The exercise of authorization can't be separated from legal support. Therefore, we should consider the rigor of theory and the practical needs to provide legitimacy and stability for the legal system of special economic zones.

3.3 Review and Supervision of Authorized Legislation in Special Economic Zones

The Legislative Law (2015) requires special economic zones to provide situations on their modifications when

submitting and filing authorized regulations. However, requiring only the situation of the flexibility without the explanation of the reasons for the flexibility makes it difficult for the reviewing authority to fully understand the rationality and necessity of the flexibility, thereby reducing the effectiveness of the review. The authorized authority has too much autonomy in adapting to the law, and there is a risk of abuse of power. Therefore, it is reasonable and necessary to provide sufficient alternative reasons for the legislation of special economic zones, which is conducive to improving the credibility and effectiveness of special economic zone regulations. The supervision of legislation by the state is usually divided into two types, pre-supervision and post supervision, with preliminary supervision mainly including approval and filing. The approval system is a powerful means of supervising the necessity of local legislation, but due to various factors such as efficiency, it is not commonly used in actual authorized legislation. Filing is a common supervision method, but currently there is no clear legal regulation on the procedures and standards of filing review work, which leads to the lack of organizational guarantee and the risk of inconsistency and unfairness in the review process. At the same time, the country also lacks effective relief mechanisms, and once the legislation of special economic zones takes effect, it is difficult to quickly correct possible unconstitutional issues. There are several suggestions in the academic community regarding the current phenomenon of unclear supervisory authority, lack of specific operational rules for supervision, and the mere formality of preparation without review. Firstly, consider establishing an approval system for important authorized legislation, which means that important legislation should only come into effect after being reviewed and approved by the authorized subject [3]. The system of reviewing before taking effect can prevent erroneous legislation without review and approval from causing adverse effects on the public. By introducing review and approval processes in the legislative process, the quality of authorized legislation can be effectively monitored and controlled, ensuring that it meets the requirements of the national legal system. Secondly, refine the procedures for authorizing the exercise of legislative power [4]. If the authorized authority violates procedural requirements, the supervisory authority may declare the authorized legislation invalid, effectively prevent and correct procedural violations through procedural supervision, and maintain the seriousness and fairness of the legal governance. Thirdly, introduce legislative rules for special economic zones. Systematically regulate all aspects of authorized legislation, provide clear guidance for authorized legislation, make the legislative process more

transparent and orderly, and reduce legislative uncertainty and controversies. Fourthly, establish a strict approval and filing system for authorized legislation [5], and establish an active review system for filing and an explicit system for terminating authorized legislation, promptly detect and correct legislative acts that do not comply with regulations, and maintain the stability and integrity of the rule of law system. Therefore, it is possible to consider revising and improving the legal framework, strengthening the transparency of review mechanisms, and establishing effective relief mechanisms. This will help maintain the constitutionality of legislation in special economic zones, enhance the standard of legal governance, and facilitate the continuous and sound growth of the special economic zone economy.

4. The Legal Framework of Authorized Legislation in Special Economic Zones: Power Boundary and Scope Definition

Regarding the scope of authorized legislation for special economic zones, China's current authorized legislative documents only stipulate that authorized agencies should formulate regulations in accordance with the specific circumstances and genuine requirements of the special economic zone. This broad and abstract expression has its flexibility and adaptability, but it has also sparked various interpretations and practices in theory and practice. Some scholars believe that it should be understood as the authorized authority having the authority to establish a complete legal system for special economic zones [6]. The lack of clear boundaries for authorized legislation in legal documents has left a huge gap in the legislation of special economic zones. Special economic zones are encouraged to independently formulate regulations within the legal framework, taking the distinct needs and situations of special economic zones into account, including promoting production development and safeguarding the rightful rights and interests of investors, to ensure that they can effectively promote economic growth and attract investment, and promote the adaptation of laws and regulations to the actual situation of special economic zones. However, in practice, these practices can also bring some challenges. Overly flexible legislation can lead to fragmentation of the legal and regulatory system, and conflicts and overlaps between regulations can cause chaos in the legal system and undermine its unity. Another group of scholars believe that the scope of authorized legislation should be strictly limited to matters related to economic system reform and opening up to the outside world [7]. The main task of special economic zones is to carry out reforms and opening up in the economic field.

The political, administrative, social and other fields of the country are usually national and universal affairs, and they are not required to have a close connection with the specific situation of the special zone. There is no need to adjust them through special legislation for special economic zones. However, when faced with the need to formulate appropriate legal provisions in multiple fields address specific economic requirements of the special economic zone, if authorized legislation restricts the power of the special economic zone to formulate laws in other fields, it may restrict its comprehensive development ability. Therefore, when formulating authorized legislative documents, higher authorities should consider balancing a broad stance and specific regulatory requirements, and improve the legal framework of special economic zones to adapt to the constantly changing requirements of the zones.

With the ongoing advancement of the special economic zone economy, there has always been controversy over whether the legislative actions of the special economic zone should continue to exist. Some people believe that the authorized legislation of special economic zones is a product of a specific era, and its characteristics and advantages are no longer obvious compared to free trade zones and cities with districts[8]. China has already established a market economy system, and central legislation is gradually improving. The necessity of legislation in special economic zones is gradually weakening. Excessive local legislative power may lead to the dispersion and chaos of the legal system, challenging the consistency and authority of the national legal system. Some people also believe that the legislative power of special zones is a supplement and concretization of central legislation[9]. Since China's reform and opening up, the market economy has experienced rapid development, and the level of development in various regions is uneven. Legislation should be formulated according to the specific circumstances of the region. The legislation of special economic zones can better meet local needs, promote economic development, create employment opportunities, and attract investment. The advancement of legislative power in special zones also helps to promote reform and explore new models of rule of law construction. The progression of the legislative power of special economic zones in China's legislative system involves the balance between the unity of the legal system and the actual local situation. On this issue, it is necessary to comprehensively consider the needs of different regions to ensure that the development of legislative power not only maintains the unity of national legal system, but also promotes local economic and social development.

5. Conclusion

In summary, the authorized legislative power of China's special economic zones has significantly contributed to the historical process of reform and opening up, providing robust endorsement of China's development. With the changes in domestic and international situations as well as the continuous improvement of the rule of law system, the authorized legislative power of special economic zones also needs to be constantly adapted and adjusted to ensure consistency between authorized legislation and the national legal system, maintain the principles of the legal governance and constitutional authority, and promote the growth of the special economic zone and the uninterrupted achievement of reform and opening up. Only within the framework of the legal governance, can the legislative power authorized by special economic zones be maximized, providing more opportunities and possibilities for China's modernization construction and international cooperation.

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