ENERGY LAW FROM 2020 TO 2030 (PART 2)*

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Law will play a significant role in the future, in particular, for development of 2030, 2040, and 2050 energy, environment, and climate plans. For example, in order to achieve 2030 climate and energy targets, a corresponding law has to be formulated, passed, and implemented. This is because a functioning energy infrastructure takes not only time to plan, raise funds for, and build, but there are also complicated planning and environmental protection challenges that have to be met. All these lead to another important point: it is the national laws that can stimulate the energy sector development. A national government can set a policy agenda and make sure the law provides the relevant structures, incentives, and pathways for energy sector development. The purpose of this article is to provide a brief, up-to-date view of what energy law science and education should focus on as we move from 2020 to 2030. This article serves to provide a global perspective. Energy law should have similar provisions in all countries as it is based on the same technologies used across the world. What is different is the energy resources countries have at their disposal and the energy sector structures they are trying to create. At the same time, laws on the extraction of energy resources will be the same, including the system of incentives and taxation for the energy resources. Energy law science has already risen to the fore and is now supported by universities. Part 1 of the article is dedicated to energy law as a science and was published in 2020 in the Energy Law Forum journal, issue No. 2. This part focuses on development trends of energy law education and the key energy law development targets for the period from 2020 to 2030.

Keywords: *energy law, energy law development trends, energy law education.*

1. Energy Law Education

Over the past few years, a lot of academic studies have been conducted focusing on energy law from the point of view of both scholars and practitioners. [1]. However, the purpose of this part of the article is to address the situation in energy law science and education that has been researched in the USA and the UK more recently [2]. An approach towards understanding the future of energy law was developed within the *Movement for Modern Energy Law* [3].

It is essential to view energy law education as a global goal. For instance, in legal practice, one could practice energy law in London without having any British clients or knowledge of specific resources owned or controlled by the United Kingdom. Similarly, one could teach energy law as an international or a transnational

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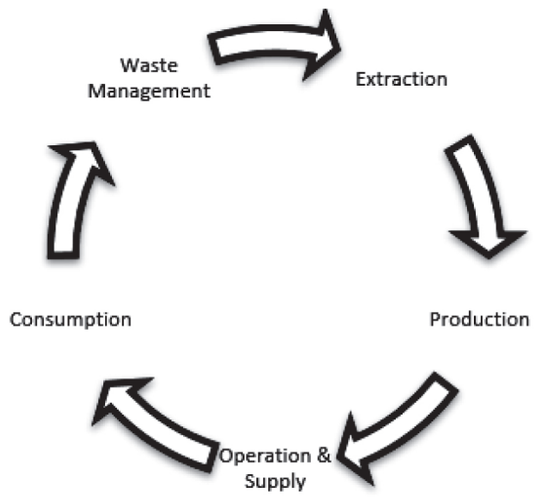

Figure 1. **Energy life cycle** [6]

code of rules and standards in the UK to a group of students who are often not citizens of the UK or even EU. A number of articles has been published recently covering this topic in detail [4,5]. Building upon these recent additions, this article expands the previously adopted definition of energy law as it pertains to energy resource management, as well as rights and responsibilities in relation to all energy system processes at each stage of the energy life cycle. We must think of energy law at a global level. In this case, a direct approach is to think about different processes within the energy system (as shown schematically in Figure 1) and about their action at the local, national, and global levels. This is a work-in-progress definition. Included are all types of primary and secondary energy, renewable and non-renewable, conventional and unconventional energy sources.

This approach with a focus on the energy life cycle is noticeable, although not apparent, in the US and UK Review. A more narrow definition of energy law is needed to develop of an energy law curriculum and will help determine who should conduct research in this area, and who has the expertise to teach this curriculum. Furthermore, a definition needs to be developed pertaining to other disciplines [7], especially when cross-disciplinary energy research is concerned. All cross-disciplinary researchers and informed developers of teaching methods can use the scheme from Figure 1 above directly to determine different stages of the energy life cycle for each of which applicable energy laws should be provided.

According to the Energy Bar Association, advancement of energy law education implies that "*whether a law student is considering a career in the field of energy law or not, understanding how energy is regulated is becoming essential legal knowledge*" [8]. Thus, it can be concluded that certain knowledge in the area of energy law are necessary for all lawyers. In the setting of the coronavirus pandemic and financial crisis 2020, energy law education should be promoted rather than discouraged. As noted by John Henry Newman in *The Idea of a University*, these are the conditions where "*...research is encouraged, discoveries are verified and improved, hastiness is not chastised, and errors are found in intellect-to-intellect and knowledge-to-knowledge interactions"* [9].

In addition to providing their graduates with the knowledge necessary to become energy law practitioners, universities should also encourage them to choose this profession, as well as maintain their teaching approaches flexible so that they could adapt to any challenges they may face working in the energy sector. Therefore, the energy law curriculum developed in the UK offers a number of key purposes, namely: to unite a subject previously seen more as a special element in other, separate subject areas; to contribute to the international community's response to energy problems that cause damage to society.

At the same time, the growth in demand for energy lawyers (careers in energy law) and the potential contribution of energy law to comparative law scholarship should be taken into account [10].

2. Three Key Questions of Future Energy Law from 2020 to 2030

The main concepts of energy policy affecting the law have been described in literature previously [11]. There are, however, three key provisions that will gradually become increasingly important starting from 2020 on (see details below).

Environmental Impact Assessment (EIA)

The purpose of environmental impact assessment (EIA) measures is to strike a balance between development and environmental protection in the global, national, and local communities. There are many other methods and strategies used to balance the goals of development and environmental protection, however, EIA is a formal process under which consensus has been reached at global, and national levels. The purpose of this article is not an in-depth EIA analysis, but rather to show what can be achieved by applying EIA. Even though few environmental protection publications deal with the aspects of EIA, they lead to initiation of legal proceedings on a regular basis. Nevertheless, there is a number of cross-disciplinary texts of this topic. The most important book on the subject of EIA is *Environmental Impact Assessment* by Tromans (2012) that was based on the British experience and offers a very good approach from the point of view of the EU law. Another fundamental publication on EIA laws (considering the experience of Ireland) is Effective Judicial Protection and the Environmental Impact Assessment Directive in Ireland by A. Ryall [12].

In general, the EIA process should be considered a success from the global perspective. It is basically the idea of the philosophy of cosmopolitanism that all human beings are citizens of the world put into action. The philosophy of cosmopolitanism is the belief that we are all *citizens of the world*. Cosmopolitanism has existed in one form or another since the times of Ancient Greece. The first western philosopher to define cosmopolitanism with absolute accuracy was Diogenes, a cynic inspired by Socrates who lived in the 4th century BC. It is said that, when asked from where he came, he replied: "I am a citizen of the world" (Diogenes Laërtius VI 63) [13]. In this vein, the main purpose of the EIA process from its very outset was to impose certain restrictions on development and to guarantee that it goes hand in hand with environmental protection. Any that claims to move toward a low-carbon economy and plans to develop a climate change mitigation and environmental protection policies should welcome EIA. Globally, the EIA process is recommended to be used in all projects funded by international development agencies, such as the World Bank, the OECD, and the UNEP.

Social License to Operate (SLO)

The SLO principle is gaining wide acceptance in energy law [14]. It was developed, in particular, in the community of law, rule, and procedure makers of the extraction sector [15]. SLO is a new type of agreement between the project developer and the local community covering the project implementation stage as well as waste management plans. Basically, it represents what the developer and the local communities have agreed to at the EIA stage of the project. The SLO principle also applies to other parts of the energy sector, and even to other economy sectors. A number of documents examine SLO origin and use in the extraction sector. It is clear that availability of SLO will become a mandatory requirement for operation in the energy industry [16].

Mandatory Financial Assurance for Energy Companies (MFAEC)

It is a general term describing a requirement companies have to meet during energy infrastructure operation. It applies, in particular, to companies that incur waste management obligations. Alternatively, it can mean that such companies shall incur waste management obligations. They can also be called cleanup obligations and green bonds. The nuclear energy sector deposits waste management funds directly during operation, whereas operators in the coal sector are only required to have a dedicated provision for this purpose [17]. Undoubtedly, this has become a serious problem. There are many reports on this issue in relation to operation of coal assets in Australia and the USA [18]. For example, American energy companies are responsible for land reclamation following extraction of minerals under the Surface Mining Control and Reclamation Act (SMCRA) [19]. Nevertheless, many companies were allowed to make their own decisions on green bonds, so when they went bankrupt, it turned out that there were no funds to perform reclamation obligations [20]. MFAEC will soon become

a mandatory requirement for those applying for a permit to build or buy an energy infrastructure.

3. Conclusion

Energy law research in the scientific community has already has grown to become an entire movement known as the *Movement for Modern Energy Law* which can have a significant impact in the future [21]. In the past, energy law research and application practice were dysfunctional, and holistic thought was, and still is, meager. As a result, for one thing, other law branches play a dominant part in legal decisions-making. Using the BP Deepwater Horizon oil spill of 2010 in the USA as an example, the court's ruling was based on tort law rather than energy law principles or rules [22].

Energy law has been traditionally applied to bunkers, primarily in case of oil, gas, and coal, with hardly any exchange of legislative initiatives between countries. In this context, nuclear energy is different from the other sectors as it is governed by relevant international laws. In particular, the subject of global nuclear liability is examined in an article detailing issues of liability in the nuclear energy and shell oil and gas extraction sectors [23].

The goal of the *Movement for Modern Energy Law* is to unite oil and gas researchers, legal scholars specializing in energy law and economy, low-carbon energy experts, and even researchers working on energy taxation issues. Cooperation is needed to develop the discipline and create similar theoretical concepts and principles. Cooperation will help develop a more reliable, effective, and enforceable energy law. If we can achieve this, the overall "risk" level in the energy sector will be lower.

Law in the business world aims to risk reduction and adoption of just decisions for the society. Energy law science and education can be instrumental in this process and ensure effective advancement of the society by 2030. Recent literature describes the problems of the *just transition* to a low-carbon economy in great detail [24]. Organizing a transition of all energy sector structures is one of the key aspects in this context. New expertise must be developed to strengthen the role of regulators in the energy sector. Furthermore, retraining and new learning opportunities should be made available to today's energy workers, so that they could adapt and be included in the energy sector transformation. These latter aspects are also reflected in the sustainable energy law principle.

Generally speaking, policy makers should set long-term goals for the investors via the regulatory framework, since this will guarantee legal certainty of the government's intent. Although difficult, this process will provide an advantage by laying a foundation for building investors' trust: they will be able to make their investments with confidence now due to lower risk levels of new energy infrastructure projects. It is beyond doubt that new energy law based upon the fundamental principles will ensure this transparency and certainty for investors, and it will be of particular importance for the next decade as the society lives in a post-coronavirus world under the conditions shaped by the 2020 financial crisis. ■

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