

Application of Rule of Law Thinking in University Management

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Abstract: *Running the university according to law is the meaning of the strategy of governing the country according to law. With the deepening of the reform of higher education "delegating administration and providing services" and the continuous implementation of university autonomy, the rule of law and standardization of university governance are increasingly prominent. At present, China's regulations on the management of colleges and universities cannot meet the needs of the rule of law in terms of both quantity and content, the management system is not perfect, "rule by man" thinking dominated, the effect of the education of the rule of law is not obvious, students' weak legal consciousness and other problems still exist, which bring great challenges to the construction of the rule of law in colleges and universities. Therefore, it is necessary to change the mode of management thinking, use the rule of law thinking to form the "good law" of colleges and universities, speed up the construction of the rule of law campus, and better serve the needs of the country's rule of law construction.*

Keywords: *University management; Legal thinking; Legal education; Due process*

1. Introduction

In July 2020, the Ministry of Education issued the Opinions on Further Strengthening the Work of Rule of Law in Colleges and Universities, which not only clarified the concept and importance of the work of rule of law in colleges and universities, but also pointed out the direction of the work of rule of law in colleges and universities. As an important place to train high-level talents for the Party and the country, the degree of its legalization determines the level of legal literacy of the trained talents and the level of citizens' legal literacy. We should change the traditional management thinking mode, properly handle the contradictions faced by running schools according to law with the rule of law thinking, as well as the contradictions between the management of colleges and universities and the growing need of teachers and students to safeguard their rights under the independent running of schools, actively serving the construction of national rule of law needs to become an urgent problem in the development of university rule of law work.

2. The Dilemma of Legalization of University Management

2.1 Lack of Perfect Management System

At present, China's laws and regulations related to the management of colleges and universities are few and mostly principled. The handling of specific affairs depends on the internal management regulations of colleges and universities. When the provisions of the upper law are unclear or missing, it will inevitably lead to the problem that the internal management system of colleges and universities is not sound.

2.1.1 Incomplete Laws and Regulations on University Management

At present, China's university management regulations are mainly based on the "Education Law", "Teachers Law" and "Higher Education Law", supplemented by the "Regulations on the Management of Students in Ordinary Colleges and Universities", "Code of Conduct for Students in Colleges and Universities" and "Degree Regulations". [1] Both in quantity and content, they are far from meeting the needs of the legalization of university management under the new situation.

First of all, the legal provisions have obvious characteristics of generality and principle, and the

operability is poor. The Higher Education Law is not only the only law formulated for college education, but also the core of college management and legal construction. The full text has no special and specific provisions on how to carry out the management of colleges and universities. The article only makes a simple explanation on the establishment and improvement of the management body and financial management system of colleges and universities. Even the matters involving the management of teachers and students are also covered by the general and authorized provisions. For example, Article 47 only states that the main body of the provisions on the qualifications of university teachers is the State Council, but in the relevant provisions of the State Council, the evaluation and employment of university teachers is within the scope of university autonomy, which means that the provisions of this content at the national level are missing. Even though the "Regulations on the Management of Students in Ordinary Colleges and Universities" supplements the rights and obligations of students, the corresponding obligations of obtaining loans and grants are still vague and lack of operability.

Secondly, the upper law has insufficient provisions on the supervision of university autonomy. As an important supplement to the Higher Education Law in the management of colleges and universities, the Regulations on the Management of Students in Ordinary Colleges and Universities grants colleges and universities a high degree of autonomy in terms of student status management, degree awarding and disciplinary action. Although it is stipulated that students can appeal and complain about the violations of colleges and universities and their staff, this relief belongs to post-event supervision and depends on students' initiative to start the process. Once students lack awareness of safeguarding rights, they may lose the opportunity to safeguard rights.

2.1.2. Imperfect Internal Rules and Regulations of Colleges and Universities

Due to the principle and generalization of the provisions of the upper law, the internal rules and regulations of colleges and universities have become an important basis for effective implementation of efficient management. From the analysis of the problems and litigation disputes in the management of colleges and universities, the internal management system of colleges and universities still needs to be improved. First, the internal rules and regulations of colleges and universities are lack of systematism and mainly contain administrative content. The formulation of internal rules and regulations of colleges and universities takes the articles of association as the core, and each functional department compiles corresponding implementation rules and special supporting measures in combination with its own work. The contents are numerous and complex, and each department is in a row, and the intersection between systems is not smooth. Inadequate connectivity exists between inner-party supervision and administrative management, student management, teaching management, etc., which is easy to be discounted in the implementation of the system. The second is the lack of democracy and procedural legitimacy in the formulation of internal regulations in colleges and universities. In the formulation of rules and regulations in the school, teachers and students often participate in the collection of opinions, with few opportunities, short collection time and single method. The overall participation of teachers and students is not high. In terms of the procedures for formulating the internal system, especially the rules of the secondary colleges, some universities have not clearly defined the procedures for formulating and issuing the rules, the publicity of the rules is not comprehensive, and the implementation of the principle of due process is flawed. The third is the lack of provisions on democratic supervision mechanism. As for the democratic supervision and management mechanism, some colleges and universities have not made clear provisions. Even if there are provisions, they only carry out necessary supervision on procedural matters.

2.2 The Thinking of "Rule by Man" Exists in Different Degrees in the Management of Colleges and Universities

For a long time, the administrative department of education has adopted the mode of vertical management and micro-management in the management system of colleges and universities. Due to the dependence on administrative means and methods for a long time, the administrative centralization, paternalism and perceptual experiential management thinking still dominates the management work of colleges and universities. The three traditional thinking modes are dominated by "rule by man". The school adopts a top-down management mode to promote the deployment of relevant work, and relies on the administrative authority of leaders to promote the decision-making and implementation of work. However, when the school exercises its management function, there is not only an administrative relationship between the manager and the managed, but also an equal civil relationship between the service. In addition to leading cadres, university administrators also include counselors and head teachers at the front line of management. Their comprehensive qualities are uneven. Many managers have weak reserves of basic legal knowledge and weak awareness of the rule of law. In management, administrative

relations are highlighted and the existence of civil relations is ignored. It is easy to conflict with the current situation that students' awareness of rights is enhanced and the awareness of obligations and responsibilities is relatively lacking, which makes the development of management work passive.

2.3 Students' legal Awareness is Weak

The formation of legal consciousness originates from the cognition of legal knowledge. Influenced by the lack of universality, depth and system of legal education, college students have insufficient understanding of the socialist concept of rule of law, lack of knowledge of legal theory and a half-understanding of legal provisions. In addition, college students are not deeply involved in the world, their minds are not yet mature, and they are vulnerable to the influence of bad ideological trends. They have a wrong understanding of the legal system and legal spirit, but they do not trust the law, and their legal awareness is weak. First of all, the boundaries of understanding of moral violations, illegal acts and criminal acts are vague. Some students use computer technology to steal the final exam papers and send them to their classmates in order not to fail the final exam; During the epidemic prevention and control period, if you know that you are going to and from the medium-high risk areas or have close contact with the relevant personnel, and do not comply with the prevention and control regulations to conceal your whereabouts and illness, you only think that your behavior only violates the moral obligation and ignores the possibility that this behavior may violate the criminal law and constitute a crime. Secondly, excessive reliance on the Internet to obtain knowledge, and the awareness of rights and obligations is strengthened and weakened. According to the latest Statistical Report on the Development of Internet in China, by the end of December 2020, the number of Internet users in China was 989 million, and the number of mobile Internet users was 986 million. Internet users aged 20-29 and 30-39 accounted for 17.8% and 20.5% respectively. Among the Internet users in China, students accounted for the most, accounting for 21.0%. [2] It seems that indulging in the network has become a major feature of the student community in the new era. In case of problems related to law, students are often used to looking for the network first and then professionals for consultation. Due to the virtual and secret characteristics of the network environment, good and bad information are mixed, and a large number of wrong information is intertwined. It is difficult to distinguish the true from the false, and students are easily misled.

2.4 The Effect of Law Education in Colleges and Universities is Not Obvious

At present, the rule of law education in China's universities is mainly divided into general education and professional education. General education is mainly based on the compulsory course of ideological and political theory, "Ideology and the rule of law", and the compulsory course of professional foundation, "Introduction to law", etc. "Ideology and the rule of law" is a public course of multidisciplinary teaching, with a large number of classes, and a relatively small proportion of the legal basis in the teaching of this course. In addition, some ideological and political teachers are not legal professionals, and the interpretation of the content is not comprehensive, and the role of legal education has not been fully played. Although Introduction to Law is a general compulsory course, it is only offered for students of some majors. The course content is extensive and the class hours are limited. The classroom teaching can only be changed into a brief introduction of laws and regulations from point to point, which has a limited role in cultivating students' concept of rule of law.

3. The Thinking of Rule of Law in University Management

The thinking of rule of law is a rational cognitive process that is based on the concept of rule of law, guided by the spirit of rule of law and the principles of rule of law, creates a system of good laws and good regulations, and uses legal norms and principles to comprehensively analyze, judge and reason related matters and issues. [3] The key to using the rule of law thinking is to form the thinking mode of rule supremacy, power standard, unity of power and responsibility and proper procedure. Based on the current situation of extensive administrative and ethical thinking in university management and the weak legal concept of teachers and students, the legal thinking in university management can be discussed from three levels:

3.1 Strengthening of Legal Awareness

First, we should strengthen the awareness of "abiding by laws". Teachers and students are required to abide by the existing laws and regulations, legal values, spirit and methods on the basis of understanding

the basis of the rule of law in university management, emphasize the principle of law first, believe in the principle of law first, and form the awareness of solving problems with legal rules; The second is to strengthen the awareness of "having laws to follow". The rule of law is also a rule of law, the core of which is to use the rule of law, so it is necessary to improve the gaps and deficiencies in the management system of colleges and universities, form stable system rules, and provide a basis for management.

3.2 Clarify the Requirements for Consistency of Power and Responsibility

The relationship between rights and obligations is the core of legal thinking. Distinguishing the relationship between rights and obligations is the basic clue to cultivate legal thinking. Management is not only a social problem but also a legal problem. If we want to solve management problems with the rule of law, we can turn these problems into rights and obligations, and clarify the relationship between rights and obligations in management. While protecting the legitimate rights of teachers and students, we should emphasize the obligations accompanying rights to guide teachers and students to regulate their own behavior, and also draw the bottom line and boundary for teachers and students' behavior. Through the positive publicity of rights and obligations, promote the effective construction of "good law and good governance" in colleges and universities.

3.3 Construction of Procedural Thinking

Due process is the prerequisite for the effective implementation of laws and regulations. In order to realize the static legal principles and the spirit of rule of law in the dynamic real life, it is necessary to follow specific procedures, including legislative procedures, law enforcement procedures and judicial procedures. [4] In the practice of university management, we should form the procedural management thinking of standardizing "law enforcement" and "legislation". On the basis of listening to opinions from various parties, especially the teachers and students who are managed, formulate rules and regulations with legal procedures in accordance with the requirements of the upper law, and handle relevant affairs in accordance with the relevant rules and regulations, and improve the appeal and relief procedures of teachers and students as much as possible for matters that need to be punished within the school, so as to better protect the rights of teachers and students.

4. Promoting the Legalization of University Management with the Rule of Law Thinking

4.1 To Form a "Good Law" for University Management

Aristotle once made a precise statement about the rule of law, "The rule of law should include two meanings: the established law should be generally obeyed, and the law that everyone obeys should be a well formulated law." [5] Therefore, the implementation of the rule of law depends on the formation of good laws. The rule of law in the management of colleges and universities also needs to build a good system that takes into account the needs of school management and the reasonable demands of teachers and students under the framework of laws, regulations and policies.

4.1.1 Improve the Content of Higher Education Laws and Regulations

We should clarify the scope and purpose of the legislation authorized by higher education laws and regulations, and enhance its operability. The formulation of rules and regulations must be authorized by law. The scope of authorization for the formulation of rules and regulations of colleges and universities should be detailed in the Higher Education Law and the Regulations on the Administration of Students in Ordinary Colleges and Universities, and the extent to which colleges and universities can formulate implementation rules should be further clarified. Refine the regulatory provisions of the upper law on university autonomy. For the rules formulated by authorized colleges and universities involving the vital interests of teachers and students, the nature of the rules, the formulation procedures and the review procedures should be clarified, and the scope of use of administrative remedies should be expanded to achieve the purpose of prior supervision. In terms of the post-supervision of the independent running of colleges and universities, at present, only the Interim Measures for the Supervision of the Evaluation of Professional Titles of College Teachers in China has clarified the relevant matters of supervision, and there are no relevant provisions for other teacher management matters and student management matters. Therefore, at the same time of authorization, corresponding regulatory measures should also be introduced to improve the regulation of the operation of the rules and broaden the channels of post-relief for teachers and students.

4.1.2 Improve the Formulation and Modification Procedures of the School Rules and Regulations

First, we should improve the rule-making system of colleges and universities according to the upper law and the school constitution. According to the requirements of the upper law and the school constitution, the school management system is systematically and comprehensively sorted out. Categorize rules according to the work content or nature, simplify the number of rules, build the basic structure of the school system and improve the school system, form the "codification" of the school system, and complete the effective cross connection between systems. Secondly, we should standardize the procedures for the formulation and revision of university systems. Clarify the principles of rationality, legality and procedural legitimacy of the establishment of the internal system in the university charter, and formulate procedural rules for the revision of the system. To restrict the public opinion collection, drafting, review, resolution and publicity of the system, improve the participation of teachers and students in the public opinion collection, and ensure the democracy and procedural legitimacy of the rules and regulations in the school. Finally, improve the review mechanism of university system. Increase the reserve of legal advisers in the school to promote the construction of the legal advisory group, give full play to the role of legal advisers, and integrate the forces of discipline inspection, school affairs, organization and other departments to set up a review body. Review the legality and rationality of the establishment, modification, repeal and implementation of the rules and regulations in the school, give full play to the functions of the supervision department, and ensure the quality and effectiveness of the rules and regulations in the school.

4.2 Improve the Procedural Matters of University Management

The legitimacy of the procedure is an important guarantee for the good operation of the law, so we must adhere to the procedural legitimacy of the university management. First, in the identification of teachers and students' violations of discipline, we should listen to various opinions, collect relevant clues and basis, ensure the accuracy of qualitative analysis, and avoid the abuse of "blind use of power" caused by perceptual empirical thinking mode. The second is to provide appeal and legal consultation channels for teachers and students who violate the rules or are involved in punishment, so as to ensure the realization of teachers and students' right to relief. Refine the provisions on appeals in the Regulations on the Management of Students in Ordinary Colleges and Universities, clarify the departments, procedures, deadlines and other contents of appeals, and ensure the effective implementation of appeals. Third, improve the supervision mechanism. Establish a law enforcement and supervision institution in the school to supervise the administrative activities in the school and improve the punishment mechanism, and seriously investigate and deal with the violations of laws, regulations and policies in the management activities. At the same time, we should unblock the channels of democratic supervision of teachers and students, include the way of democratic supervision and the way of participation in the mechanism, actively explore the introduction system of third-party supervision outside the school, and maintain the good operation of the rule of law.

4.3 Grasp the "Key Minority" and Improve the Legal Literacy of Managers

Party members and cadres are important organizers and practitioners of promoting the legalization of university management. Under the current situation of promoting the effective development of management from top to bottom, grasping the "key minority" of party members and cadres is the key to realize the transformation of university management from the traditional "rule of man" management mode of thinking to the rule of law management mode of thinking. Only by knowing the law can we use it. The change of thinking about the rule of law is rooted in the understanding and mastery of educational laws and policies. Therefore, it is necessary to institutionalize and normalize the study of education laws and policies by Party members and cadres, league school cadres, counselors and class teachers. Through systematic and comprehensive study, we can understand the importance of school management, grasp the basic goal orientation, basic principles and key requirements of university management. Clarify the scope, procedures, key points and boundaries of their own work, and use laws, regulations and policies to reasonably demonstrate and explain management disputes.

4.4 Strengthen the Legal Education of Teachers and Students

The cultivation of legal awareness is a long-term process, which also determines the long-term nature of legal education as the basis for the formation of legal awareness. In the face of the lack of time and pertinence of the rule of law education in colleges and universities, we should also actively promote

education reform and strengthen the rule of law education in combination with the needs of the rule of law construction. First, set up independent compulsory courses of legal education. Separate the basic legal education from the ideological and moral education curriculum, and as an independent basic compulsory course, increase the scope of courses and appropriately increase the teaching duration. The teaching focuses on the interpretation of the socialist rule of law with Chinese characteristics and the interpretation of the Constitution, civil law, criminal law and other core legal departments, with the aim of cultivating students' rule of law concept and belief. Second, innovate the forms and methods of legal education. Make full use of "Internet plus" to enrich the form and content of rule of law education by means of "micro classroom", "micro film", "MOOC" and other means. Realize the effective combination of online and offline education, attract and guide students to form the consciousness of legal knowledge learning, and cultivate the awareness of actively improving their legal literacy.

Since the 19th National Congress, the concept of ruling the country by law has been implemented in all aspects of society. It is imperative to promote the legalization of university management by using the rule of law thinking. However, the cultivation of the rule of law thinking is a long-term process, which requires university administrators to constantly explore and establish a mature rule of law management system based on increasing their own legal reserves and improving their legal awareness, and finally achieve the goal of legalization of university management.

5. Conclusion

It is obvious that the application of rule of law thinking in university management proves significant. At present, there are still great challenges to the management of colleges and universities in China, for example, the quantity and content of university management laws and regulations cannot meet the needs of the rule of law, the management system is not perfect, the thinking of "rule by man" is serious, the effect of rule of law education is not obvious, and the students' legal consciousness is weak. Therefore, we need to change the mode of management thinking and form a "good law" with the rule of law thinking in order to speed up the construction of the rule of law campus. In short, the facts have proved that the application of the rule of law thinking in the college and university management plays an important role in the new era, and we should pay attention to the cultivation of the rule of law thinking of students and teachers.

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