

Research on the Problems in Rural Governance Based on Civil Code Analysis

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Abstract: *The smooth implementation of rural governance lies in how to revitalize the economic development of rural areas. However, the key to rural economic development lies in how to improve the development of rural collective economic organizations. Rural collective economic organizations have been the most important economic organization in rural production and operation activities in China since the founding of the People's Republic of China. Their original purpose was mainly to protect the rights of members of rural collective economic organizations and the appreciation of collectively owned property, in order to ensure that collective members can not only solve the problem of food and clothing, but also achieve the needs of a better life. Based on this, China's measures and legal system for safeguarding rural collective economic organizations are also consistent with economic development. After the promulgation of the Civil Code in 2020, rural collective economic organizations have transformed from non economic organizations to special legal entities. Although some of the powers of rural collective organizations have been explained in a legal manner at present, the relevant systems and corresponding practical activities also need to be further improved.*

Keywords: *Rural governance; Civil Code; Rural collective economic organizations; Village committee*

1. The Nature of Rural Collective Economic Organizations

1.1 The Meaning of Rural Collective Economic Organizations

According to semantic interpretation, collective refers to a collection of multiple people, while economy mainly refers to the finance within an organization. From a semantic analysis perspective, collectives mainly focus on the identity issues of members, while economies mainly focus on property issues within collectives. This also indicates that the nature of rural collective economic organizations is not limited to economic aspects. However, there is no specific law in China that stipulates rural collective economic organizations. Although other laws also involve rural collective economic organizations, the provisions for rural collective economic organizations are still partial or specific to a specific aspect, and there is no legal provision for the relevant issues of rural collective economic organizations as a whole. For example, the Constitution of our country clearly stipulates its business system, which has corresponding provisions for the ownership of collective means of production and its economic nature. Article 8 of the Constitution stipulates that rural collective economic organizations shall implement a dual level management system based on household contract management and combined with unified and decentralized management^[1]. However, there is no clear provision on the definition and exercise of rights of rural collective economic organizations, and other laws also lack such content.

1.2 Reasons for the emergence of rural collective economic organizations

The main reasons for the existence of rural collective economic organizations are to address the dispersion of farmers' production, the limitations of farmers' production scale, and the fragility of agricultural production, in order to maximize the benefits of rural economy and facilitate the management of rural land and production. However, in theory, the understanding of rural collective economic organizations mainly includes: firstly, some scholars, starting from the economic functions of rural collective economic organizations, believe that rural collective economic organizations are collective or organizations that enjoy land or other means of production in rural collectives, and are

centered on agricultural production and operation activities or economic benefits in the respective areas of rural areas (within the scope of townships or village administrative areas). 2) Some scholars believe that rural collective economic organizations are the development of people's communes. On the basis of communes, the implementation of the household contract responsibility system not only has management rights but also management rights. 3) Some scholars, starting from the characteristics of rural collective economic organizations, believe that rural collective economic organizations are both centralized and unified production and operation organizations divided by townships or village administrative regions, as well as decentralized organizational members' family production. That is to say, rural collective economic organizations have collective, regional, and double-layered characteristics.

In summary, since the emergence of rural collective economic organizations, their legal boundaries or content meanings are not clear. In the process of its development, rural collective economic organizations have shifted their nature towards different fields with different historical backgrounds. For example, in the early days of the establishment of the People's Republic of China, rural collective economic organizations and ownership were based on specific civil rights of equity nature enjoyed by farmers' families or farmers. Therefore, during this period, rural collective economic organizations tended to focus on the field of civil law.

But in the 1960s, the rural collective economic organization People's Commune was not only an agricultural production and operation organization, but also a grassroots administrative organization, with its nature biased towards the administrative field. Due to the lack of formal legal subject status, it is difficult to accurately understand and form the meaning and institutional logic of rural collective economic organizations, which hinders their further improvement and development.

1.3 The Nature of Rural Collective Economic Organizations

1.3.1 The duality of the nature of rural collective economic organizations

According to Article 8 of the current Constitution of China, it clearly stipulates the operating system of rural collective economic organizations and stipulates that rural collective economic organizations have the right to independently organize production and business activities under the premise of complying with the law^[1], as well as to abide by the principles of democratic activity within rural collective economic organizations. Collective members can elect management personnel and can recall them through voting. Through these regulations, it is not difficult to see that rural collective economic organizations have a dual nature, one is the management and ownership of collective property, and the other is the membership rights of rural collective economic organizations. So its corresponding functions also have dual properties, namely economic and social functions. The economic function is mainly reflected through the obligation of rural collective economic organizations to carry out production, operation, consumption, and distribution activities related to rural agriculture and other aspects. The goal of exercising economic functions is to achieve the maximization of agricultural economic benefits. Article 10 of the Agricultural Law stipulates that rural collective economic organizations shall, on the basis of household contract management, manage collective assets in accordance with the law, provide production, technology, information and other services to their members, organize reasonable development and utilization of collective resources, and strengthen economic strength. This also demonstrates that rural collective economic organizations shall carry out production and management activities on their collective assets to maximize land efficiency. The principle is to increase the interests of organizational members, with the goal of investing the least and producing the most production capacity. Like other forms of economic organizations, they pursue maximum economic efficiency and achieve maximum benefits. However, unlike other economic organizations, collective economic organizations should seek the interests of members of the collective and serve the overall members of the collective.

The social functions of rural collective economic organizations are mainly reflected in Article 73, which clearly stipulates that in special circumstances, if rural collective economic organizations or village committees need to raise funds and labor from their members, they have the right to do so with the consent of more than half of the members^[2]. Based on the above legal provisions, it is evident that although collective economic organizations are managers of collective property and have certain economic functions, they also have certain public functions. The dual nature of organizational functions also determines the dual nature of the rights of its members, one being property rights based on the economic functions of collective organizations, and the other being identity rights based on public functions.

1.3.2 Rural collective economic organizations have a fixed nature

As mentioned earlier, rural collective economic organizations are organizations with economic and public functions and have regional characteristics, indicating that they have a relatively closed characteristic compared to general organizations.

Firstly, rural collective economic organizations have a fixed nature in terms of geography, dividing regions according to certain township or village administrative units, originating from specific regions and relying on rural land as a means of production for operation and development. Not only that, its main body is also the villagers in the region as members of the organization.

Secondly, the means of production of an organization are closed, and although members of a collective organization have joint ownership of collective property, such joint ownership is inseparable. This indicates that collective economic organizations are closed to the boundaries of the property they can handle, and property cannot flow.

Thirdly, the members of rural collective economic organizations have a fixed nature. In general rural areas, the members of rural collective economic organizations are all villagers of their own village and their descendants, who enjoy the rights and obligations of the village collective organization from birth, and naturally lose them after their withdrawal. This indicates that members of collective organizations are not open, and in many places, there are strict differences between residents and members of rural collective economic organizations. If a resident wants to participate in a rural collective economic group, farmers will definitely not agree. At the beginning of its establishment, rural collective economic organizations were established through administrative means. Unlike other economic organizations, members of a collective cannot establish or dissolve rural collective economic organizations based on the principle of autonomy of will.

The consequence of fixity is that rural collective economic organizations have a certain degree of closeness, and their production and operation scope, means of production, and members are all closed, unable to trade with the outside world and actively engage in internal activities.

2. Problems in Rural Collective Economic Organizations in Rural Governance

With the continuous development of the social economy, our party and country are paying more and more attention to the development of rural economy. There are also many problems in the development of rural revitalization strategies. There are many new challenges to how to develop rural collective economic organizations, how to protect the members of rural collective economic organizations, and the improvement of our legal system. This requires us not only to analyze the methods of solving problems that have arisen in reality, but also to improve rural collective economic organizations from a systemic perspective, and to ensure their functional development from a legal perspective.

2.1 Unclear legislation

Although the current constitution of our country grants rural collective economic organizations a certain degree of autonomy in operation and management, it lacks a definition of the rural collective economy, such as what the organizational form is, the scope of operation, the management methods of the organization, the issues of members in the organization, and the relationship between organizations and members. Therefore, there is a certain ambiguity in the regulations for rural collective economic organizations.

Firstly, the main body status is unclear. According to Article 2 of the Agricultural Law, the term "agricultural production and operation organization" referred to in this law refers to rural collective economic organizations, farmers' professional cooperative economic organizations, agricultural enterprises, and other organizations engaged in agricultural production and operation. It can be seen that rural collective economic organizations are not affiliated with other organizations and have the same legal status as other organizations. However, there is no clear definition of which type of legal entity it belongs to.

The legislation of organizational members is not clear, and the legal system does not regulate the content, scope, and conditions of organizational member rights from a positive perspective. For example, according to Article 264 of the Property Rights Part of the Civil Code, it only stipulates the obligations of rural collective economic organizations. It also clarifies the right to know and the scope of rights of members of collective organizations from a negative perspective, and gives negative

provisions on the obligation to disclose the property status of rural collective economic organizations.

2.2 Legislative conflicts

According to Article 73 of the Agricultural Law, if rural collective economic organizations or village committees need to raise funds and labor from their members (villagers) for the development of production or the establishment of public welfare undertakings, they can only proceed after being approved by a majority of the members (villagers) meeting or members (villagers) representative meeting. We can conclude that rural collective economic organizations not only have economic functions but also social management functions. However, in general, the public functions in rural areas are exercised by grassroots autonomous organizations, namely village committees. According to Article 8 of the Organizational Law of the Villagers' Committee, this indicates that there is a confusion of two main functions regarding the power of collective economic organizations and village committees at the legal system level. Therefore, in the current society, village committees have economic functions, while rural collective economic organizations also have certain public function responsibilities. Under this system, there will be confusion in the functions of these two subjects in specific practice, as the focus of their establishment is different and differences may arise in the process of solving specific problems. For example, there is a power intersection between the two in actual operation, and there is a lack of clear legal provisions for the operation of powers and the assumption of responsibilities after the intersection, which will lead to unclear definition of responsibility. Based on this approach, it will not only exacerbate social conflicts in rural areas, but also hinder the development of rural economy.

1) Inconsistency between villagers and members of collective organizations

Since the General Office of the State Council issued the "Opinions on Improving the Separation of Rural Land Ownership Contract Rights and Management Rights" in 2016, rural contracted land and homestead land have implemented the "three rights separation" [4]. This system mainly guarantees the basic survival and property rights of members of collective organizations, and the management rights mainly solve the problem of revitalizing land management activities, improving the utilization rate of land and the profitability of organizations. But many problems also arise in this mode.

Firstly, for example, in some urban village areas of Guangzhou, Guangdong, outsiders can purchase local housing and obtain local rural household registration, but cannot become members of the collective economic organizations of farmers in the area. The most prominent situation is in relatively affluent areas, such as Liede Village, a famous demolition village in Guangzhou. Due to the distribution of demolition compensation fees, the original collective economic organizations are unwilling for outsiders to join the organization and share their interests.

Secondly, for regions with better economies, their collective economic organizations have been constantly developing and changing, from existing production brigades and teams to relatively advanced organizations such as headquarters and economic cooperatives.

Thirdly, for underdeveloped or poverty-stricken areas, farmers do not have a significant distinction between village collective members and members of rural collective economic organizations. The villagers are not concerned about whether outsiders can obtain membership in the collective economic organization. However, according to the general village rules and regulations, taking my village collective as an example, if a woman joins the village, she cannot become a member of the collective economic organization, but her children can obtain membership. However, for a woman who marries with children, her children born from a previous marriage cannot obtain membership.

Fourthly, in accordance with the original provisions of the General Principles of the Civil Law, for villages that have not established rural collective economic organizations, village committees may act as collective economic organizations within the scope permitted by law. In the current society, there are still a large number of village collectives in China that only establish village committees. This type of village does not establish a village collective economic organization, but rather allows the village committee to exercise the functions of a collective economic organization on its behalf. In fact, for many villagers, the existence of village collective economic organizations is very low. For departmental villagers, village collective economic organizations only exercise the function of contracting and contracting, and their understanding of village collective economic organizations is relatively weak.

According to the purpose of the initial institutional design, the law aims to establish a system where village committees exercise administrative and public service functions, while rural collective economic organizations exercise economic functions. According to the purpose of this system, villagers

should exercise their economic rights as members of rural collective economic organizations and other rights as villagers. But if we follow the above three questions, who will guarantee the economic rights of the villagers who join the village in the later stage? For villages with only village committees or rural collective economic organizations, replacing collective economic organizations with village autonomous organizations to exercise economic functions is not conducive to the economic development of village collectives, which violates the principle of "political and economic" separation in China's administrative level.

3. The Change of Collective Economic Organizations in the Civil Code

In the original legal system, rural collective economic organizations were divided into non economic organizations, but Article 96 of the Civil Code stipulated that the Rural Collective Economic Organization Law should be transformed from the original non economic organization legal person to a special legal person^[5], which fundamentally transformed rural collective economic organizations. The promulgation of the Civil Code not only transformed the original non economic organizations of rural collective economic organizations into special legal persons, but also clearly stipulated that their ownership belongs to collective members, indicating the further development of rural collective economic organizations in the construction of a rule of law society.

3.1 Special legal person status of rural collective economic organizations

The original General Principles of the Civil Law did not provide corresponding provisions for the subject status of collective economic organizations. However, under the background conditions at that time, various regions carried out corresponding reforms and development, and had different provisions for the legal status of rural collective economic organizations.

Firstly, it is necessary to establish rural collective economic organizations as unincorporated organizations with a dominant position. For example, according to Article 13 of the Guangdong Provincial Regulations on the Management of Collective Economic Organizations (revised according to the Guangdong Provincial Government's Decision on Amending the Guangdong Provincial Regulations on the Management of Rural Collective Economic Organizations on May 31, 2013), rural collective economic organizations have the power to operate, manage, and benefit from collective means of production^[6]. From this provision, rural collective economic organizations have a certain legal status and engage in civil activities as an independent civil subject. This regulation clarifies the legal status of rural collective economic organizations and their power over collective means of production, that is, under the premise that collective organizations enjoy the same ownership of collective property, they have disposable property, which indicates that collective property has liquidity.

3.2 The content of the Civil Code regarding rural collective economic organizations as special legal persons

3.2.1 Establishment of the Legal Status of Rural Collective Economic Organizations

The original legal system was relatively unclear about the legal status of rural collective economic organizations. In the past decade or so of legal systems and policies, there have been no relevant legal systems or regulations to regulate the legal status of collective economic organizations. Instead, through continuous exploration in various regions, local laws and regulations have been promulgated to protect the economic rights related to collective economic organizations.

3.2.2 Clarified the property ownership of collective economic organizations

This clearly stipulates in Article 262 of the Civil Code the issue of the power operation of production materials that belong to the collective ownership of rural farmers. This emphasizes that rural land and other property are legally owned by rural collectives, not individual members of organizations, and clarifies the ownership of rural property.

3.2.3 Separating political and economic functions

Unlike the previous confusion between administrative organizations and rural collective economic organizations, the promulgation of the Civil Code separated rural collective economic organizations from village committees. This further clarifies that collective property is exercised by rural collective economic organizations, preventing the government from using administrative means to utilize

collective property.

3.3 Clarification of the Rights of Rural Collective Economic Organizations and Members

In the past, rural collective economic organizations emphasized more on the identity of members rather than the investment of funds. The promulgation of the Civil Code is of great significance for balancing the relationship between property and identity. The promulgation of the Civil Code helps to clarify the power of rural collective economic organizations. According to previous legal systems and policy objectives, the ownership in the regulations is the collective ownership of socialist working people, with more emphasis on its political significance. But now, the promulgation of the Civil Code emphasizes that ownership is a property right and fully emphasizes the rights of members of the collective.

4. The shortcomings of the Civil Code in addressing issues in rural governance

4.1 The issue of rural collective economic organizations and village committees has not been resolved

Article 8 of the Organization Law of the Village Committee stipulates that the village committee has the power to manage collective property. The village committee shall, in accordance with legal provisions, manage the land and other property collectively owned by the village farmers, guide the villagers to make reasonable use of natural resources, and protect and improve the ecological environment. There will be legislative conflicts between this and the provisions in the Civil Code, and there is no clear legal provision on how to handle the relationship between village committees and rural collective economic organizations. The two belong to organizations of different natures, one representing grassroots organizations of administrative nature and the other representing collective organizations of economic nature. If there is a cross and overlap of power between the two, will it have adverse effects on the construction of the rule of law in rural governance.

4.2 The rights of members of rural collective economic organizations are not clearly defined

Although the promulgation of the Civil Code clarified the membership rights of rural collective economic organizations, which was not present in previous legal systems and had a certain degree of progress. However, the system for the overall membership rights of rural collective economic organizations has not yet been established or improved. How to solve the problem of obtaining membership rights, what rights members enjoy, what obligations they should bear, how to exercise their rights, and how to provide relief for rights when they are violated. The most important issue in the process of rural governance is to solve rural financial problems, which involves the identity and property rights of members in rural collective economic organizations, namely the member rights mentioned above.

4.3 The rights of collective ownership are not clearly defined

The promulgation of the Civil Code has transformed the political power of rural collective economic organizations into property power. So, what are the powers of rural collective economic organizations? Although the Civil Code stipulates collective ownership, how should collective ownership realize the value of its power. Not only that, after China clarified the "separation of three rights" of land, collective ownership has also been weakened. In legislation, the prominent emphasis is on the right of households to contract and manage land and the ownership of homesteads, without collective ownership. Not only has power been weakened, but rural collective economic organizations have also been weakened. In existing rural areas, many rural collective economic organizations have withdrawn from rural economic activities after the original land contract was issued. The promulgation of the Civil Code should make certain changes to rural collective economic organizations, from passive exercise of power to active exercise of power. In the past, policies and legal systems emphasized that rural collective economic organizations enjoyed collective land ownership, operated and managed collective property to ensure the survival and development of their members and the role of social security. This view emphasized more political significance, but this goal is not realistic for existing rural collective economic organizations. So, are the existing rural collective economic organizations still following this goal, or what are the obligations corresponding to the power of rural collective

economic organizations?

5. Suggestions for the Future Development of the Civil Code

The Civil Code, as a private power law for citizens, is formulated to safeguard the legitimate rights and interests of civil subjects, adjust the rights and obligations between equal civil subjects, and maintain market economic and social order. Clarifying the issue of collective economic organizations can better play the role of our rural collective economic organizations, which is conducive to better advancing our party's rural revitalization strategy and promoting further development of the rural economy.

5.1 Clarify the functions of rural collective economic organizations and village committees

Clarifying the functions of rural collective economic organizations and village committees is to distinguish the functions of administrative units and economic organizations, and to separate the powers of the two. To avoid the intersection and overlap of economic and administrative functions, how to solve the problem of some villagers' unwillingness to join the collective economic organization of their unit by external personnel, as mentioned earlier. Moreover, the confusion between the functions of the two can also lead to administrative units replacing economic organizations in exercising economic functions.

For example, the problem caused by both being special legal persons is that a special legal person is first and foremost a legal person. According to China's regulations for legal persons, a legal person is an organization with civil rights and capacity for civil conduct, independently enjoying civil rights and assuming civil obligations in accordance with the law, and the legal person bears civil liability with all of its assets. In the case where both are special legal persons and have management functions over collective property, whether the property referred to by the village committee will be confused with collective property when assuming civil liability and how to solve this problem should be emphasized in the subsequent development of the law.

5.2 Clarify the identification and rights relief of members of rural collective economic organizations

Although the Civil Code has certain provisions on the membership rights of rural collective economic organizations, it positively stipulates that rural collective property belongs to collective members and, in terms of the obligations of collective economic organizations, stipulates that members have the right to access and copy. However, the regulations for the members of rural collective economic organizations are still incomplete.

5.2.1 Determination of Membership

According to our country's original intention of establishing rural collective economic organizations is to manage and operate the collective property of our village, and ensure the survival and development of members of this collective organization. Therefore, how to define the members of this original intention and determine their membership has become a hot topic. From the questions raised earlier, we can see that some villages deny the identity of migrant populations as members of collective economic organizations.

According to general village rules and regulations, the membership of a collective economic organization is obtained from its birth, and the married woman automatically relinquishes her membership of the collective organization from her marriage. Women who marry from another village do not have the membership status of the collective economic organization in their own village, but enjoy it with their children born to collective members. For other migrant populations, even if they obtain the identity of villagers in their own village, they cannot obtain the identity of collective economic organizations in their own village. How to scientifically and reasonably determine the membership of collective members has become a difficult point in China's current process of promoting coordinated urban-rural development. Future laws should explore a scientific standard and method for determining membership, ensuring the legitimate rights and interests of these individuals

5.2.2 Remedies for Members' Rights

The infringement of member rights mainly stems from collective members, individuals outside the collective, and administrative organizations. From the perspective of collective members' infringement,

the existing laws generally require villagers to govern their own property disputes or resolve them through their village committees. Although we emphasize grassroots organizational autonomy, can disputes between members be resolved through autonomy of will. In addition, when someone outside the collective intentionally damages the rights of the farmer collective or members of other collective economic organizations, the existing legal system does not provide specific provisions on how collective members should protect the legitimate rights and interests of the collective or themselves. Moreover, when administrative units infringe on the rights of members, how should they solve it? For example, in the current popular issue of forced demolition, can the government intervene in the freedom of will of both parties in the transaction, especially in cases where some administrative units use their power as a threat to influence the success of the transaction, how to protect the rights of members. But there is no regulation on how to request relevant organizations for relief when their rights are infringed.

6. Conclusion

The promulgation of the Civil Code has made significant changes to collective economic organizations, especially by transforming them from non economic organizations to special legal persons. This to some extent helps them carry out their business management functions, deepen the development of China's rural revitalization strategy, and achieve further development of the rural economy. Clarifying the ownership of rural collective economic organizations helps to distinguish their functions from those of village committees to a certain extent, and is conducive to better exercising the ownership of collective property. The rights of members have been clarified, and there are laws to follow when collective members exercise their rights. However, there are also shortcomings. Rural governance cannot do without the protection of laws. I believe that in the future, laws will become more and more perfect, providing a good legal environment for rural governance.

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