

# *A Study of Relationship of Public Policy to the Law Operation*

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**Abstract:** Public policy is a public action plan, program and guideline formulated by the public authority of society, such as the government, in order to achieve social goals and solve social problems. It plays a pervasive role in the process of legal operation and has a far-reaching impact on legislation, justice or law enforcement. While the objective necessity and reasonableness of this impact should be recognized, the possible negative impact of public policy in the operation of the law should not be overlooked, and public policy should be prevented from impacting and weakening the authority of the law, and from distorting or replacing the function of the law by public policy. Therefore, it is necessary to rationally position the interrelationship between public policy and law, and strive to make public policy play a guiding role in the formulation and implementation of law. The realization of this rational positioning is mainly accomplished through the legalization, democratization and scientification of public policy.

**Keywords:** public policy, law, impact

## 1. Introduction

Due to the complexity of social life and the limitations of people's cognition, the creation and implementation of laws cannot cover all social relationships and solve all social contradictions. These issues cannot be solved by the improvement of legislative technology and the soundness of the legal system. Such defects will inevitably lead to difficulties in legal application, causing confusion for the public to abide by the law and judges to adjudicate cases. Public policy, as a manifestation of the government's exercise of administrative power, is also a form of accumulated experience. In some cases, its effectiveness and universal binding force are more easily understood and recognized by various sectors of society, including legislators and judges, making it more effective. Both legislative and judicial organs should show necessary, reasonable, and good faith respect for this impact.

Furthermore, a reasonable positioning of the relationship between public policy and law is necessary.[1] Due to the current lack of a reasonable positioning, existing public policies and laws, as well as their respective systems, have not formed a reasonable, harmonious and complete system, and conflicts between them are not uncommon. This not only hinders the implementation of public policies and laws, but also damages their credibility and effectiveness. At the same time, the incompleteness of the relationship between public policy and law may also lead to different and isolated interest groups formed by different policy-making departments, resulting in the overall interests of society being ignored. It should also be noted that public policies may have a negative impact on the legal operation process, which may deviate from the value goals and pursuits of both.

This also requires streamlining the relationship between public policy and law, and minimizing the adverse consequences it may bring.

## **2. The Relationship Between Public Policy and Law**

Public policy and law are not opposites, but influence and permeate each other. There are differences between the two, but they also adapt to each other. [2] From an empirical point of view, in situations where public policy and law coexist, public policy and existing law act in the same field and complement each other. Some public policies are formulated for the implementation of the law and become tools for the implementation of the law, some public policies are transformed into part of the law and become “policy provisions” of the law, and some public policies become principles of the law. Where the law is not in place, public policy has its own independent role to play, with a unique value or alternative meaning. When the time is right, a particular public policy may be transformed into a law. It can be seen that the relationship between public policy and law is multidimensional.

Specifically, the relationship between public policy and law is as follows: 1) Both public policy and law are tools and means for the state to carry out social management, jointly adjusting, controlling, and regulating social relations. 2) Public policies can often be transformed into guiding principles of law or the law itself. Although public policy and law have the same functional nature, their scope of application is not entirely the same, and they only take effect in the field of social relations that belong to their own adjustment. There is also a clear difference between public policy and law: 1) Law is formulated by state organs based on statutory powers and in accordance with statutory procedures. It reflects the will of the state and the public, and is a contractual document between all citizens. And public policy does not have the attribute of national will. 2) The law is mandatory and punitive, relying on its coercive power to make people generally comply. Public policies may not necessarily be backed by coercion. 3) The law has strong stability. Public policies are flexible and variable, with relatively weak stability.

Because of the stability of the law, it is inevitable that there will be loopholes and lags. At the same time, in the process of law-making, different interest groups may have conflicting interest needs and value beliefs, so there may be intense conflicts and contradictions at any time. That is why the importance of public policy is indispensable. In modern social governance, the law is not the only and all-powerful thing. It is good laws and policies that is the necessary condition for good social governance and the guarantee that society will move towards fairness, justice and harmony. Emphasizing the independent significance and value of law does not mean that law and public policy are diametrically separated or even opposed. The two actually constitute a system of rules of social behavior, both have the function of guiding and adjusting the relationship of social interests and guiding the operation of public power. And both need to follow the basic values of society and implement the principle of social justice.[3]

## **3. The Impact of Public Policies on the Legal Operation Process**

### **3.1. The Impact of Public Policies on Legislation**

Among the legislature, the judiciary and the executive, governmental institutions often play the role of underwriting social governance. It is impossible for the law to provide for all social problems in advance, and many emergencies that the legislature and the judiciary are unable to resolve require a response from government agencies. In the face of these social problems, government agencies must quickly choose the measures they deem appropriate, rather than waiting for the legislature to formulate the corresponding legal norms. In addition, government agencies are often the ultimate bearers of social problems for which the governing body is unknown.

Accordingly, there are cases in which legislation directly translates proven public policies into legal provisions, i.e., guiding public policies are directly transformed into specific and stereotyped legal provisions. Moreover, public policy also serves as the basis for the revision and replacement of laws. Changes in public policy can respond to the collective needs of society, and changes in the law can also refer to the content of public policy. Legislation may be guided by the spirit of public policy, which may be reflected in legal provisions.

### **3.2. The Impact of Public Policies on the Judiciary**

Firstly, public policies have a significant impact on conviction and sentencing. How a judge makes choices within his or her discretion is influenced by the public policy of the time.[4] Secondly, public policies influence the attitude of judicial authorities towards the behavior and rights of members of society. What kind of tendentious views expressed on issues that are not explicitly allowed or prohibited by law will be influenced by the policy background at that time. In addition, public policy often becomes one of the means for judges to balance the interests of all parties during the trial process.[5] The trial process is not a one-on-one play by judges, but a process involving the parties and professional groups. In this process, judges, parties, and lawyers engage in dialogue based on different understandings of facts and law, ultimately seeking acceptable answers. The public opinion and mainstream values determined by cultural factors, considerations of public policies, trade-offs between different interests, and the impact of judgments on society will all permeate into the final judgment of judges. Judges will try their best to use the most authoritative and socially agreed reasons in their judgments, in order to make the judgments more persuasive.[6]

### **3.3. The Impact of Public Policies on Law Enforcement**

Public policies can enhance the effectiveness of law enforcement. Some public policies do not have an independent substance, but merely express an attitude of the government. In social practice, public policy is more dynamic than legal norms, and the main role of such public policy is to strengthen the implementation of the law in specific areas. The dissemination of public policy is quick and extensive, and there are two main ways in which it is disseminated: firstly, the news media and other propaganda tools, such as newspapers, radio, television, slogans, boards, etc., which send public policy directly into the homes of the people, and secondly, public policy is communicated within the administrative unit through the issuance of documents and meetings. If the former means is widely publicized to the public, the latter focuses on getting the officials who implement and apply public policies to master them. It is often conveyed face-to-face through meetings, which is also quick and has the effect of reinforcing acceptance.

Public policy is grasped by the general cadres and masses through the above means, and will quickly receive the effect of implementation. In this way, public policy, with its distinctive attitude, concise and easy-to-understand provisions and thought-mobilizing language, has a strong appeal and infectious power, and can be rapidly disseminated among the general public, thus mobilizing the general public's participation in an extremely rapid manner.

### **3.4. The Negative Impact of Public Policies on Legal Operations**

The impact of public policies in the process of legal operation is objectively inevitable and reasonable, but the negative impact that public policies may have in the process of legal operation should not be ignored.

### **3.4.1. The Influence of Rule by Man**

Using legal rules as authority can effectively constrain power and prevent arbitrary arbitrariness of power. But it is not enough to emphasize the importance of rules, it is also necessary to require clarity and predictability in their operation. However, public policy does not have the characteristics of legal rules that prevent arbitrary arbitrariness of power, constrain the discretion of officials, and ensure reliable and predictable operation. It is actually influenced by power and has characteristics of human rule such as arbitrariness, uncertainty, and unpredictability. The important role of public policy in the operation of the law often means the expansion of administrative power and the weakening of legal authority, which means that the function of the law is replaced by policies, indicating a strong color of rule by man and a weak color of rule of law.

### **3.4.2. For the Benefit of Rulers**

The expansion of the role of public policy allows government officials to use the power of public policy to evade legal supervision and constraints, expand their power, and maintain their privileges and vested interests. With the power of policies, rulers maintain their own privileges and extensive discretion in various fields. With it, rulers equate their own interests with the interests of the social community and demand that the interests of citizens be subject to the needs of the government and the requirements of administrative convenience.

## **4. Enlightenment on the Relationship between Public Policy and Law**

### **4.1. The Legitimacy of Public Policies**

In pursuit of fairness, administrative agencies that formulate public policies must adopt appropriate procedures in decision-making. Control administrative power and prevent improper exercise of power through hearings and participation in the operation of administrative power.

In terms of content, public policy must be rational, which is a prerequisite for its legitimization. As an authoritative means of allocating social resources, public policy must first and foremost take account of people's value orientation and psychological tolerance. In terms of procedure, the legalization of public policy should also comply with legal procedures. For example, the procedure of administrative adjudication, the procedure of political hearing, the procedure of proving, and the procedure of decision.

In cases where there are legal provisions, the provisions of public policy on relevant matters shall not exceed the law. In the absence of legal provisions, matters other than legal reservations can be involved. Adhere to the fundamental principle of putting law first. The supremacy of law means that in a country ruled by law, the law has a decisive role above all else. The supremacy of law also means that the makers and implementers of public policies must exercise their powers within the scope stipulated by the Constitution and laws.

### **4.2. Democratization of Public Policies**

Firstly, public policies should fully reflect public opinion. Public opinion represents a moral judgment of the general public based on public order, good customs, and centered on the evaluation of good and evil, and reflects a popular sentiment. A healthy society should be a society where public opinion is freely expressed and fully respected. In a country that pursues democracy and the rule of law, the government should strive to ensure that social will is fully expressed and that its channels of expression are unobstructed. At the same time, in the process of formulating and implementing public

policies, channels for expressing public opinion should be kept open, public participation should be encouraged, and the right to information of the public should be guaranteed.

Secondly, channels for the expression of public opinion should be kept open in the process of formulating and implementing public policies, and public participation should be encouraged. People's cherishing and active exercise of their rights is also indispensable to the democratization of public policies. The attitude and role of public policy subjects in the decision-making process can have the potential to disregard the rights of the population. Because of the different perspectives of high-level policymakers, it is difficult to ensure that the implementation of public policies involving the immediate interests of ordinary people will not result in serious violations of people's rights, or that there will not be slackness or indifference to people's rights in the process of implementing public policies.

Thirdly, the people's right to be informed should be fully respected and guaranteed. Public policy affects the rights and obligations of the people to a greater or lesser extent. Only when the people have sufficient information about public policy can they engage in dialogue with the government on the same information platform and realize their participation in the governance of public affairs. In addition, asymmetry in the channels of communication will result in a unidirectional dissemination of public policy information. The Government should disclose information to increase the public's understanding of public policies, so that the public can make rational analyses and judgments. In the case of the death penalty policy, for example, the disclosure of death penalty figures by retentionist countries would enable the public to evaluate the policy on the death penalty on the basis of empirical research, and the conclusions reached would thus be more convincing.

### **4.3. The Scientification of Public Policy**

First, construct a public policy decision-making framework with the participation of all parties and mutual constraints.[7] Major matters related to the national economy and people's livelihood are taken into democratic form to enhance their legitimacy. Procedures and systems such as hearing, auditing, expert consultation, and argumentation can not only enable administrative units to have extensive and frequent contact with people from all walks of life, but also enable the government to have a more sensitive response to the intentions of society, ensuring that government decisions are as much in line with the wishes and interests of the people as possible.

Second, maximize access to relevant information for public policy decision-making. Maximize the solution to the disadvantages of information asymmetry on public policy decision-making. The makers and participants of public policy decisions should listen to the opinions of various sectors, classes and geographic regions. Public opinion surveys can be used to ensure the objectivity and authenticity of information collection, and to obtain decision-making information and reflect public opinion. To this end, a certain amount of human, material and financial resources will be required, which will increase the investment in public policy decision-making.

Third, the transparency of the public policy process should be increased. Increased openness and transparency in the decision-making process of public policy is conducive to increasing public acceptance of and participation in the formulation of public policy and reducing resistance to its implementation. Government information can be widely disseminated through a variety of communication media, so that the public can effectively participate in the public decision-making process and monitor the entire public management process.

## **5. Conclusion**

The relationship between public policy and the law in real life, on the one hand, public policy fills the gaps in the law, making the law more complete, and in some cases public policy can be

transformed into law, on the other hand, public policy and the law complement each other, public policy to assist in the implementation of the law, and the process of implementing public policy needs the law. Therefore, the relationship between public policy and law is diverse and complex, and public policy and law should be complementary and mutually reinforcing.

In fact, the relationship between public policy and law is an objective expression of the common response to social change. In order to cope with the emerging new problems, public policy and law need to be in a coordinated, adaptive co-changing state. Only by keeping the two in a state of interaction can we overcome the lag of law and the arbitrariness of public policy. In this process, the two coordinate and complement each other to overcome their respective limitations, so that the law has more public policy considerations, so that public policy has more legal elements, and jointly promote the healthy operation and coordinated development of society.

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