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气候资源立法的法律逻辑



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On the Legal Logic of Climate Resource Legislation

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中文摘要:

受自然资源法律传统的影响,在我国自然资源立法理论与实践,保守性和滞后性表现较为明显,难以适应新的自然资源类型开发利用对立法的需求。气候资源的特点及开发利用过程的特殊性,决定了气候资源立法不能以物权制度设计为前提,而应将行政权作为立法的内生变量。以此为前提,气候资源立法的基本制度构成应包括以下三个方面:气候资源利用准入的合理管制与引导;消除气候资源利用过程中的外部性影响;协调气候资源利用可能引发的利益冲突。

English Summary:

The tradition of natural resources law has influences upon our current theory and practice of natural resource legislation. Conservative and lagging performance is more obvious, and it is difficult to adapt to the need for legislation for the development and utilization of new natural resources type. Based on the climate resources characteristic and the special process of development and utilization, climate resources legislation does not conduct the property right system design as the prerequisite, and should take the administrative power as the endogenous variable of legislation. The Climate resources legislation system structure should include the following three aspects: reasonable regulation and guidance on climatic resource utilization access, eliminating external influence in the process of the climate resources utilization, coordinating the conflict of interests which may be triggered by of climatic resources utilization.