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## Constitutional basis for the development of legislation in the field of subsoil use

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**Abstract.** The development of legislation in the field of subsoil use in Kazakhstan has been a continuous process since the country gained independence in 1991. The original legislative framework was created in the early 1990s, and since then it has undergone several revisions and updates to keep pace with the changing needs and priorities of the country's subsoil sector. The study analyzes the development of legislation in the field of subsoil use, taking into account its constitutional foundations. The following aspects will be considered in the work: a historical overview of legislation in the field of subsoil use, from ancient times to modern times period. Assessing contemporary challenges and problems associated with subsoil use, such as conflicts of interest, environmental threats, and the necessity to improve regulation and control. Consider ways to improve legislation and its compliance with constitutional principles to ensure more effective management of subsoil resources and ensure sustainable development. This study will help to better understand the evolution of legislation in the field of subsoil use and identify key areas for its improvement, taking into account the constitutional framework.

**Keywords:** subsoil use, subsoil laws, development of subsoil use, legislation, constitutional foundations, Kazakhstan, sustainable development, licensing procedures.

## **Introduction**

The formation of the mineral resource industry in Kazakhstan represents an important part of the historical, economic and social development of the country. Minerals such as oil, natural gas, metals and minerals play a key role in the economy of Kazakhstan, providing significant revenue to the state budget and contributing to the development of infrastructure, industry and other sectors.

The history of the formation of this industry is rich in events and changes that have shaped the current state of affairs. Since Kazakhstan's independence in 1991, the country has faced challenges and opportunities in the field of subsoil use. The process of unlocking and using natural resources was associated not only with economic benefits, but also with issues of environmental sustainability, social responsibility and legal regulation.

In this study, we will review the historical stages of the formation of the mineral resource industry in Kazakhstan, starting from the moment of independence, and consider the key factors influencing the development of this industry. We will also explore changes in the legislation and constitutional framework governing subsoil use and their impact on the economic and environmental development of the country.

The purpose of this study is not only to analyze the past, but also to identify strategic directions for the further development of the mineral resource sector in Kazakhstan, taking into account modern challenges and global trends.

The beginning of the formation of the mineral resource industry in Kazakhstan can be attributed to the acquisition of independence in 1991. In parallel with the development of the General Civil Code, laws on oil and gold and minerals in general were quite actively developed. One of Kazakhstan's first laws on subsoil use was the Code "On the Processing of Subsoil and Mineral Resources" dated May 30, 1992. The Code played an important role in the development of mining in the economy of Kazakhstan. It became the legal basis for subsoil use in the country, which led to the adoption of the legally significant Decree of the President of the Republic of Kazakhstan "On subsoil and subsoil use" on January 27, 1996. With the adoption of this Decree, the Subsoil Code lost force [1].

In Soviet times, obtaining permission to develop the country's mineral resources was almost impossible. Thanks to independence, we now have full rights to explore study, and develop deposits of ores, precious metals, and metals. Information that the vast expanses of Independent and sovereign Kazakhstan are rich in mineral resources has become widespread among interested foreigners. The need to adopt a new Subsoil Code was caused by the influx of foreign investment into the region. When foreign investors began to evaluate Kazakhstan's legislation as it applied to them, they discovered many gaps and inconsistencies inherent in the 1992 Subsoil Code.

Most importantly, the ideology of the Code was recognized as inappropriate to the new conditions. The Code was based on a framework relationship and was designed to work with state-owned enterprises that were heavily dependent on government agencies. The emergence of foreign companies in the Kazakhstan market urgently required the regulation of legal norms, especially the foreign investors themselves needed this [2].

Foreign countries have influenced the subsoil of Kazakhstan, especially in the oil and gas sector of the present time. Many foreign companies, including major oil and gas companies, have made significant investments in Kazakhstan's subsoil sector, bringing with them advanced technologies, experience, and significant capital investments.

This impact can be divided into several key aspects:

**Foreign investment and technology:** Many foreign oil and gas companies have invested in the development and development of oil and gas fields in Kazakhstan. These investments allowed Kazakhstan to use modern technologies and mining methods, which increased its mining capacity and production efficiency.

**Cooperation through joint ventures:** Many foreign oil and gas companies have entered into agreements on joint activities with Kazakh partners. This contributed to the exchange of experience and technology, as well as the creation of new jobs and infrastructure in the mining regions.

**Export and Transportation:** Foreign countries, particularly Russia and China, have become important partners for Kazakhstan in the export of its oil and gas. This required the development of infrastructure for transporting energy resources through the territory of other countries and the creation of international transport corridors.

**Regulation and control:** Foreign investors and companies have also influenced Kazakhstan's legal and regulatory environment in the field of subsoil use. This has led to the development of new laws and regulations governing the oil and gas industry.

**Social Impact:** The development of the oil and gas industry has attracted labor and specialists from foreign countries, which has had an impact on cultural exchange and socio-cultural dynamics in regions where oil fields are being developed.

In general, foreign countries, especially neighboring states and large oil and gas companies, have played and continue to play an important role in the formation and development of the oil and gas sector in Kazakhstan. This impact can be positive, promoting economic growth and technological development, but can also be accompanied by challenges associated with the environmental and social aspects of natural resource development.

## **Methods and Materials**

To write an article about subsoil use and its constitutional aspects, a variety of research methods were used. Combining various research methods makes it possible to obtain a more complete and in-depth understanding of the topic of subsoil use and constitutional foundations, which helps to compose an informative article. To better understand the situation in Kazakhstan and compare it with world practices, methods of comparative analysis of legislation and practice of subsoil use in other countries were used. To understand the relationship between various aspects of subsoil use and constitutional principles, systems analysis and modeling methods were used. This is a fundamental approach to systems analysis, which involves considering the subsoil use system as a whole, rather than its individual components. Systems thinking is used to identify the structure of a system, the relationships between elements, and identify the key variables that influence its functioning.

## **Discussion**

The development and constitutional framework of legislation in the field of subsoil use is critical to ensuring responsible and sustainable management of natural resources. The discussion will examine the significance of developing legislation in this area and the constitutional principles underlying it.

Firstly, the development of legislation in the field of subsoil use is necessary to create a legal framework regulating the exploration, production and use of subsoil resources. Such legislation provides clarity regarding the rights and responsibilities of stakeholders involved in subsoil use activities, including the state, companies and local communities. This helps prevent conflict, ensure fair competition, and promote transparency and accountability in the subsoil sector.

The constitutional framework plays a critical role in the formation of legislation in the field of subsoil use. Constitutions often recognize state ownership of mineral resources and establish principles for their management. These principles may include environmental protection, sustainable development, and equitable distribution of benefits derived from mining activities. The provisions of the Constitution provide a sound basis for the adoption of laws that are consistent with these principles and protect the interests of the state and its citizens.

In the case of our country Kazakhstan, the Constitution from the period of its founding directly stated that the subsoil and its resources are the exclusive property of the state. This constitutional provision establishes the legal basis for state control over subsoil use and lays the foundation for the development of legislation in this area. The Constitution also emphasizes the importance of rational use and protection of mineral resources, which reflects the country's commitment to sustainable development.

Subsoil legislation typically covers various aspects, including licensing procedures, environmental legislation, taxation and revenue distribution mechanisms. These laws aim to strike a balance between promoting economic development and protecting the environment. They often require companies to conduct environmental impact assessments, implement mitigation measures, and adhere to strict safety standards.

In addition, constitutional principles such as transparency and accountability are critical when developing legislation related to subsoil use. Laws in this area should ensure that information on subsoil use contracts, revenues and environmental impact assessments is available to the public. Such transparency helps prevent corruption, increase public trust and ensure effective public participation in decision-making processes.

The development and constitutional framework of subsoil law is an important topic with many aspects that may vary between countries and contexts. In most countries, the constitution establishes the principles of subsoil management. As in Kazakhstan, at the moment the Constitution guarantees the right of ownership of the subsoil of the state. Comparing this with other countries, one can see differences in the language and emphasis on protecting property rights.

Legislation in the field of subsoil use often regulates issues of environmental safety and nature conservation. Different countries may have different models of subsoil development. For example, in Qatar many foreign companies have licenses to produce oil and gas, while in Russia

production is often carried out by state-owned or large national companies. The legislation also regulates the taxation and distribution of income from subsoil production. An important aspect is the issue of ownership rights to subsoil. Some countries allow private ownership, while others stipulate that mineral resources belong to the state. The subsoil of the Islamic Republic of Iran is state-owned, the right to use them is granted on the basis of contracts (agreements for joint oil activities) concluded between the National Iranian Oil Company, acting on behalf of the state, and foreign investors. Foreign companies “de jure” act as agents and contractors of the specified national company, “de facto” - as subsoil users. In addition, investors determine the volumes and directions of sales of Iranian hydrocarbons, and act as an intermediary in the export of hydrocarbons from the Islamic Republic - a source of foreign exchange earnings to Iran [3].

In some cases, countries enter into international agreements on subsoil use, which may have an impact on their domestic legislation. This is also an important aspect of benchmarking.

Innovation and technology are some of the most important implementations, especially in scientific and technological progress. Some countries emphasize attracting innovation and modern technologies in mining, which may be reflected in legislation. Innovation and technology are critical to achieving sustainable development goals. They enable the development of clean and renewable energy sources, efficient resource management systems, and environmentally friendly technologies. Promoting sustainable practices, innovation and technology helps mitigate the negative impacts of human activity on the environment and contribute to a more sustainable future.

A comparative analysis of subsoil use legislation allows us to identify best practices, as well as possible shortcomings and lessons that can be learned from the experience of other countries. This is important to ensure sustainable development, respect constitutional principles, and satisfy the interests of various parties, including government, companies, and society. In this way, it is possible to identify at the initial levels the strengths and weaknesses of the legal system in the area under study.

A strength is that the legal framework often reflects the country's commitment to sustainable development and responsible resource management. Constitutional provisions may recognize the importance of subsoil resources to the economic well-being of the country.

Weaknesses include lack of clarity: The legal framework may lack clarity and consistency, leading to ambiguity in subsoil use rules. There may be gaps in the law that leave room for exploitation or insufficient regulation.

Addressing these challenges requires improved legal clarity, transparency, environmental protection, revenue sharing, and regulatory compliance. Constitutional principles must be harmonized with subsoil-use laws to minimize conflicts. Strengthening regulatory bodies and protecting the rights of indigenous and local communities are also important aspects of reform in this area.

Foreign investment has contributed to the development of Kazakhstan's oil and gas sector and helped the country become one of the world's leading oil and gas producers. Foreign investment has also helped create jobs, improve infrastructure, and increase government revenue.

However, foreign investment has also brought challenges, especially related to natural resource management and environmental protection. Some critics argue that foreign companies

prioritize profits over environmental and social responsibility, leading to environmental degradation and social conflict.

To address these issues, the Government of Kazakhstan has introduced policies and regulations aimed at ensuring the responsible use of mineral resources and protecting the environment. These policies include environmental impact assessments, monitoring of subsoil use activities, and regulations regarding land use and reclamation.

In subsequent years, there has been a growing trend towards greater localization of the subsoil sector in Kazakhstan, with the government seeking to increase the participation of local companies and workers in the sector. The government also encourages foreign companies to transfer technology and expertise to local companies, helping to build local capacity in the subsoil sector. Overall, although foreign countries have had significant influence on Kazakhstan's subsoil resources, the government has put in place policies and regulations to ensure sustainable management of subsoil resources and fair distribution of benefits from subsoil development.

The “Decree on state control over oil production”, issued by the First President of Kazakhstan in 1993, was adopted. This decree was a significant step in the development of the Kazakhstan subsoil use sector. He established state control over oil production and created a legal framework for licensing subsoil use activities [4].

The resolution required that all oil production in the country be carried out under state control, and the State Committee for Geology and Subsoil Use was created to oversee subsoil use activities. The decree also required that all oil production be carried out through joint ventures with local companies and established rules for the distribution of oil revenues.

The decree played a decisive role in attracting foreign investment in the subsoil use sector, especially in the oil and gas industry. Foreign companies were required to form joint ventures with local companies, which helped build local capacity and create jobs.

However, the decree has also been criticized for its restrictions on foreign ownership of oil and gas resources. In 1994, the government of Kazakhstan amended the regulation to allow foreign companies to own up to 50% of oil and gas resources, which helped to further stimulate foreign investment in the subsoil sector [5].

In general, the “Resolution on State Control over Oil Production” was a significant step in the development of the Kazakhstan subsoil use sector. He established state control over subsoil use activities and created a legal framework for subsoil use licensing, which helped attract foreign investment and stimulate economic growth in the country [6].

In 1996, Kazakhstan introduced the System of Production Sharing Agreements (PSA), which allowed foreign investors to participate in the development of oil and gas fields. Later in 2010, amendments were made to this system, allowing the state to increase its share in oil and gas projects [7].

One of the most significant events in the field of subsoil use in Kazakhstan was the adoption of the Law “On Subsoil and Subsoil Use” in 2010. This law replaced the previous law on subsoil use, which was adopted in 1994, and was aimed at modernizing and streamlining the legal framework for subsoil use in the country.

The Law “On Subsoil and Subsoil Use” defines the conditions for subsoil use, including the rights and obligations of subsoil users, licensing procedures, and the legal regime of subsoil

plots. It also establishes the principles of subsoil use, such as the principles of rational use and protection of subsoil, environmental protection, and use of subsoil for the benefit of the people of Kazakhstan [8].

The Law “On Subsoil and Subsoil Use”, was adopted in Kazakhstan in 2010 and replaced the previous law on the same issue. Some of the key features of the law include:

**Subsoil ownership:** The law establishes that all subsoil resources on the territory of Kazakhstan belong to the state.

**Licensing:** The law requires all subsoil users to obtain a license from the government before they can begin exploration or production activities. The licensing process is designed to ensure rational and responsible use of subsoil resources.

**Taxation:** The law establishes a taxation system for subsoil users, which includes royalties, rent, and other payments. Tax rates vary depending on the type of subsoil resource and the stage of the production cycle [9].

**Environmental Protection:** The Law includes provisions on environmental protection and the prevention of pollution associated with subsoil use activities. Subsoil users are required to implement environmental management plans and obtain environmental permits before they can begin their activities.

**Local Content:** The law requires subsoil users to give priority to the use of local goods and services in their operations. This is intended to help develop the local economy and create jobs.

**State participation:** The law provides for the possibility of state participation in subsoil use projects. This may be equity participation, the creation of joint ventures, or other forms of cooperation between the state and subsoil users [10].

## **Results**

Thus, in almost 10 years, a reliable basis was created for the further systematic development of the law on subsoil use and subsoil use activities in nature, which made it possible to raise the level of development of public relations in the field of subsoil use and subsoil use activities of subsoil users to a new level. To attract investment in this sector of the economy. Today, there are objective prerequisites for the transition to the next stage of development of legislation on subsoil use and subsoil use activities that meet the new realities of sustainable development of the state and market economy. The transition to a new stage in the development of legislation on subsoil use and subsoil use activities is also associated with the need to implement into domestic legislation the provisions of international legal acts and international treaties to which the Republic of Kazakhstan is a party.

Analysis of Kazakhstan's mineral resource base, indicating a potential future shortage of profitable mineral reserves, raises serious concerns. Shortages of profitable mineral reserves can have several economic, environmental, and geopolitical consequences. Having highlighted the potential impacts and actions, important economic implications can be considered in the area of reduced revenues. If Kazakhstan's lucrative mineral reserves are depleted, this could lead to a decline in revenues from the mining industry, which is the country's most important source of income. There are also employment concerns: the mining sector is an important

employer and shortfalls in lucrative reserves could lead to job losses and affect the livelihoods of many people.

Mineral exploration is worth noting: Kazakhstan may consider investing in geological exploration to identify new profitable mineral deposits. Advanced geological and geophysical surveys can help discover untapped resources. Increased exploration leads directly to advances in mining technologies and techniques that can help make previously uneconomic mineral reserves profitable. Kazakhstan could invest in research and development in this area.

Kazakhstan should focus on sustainable and efficient management of existing mineral resources. This includes responsible mining practices and waste minimization.

Cooperate with other countries: Kazakhstan could cooperate with other countries either to provide access to needed minerals or to jointly invest in mineral exploration and production in other parts of the world.

Environmental Responsibility: As mineral resources are depleted, it is critical to address the environmental impacts associated with mining and develop policies to minimize negative impacts. The depletion of lucrative mineral reserves can have geopolitical implications, as access to certain minerals is vital to such industries, like technology and defense. Kazakhstan should take its geopolitical position into account when securing resources from other countries.

Kazakhstan should review and possibly revise its mining laws and regulations to ensure they help attract investment and encourage responsible mining. It is important for Kazakhstan to proactively address mineral resource shortages profitably through a combination of economic diversification, exploration, technology development and responsible resource management. Planning for the future will be critical to mitigating the potential economic and social problems associated with this problem.

## **Conclusion**

In general, the 2010 Law “On Subsoil and Subsoil Use” is intended to promote the sustainable and responsible use of subsoil resources in Kazakhstan, as well as protect the environment and promote the development of the local economy. Kazakhstan's subsoil legislation underwent significant changes in 2017. Some of the key differences between the 2010 Subsoil Law and the 2017 Subsoil Law:

Licensing: The licensing process under the 2017 law has been simplified and streamlined. There are fewer types of licenses and the requirements for obtaining a license have been clarified. The 2017 Law allows for an increase in state participation in subsoil use projects, including the possibility of the state acquiring a share in the production of a subsoil user. Taxation is a significant factor in the 2017 Law, which introduced changes to the tax system, including the abolition of the excess profit tax, the introduction of a simplified taxation regime for small subsoil users, as well as changes in the procedure for calculating royalties and rent.

In general, the 2017 Subsoil Law, which is directly related to the development stages in the Constitution, is aimed at improving the investment climate in Kazakhstan, increasing transparency and predictability in the field of subsoil use, and ensuring the sustainable and responsible use of subsoil resources.



These periods of development and change flowed into the principle enshrined in the Constitution of the Republic of Kazakhstan that the land and its subsoil, water, flora and fauna, and other natural resources belong to the people [11]. The state has the right to use and dispose of subsoil through legislative and executive bodies. The Constitution of the Republic of Kazakhstan serves as the basis for the legislation of Kazakhstan in the field of subsoil use.

The Constitution and the Law on Subsoil and Subsoil Use establish the principles of subsoil use, including the principles of rational use and protection of subsoil, protection of the environment and human health, and use of subsoil for the benefit of the people. Kazakhstan. In general, the development of legislation in the field of subsoil use in Kazakhstan is an ongoing process, and the government intends to continue to improve the regulatory framework to ensure sustainable development and responsible management of the country's natural resources.

### **The contribution of the authors**

**Zharmakhanbetova Balzhan Auezkhankyzy** – abstract, keywords, introduction, methodology, conclusion, results and discussion.

**Yessenaliyev Askat** – transliteration, information about the authors.

**Paridinova Aigul Esirkepkyzy** – list of references.

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### **Жер қойнауын пайдалану саласындағы заңнаманың дамуының конституциялық негіздері**

**Абстракт.** Қазақстанда жер қойнауын пайдалану саласындағы заңнаманы дамыту еліміз 1991 жылы тәуелсіздік алғаннан бері үздіксіз үдеріс болды. Түпнұсқа заңнамалық база 1990 жылдардың басында жасалды, содан бері ол заман ағымына ілесу үшін бірнеше өзгерістер мен жаңартуларға ұшырады. елдің жер қойнауын пайдаланудың қажеттіліктері мен басымдықтарын өзгерту. Зерттеуде жер қойнауын пайдалану саласындағы заңнаманың дамуы оның конституциялық негіздерін ескере отырып талданады. Жұмыста келесі аспектілер қарастырылады: ежелгі дәуірден қазіргі уақытқа дейінгі жер қойнауын пайдалану саласындағы заңнамаға тарихи шолу. Мүдделер қақтығысы, экологиялық қауіптер және реттеу мен бақылауды жақсарту қажеттілігі сияқты жер қойнауын пайдаланумен байланысты қазіргі заманғы қиындықтар мен проблемаларды бағалау. Жер қойнауын тиімді басқаруды және тұрақты дамуды қамтамасыз ету үшін заңнаманы және оның конституциялық қағидаттарға сәйкестігін жетілдіру жолдарын қарастыру. Бұл зерттеу жер қойнауын пайдалану саласындағы заңнаманың эволюциясын жақсы түсінуге және конституциялық негізді ескере отырып, оны жетілдірудің негізгі бағыттарын анықтауға көмектеседі.

**Түйін сөздер:** жер қойнауын пайдалану, жер қойнауы туралы заңнама, жер қойнауын пайдалануды дамыту, заңнама, конституциялық негіз, Қазақстан, тұрақты даму, лицензиялау рәсімдері.

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### **Конституционные основы развития законодательства в сфере недропользования**

**Абстракт.** Развитие законодательства в области недропользования в Казахстане представляет собой непрерывный процесс с момента обретения страной независимости в 1991 году. Первоначальная законодательная база была создана в начале 1990-х годов, и с тех пор она претерпела несколько изменений и обновлений, чтобы идти в ногу со временем, меняющиеся потребности и приоритеты недропользования страны. В исследовании анализируется развитие законодательства в сфере недропользования с учетом его конституционных основ. В работе будут рассмотрены следующие аспекты: исторический обзор законодательства в сфере недропользования, с древнейших времен до современности. Оценка современных вызовов и

проблем, связанных с недропользованием, таких как конфликты интересов, экологические угрозы и необходимость совершенствования регулирования и контроля. Рассмотреть пути совершенствования законодательства и его соответствия конституционным принципам для обеспечения более эффективного управления недрами и обеспечения устойчивого развития. Данное исследование поможет лучше понять эволюцию законодательства в сфере недропользования и определить ключевые направления его совершенствования с учетом конституционных рамок.

**Ключевые слова:** недропользование, законодательство о недрах, развитие недропользования, законодательство, конституционные основы, Казахстан, устойчивое развитие, лицензионные процедуры.

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