

Research on the Path of Legal Protection of Future Industry

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Abstract: The legal guarantee path of future industry is divided into soft law guarantee path and hard law guarantee path. The soft law guarantee path emphasizes "legitimacy identification", focuses on coordinating the benefit distribution pattern of future industry, and realizes the "positive justice" of future industrial development, operation and distribution. The hard law path emphasizes "legal recognition" and focuses on avoiding litigation risks caused by violations of international law or domestic law in the future industry, which is the guarantee of "procedural justice" in the future industry. The legal protection path of China's future industries can be improved by constructing the soft law system of future industries, making good use of the "Fengqiao experience" and introducing the "friend of the court" system of future industries.

1. The concept of the future industry

Only by applying scientific and technological innovation achievements to specific industries and industrial chains in a timely manner can we transform and enhance traditional industries, cultivate and strengthen emerging industries, lay out and build future industries, and improve the modern industrial system. The future industry plays an irreplaceable role in driving the progress and growth of the overall social economy and enhancing the comprehensive competitiveness of the country. In January 2024, seven departments including the Ministry of Industry and Information Technology of The State Council of China issued the Opinions on Promoting the Innovation and Development of Future Industries, further clarifying that future industries mainly include future manufacturing, future information, future materials, future energy, future space, future health and other tracks. The future industry is an industry formed based on cutting-edge and major scientific and technological innovation, and vigorously developing the future industry is a strategic choice to lead scientific and technological progress, drive industrial upgrading, and cultivate new quality productivity.

As mentioned above, the future industry can be summarized as follows: First, the future industry is the product of the third information industrial revolution, which is based on network data informatization and artificial intelligence tools, and enables the science and technology of traditional industries. Second, the development strategy of the future industry is closely related to the new quality productivity strategy, and the two complement each other. The new quality productivity strategy is a national strategy that relies on science and technology to enhance productivity, takes national development as the vision, and liberates China's productive forces and

empowers China's modernization construction at the macro level. The future industrial development strategy is to enhance the market competitiveness of China's traditional industries at the micro level and empower the national economy through high and new technology. In other words, the future industrial development strategy and the new quality productivity strategy are the cooperation between the macro and micro strategies of the national economic development strategy in the digital era. The third is that the future industry involves a number of new industries, and different from traditional industries, the future industry has the characteristics of the digital age in terms of production means, production methods, labor relations and so on. In this context, the institutional norms of the future industry also show significant characteristics that are different from the traditional concepts. Although the institutional norms of the future industry follow the norms and regulations of the traditional Chinese industry to a certain extent, the formation of their norms has its important characteristics of digital informatization.

According to the basic theory of law, the legal protection path of the future industry is mainly divided into soft law path and hard law path. Now, this paper studies the legal protection path of the future industry in the digital and network industries involved in the future industry.

2. Legal protection path of future industry

There are two basic forms of law: hard law and soft law, in which "hard law" refers to those legal norms that need to rely on state coercives to ensure implementation, while "soft law" refers to those legal norms that may not be complete and need not rely on state coercives to guarantee implementation, but can produce social effects. The image of soft law varies according to the situation. The reason why soft law becomes law is because it has the basic characteristics of law. The reason why soft law can be independent from hard law and become a basic form of expression of law is that it is different from hard law. The reason why soft law can become a basic form of law and play an important role in the public domain is that it has an independent function of regulating and adjusting public relations. The reason why soft law and hard law can not contradict each other and complement each other is because of their complexity in legal logic, complementary advantages in legal functions, and mutual transformation in legal norms.[1] Therefore, China needs to coordinate the role of hard law and soft law when constructing the legal protection path of future industries. From the perspective of basic jurisprudence, the path of legal protection refers to the institutional safeguard measures that are based on norms to maintain the operation order of the matters involved. In general, the legal protection path can be divided into the hard legal protection path and the soft legal protection path.

The guarantee of the hard law path mainly focuses on the implementation of the existing legal system by the state and the conversion of the law from the supposed level to the actual level. At the hard legal level, the legal protection of the future industry mainly includes: according to the existing laws, the investment risk of the future industrial development is controlled, that is, the relevant legal system of enterprise management is improved, the investment, loan and market access rules of the future industry are constructed, and the development environment of the future industry is guaranteed from the legislative level; Through relevant legislation, the general principles of civil and commercial law will be implemented and developed into the future industrial development process.

Soft law path protection is different from hard law path protection. From the perspective of sociology, soft law norms are mainly embodied in social rules, social norms and social concepts. The so-called social rules are the "benefit distribution" pattern formed by the interest game in the course of social operation, that is, the consensus on the existing benefit distribution. This consensus can provide normative basis for settling and stopping disputes in time when interest disputes occur.

The social norm is the institutionalized regulation of the pattern of benefit distribution under the social rules. Social concept focuses on guiding the inherent regulation of new interests in industrial development through concept.

Soft law path protection is a supplement to hard law path to some extent. If there is no soft law norm to fill the defects, it will restrict the improvement of the overall rule of law. Hard law path protection is limited by the lag of legislation, in this aspect, soft law path protection can effectively overcome the short-board effect; Secondly, the soft law path guarantee can overcome the Swiss cheese effect, and the attributes of various hard law norms are homogeneous, which is easy to form a legal regulation loophole in which the defects of hard law norms are closely linked, and the abuse of power or rights cannot be effectively prevented, resulting in potential dangers becoming real losses, resulting in the loss of the value of the rule of law and the failure of the rule of law goal.

3. The path of legal protection of future industries is hindered

3.1. The construction mechanism of future industrial soft law is lacking

Soft law has unique functions that cannot be replaced by hard law. To a large extent, it embodies and realizes all the basic functions of law such as declaration, instruction, education, evaluation, prediction and punishment in a way different from hard law. First, the functional status of soft law is different from that of hard law, for example, hard law pays more attention to sanctions and punishment, while soft law pays more attention to declaration and evaluation. Hard law pays more attention to command and regulation, while soft law pays more attention to education and guidance. Second, soft law and hard law display the same legal function from different aspects. Taking the directive function as an example, in the hard law, it is mainly reflected in forcing the subject to make a certain behavior choice through commands, while in the soft law, it is mainly reflected in influencing the subject's behavior choice through suggestions. The third is the same legal function, soft law and hard law are located at different levels. For example, the hard law and the soft law in fact have the same function of punishment, but the punishment in the hard law is mainly state, external, and direct, while the soft law is mainly social, internal, and indirect. Fourth, for the same function, soft law often uses different mechanisms to achieve it than hard law. Taking the evaluation function as an example, there are significant differences between the two in the evaluation subject, evaluation procedure, evaluation conclusion, evaluation consequence, etc. The evaluation mechanism of the subject behavior in the hard law is mainly bureaucratic and closed, and the evaluation conclusion has strong legal effect, which may cause the compulsory execution of the state. However, the evaluation mechanism rules of soft law are mostly civil and open, and the evaluation conclusions have weak legal effect and can not directly cause national coercion.[2]

The future industry is an important support for new quality productivity. As the future industry involves emerging industries such as artificial intelligence and meta-universe, the birth of soft law is based on long-term social practice and industry practice, and the development of internal norms in the industry. Since the above industries appeared relatively late, China's research on them also exists in the initial stage, so it is difficult to form new soft law norms for them. Therefore, soft law, as a supplement to the hard law mechanism, has no relevant industry norms or even business practices that can develop into relevant soft law norms in the process of China's future industrial development.

3.2. The difficulty in coordinating different normative systems of the future industry

The future industry is the product of the information age, and there are two different normative systems under the background of digital production. The first system is the code rules in the digital

production process and the algorithm rules in the digital operation

Taking blockchain as an example, existing legal norms and blockchain code rules are mainly associated in three ways. First, when the allocation rules and algorithm rules of blockchain conflict with the existing laws' confirmation and allocation norms, the legal norms are often superior to the algorithmic rules of blockchain, and the existing legal norms are used as the standard when dealing with similar legal disputes. The second is that the algorithmic rules of the blockchain comply with the basic principles of the law, or in the logic of the legislative system, at this time the algorithmic rules of the blockchain will be transformed into the corresponding legal norms. The third is that when the algorithmic rules of the blockchain can provide alternative solutions for the formulation of laws, such alternative solutions generally do not violate the existing legal norms. [3]The coexistence relationship between the algorithm rules of blockchain and the existing legal norms, the two operate according to their own logic, but in the normative level of commercial law such as contract law, the algorithm rules of blockchain may have a certain deviation from the perspective of the existing legal norms in handling disputes. In the case of the "dual-track" operation of the algorithm rules and legal norms, The ownership of the confirmed rights, the division of legal interests and even the operation rules generated by the blockchain industry are in different systems, which has brought greater difficulties to China's existing legislation.

3.3. The right to relief

The economic interests represented by the future industrial development appear in the form of legal interests. Since China's legislation on the emerging industries involved in the future industry is in the initial stage, there are big loopholes in the definition of legal interests and risk evaluation standards for the future industry. For example, the European Union's Artificial Intelligence Act, as the world's first comprehensive regulation of the field of artificial intelligence, divides artificial intelligence risks into four levels from low to high, and develops relevant early warning measures according to their different legal interests. However, according to the relevant laws of China, the risks are not graded, and the different legal interests derived from the future industry are not clear. The right of relief is the key to the path of legal protection of the future industry. Electronic data property rights, such as legal interests, intellectual property rights and data rights, which infringe upon legitimate rights and interests derived from future industries, are not explicitly included in relevant criminal laws. It is mainly reflected in the following aspects: First, the jurisdiction issue, due to the high mobility of data rights and interests, if cross-border infringement occurs, it is difficult to protect the rights of victims through joint law enforcement; The second is that the civil legal rights and criminal legal rights in the future industry are highly overlapping, such as virtual property and financial property such as blockchain in online games, if the infringement is such property, the definition of its property value and the attributes of the crime are difficult to weigh. The third is the problem of difficult implementation, taking the contract dispute of artificial intelligence products as an example, the contract law has enforcement problems for the enforcement of third-party beneficiaries due to the relativity of contracts, and the artificial intelligence industry may transfer value to a third party, for which the contract law does not provide specific enforcement measures. The coding of AI treaties generally involves payment in the form of remedies, unlike contract law regarding fair and appropriate compensatory damages, in which case if a party files a request for restitution with the court, the court will reject the "restitution" because of the fluidity and uncertainty of the data. According to China's civil compensation, restoration and other methods, it is difficult to apply to the future industry tort judgment.

4. The principle of improving the path of legal protection for China's future industries

4.1. The principle of legal compliance

The future industrial legal protection path needs to follow the principle of legal compliance. The so-called principle of legal compliance means that the path of legal protection of future industries should not only comply with the relevant provisions of international law, but also comply with the relevant provisions of domestic law. Legality at the level of international law refers to compliance with the relevant provisions of article 38, paragraph 1, of the Statute of the International Court of Justice (hereinafter referred to as the Statute), which provides that international law applies: (a) where, whether by ordinary or special international agreement, the parties to the proceedings establish provisions expressly recognized by them. (b) An international custom which, as proof of a general rule, is accepted as law only. (c) General principles of law recognized by civilized nations. (d) Judicial precedents and the doctrines of public jurists of the highest authority in each State as supplementary sources for the determination of legal principles. Through this article, we can conclude that the hard legal sources of international law are mainly treaties, international customs and general legal principles. A treaty is a specific, specific law recognized by the parties. A habit is a practice or a general rule. It is a general rule felt by those who believe it to be effective, and if it is not followed, then some adverse consequence is likely to occur, or at least the violator should bear such consequence. The general principles of law refer to the principles of private law applied by domestic courts, including but not limited to international relations. [3] International law norms of future industry mainly include treaties signed between countries, international customary law formed by national practices, such international habits mainly include international practices formed by national practice and business habits, future industry is essentially a production behavior, need to transform science and technology into productive forces, so as to produce corresponding economic benefits. General legal principles refer to the need for the future industry to follow the international rule of law principles, that is, the production behavior of the future industry needs to respect the sovereignty and integrity of other countries, which mainly includes the following two levels, the first level is the network public domain, the network cooperation and artificial intelligence data flow in the future industry can not violate the network sovereignty of other countries. The second level is the production of future industries, which should not be violated at the expense of other countries' economic interests, and should follow international law principles such as the "Five Principles of Peaceful Coexistence". At the domestic law level, the production and operation of the future industry need to comply with the domestic laws and regulations of the exporting country and the importing country, mainly referring to the compliance with relevant laws and regulations.

4.2. There are examples to follow

The rule of law is a complement to the future path of industrial rule of law. There are examples of rules-based principles that in the future transnational industrial cooperation, it is necessary to coordinate the interest disputes between countries and regions. In this case, the principle of rules-based advantages advocates that the contradictions between producers and sellers of future industries and sellers should be coordinated through informal sources of law. In other words, there are rule-based principles that focus on building legitimacy in the process of future industrial development.

Legitimacy has the function of defining the goals and interests of the actors. Soft law norms influence the way countries make decisions by establishing criteria of legality. The legitimacy standard formed in the system practice can guide and change the formulation of national strategy. In this case, there may be two types of actors who resist internalization, namely, strong resistance and

"forced belief". First, both stronger and weaker subjects are affected by an effective social order. Although the perceived functionality of the two groups of states is different, and the higher costs of breaking the rules are relatively easily borne by the dominant party, the considerations of gain and loss have changed for both. Those in the ascendance find themselves constrained by a legalized social system, unable to act in the way they prefer, even if they themselves helped create the system. The legal social structure limits the scope of free action of the dominant subject, and so does the weak subject. There are examples to explain the legitimacy identification issues involved in the future industry through soft law and informal legal sources, focusing on the coordination of the distribution of interests of the parties to the future industry and the coordination of the conflict of interests between countries on the future industry.

4.3. The jurisprudential value reflected in the above principles

To sum up, the "principle with laws to follow" and "principle with examples to follow" of the future industrial legal protection path are based on hard law and soft law respectively, while the "principle with laws to follow" focuses on maintaining the "legality" of the future industry, which means that the operation of the future industry needs to comply with the relevant provisions of international law and domestic law at the same time, and cannot violate its legal components. In other words, legality is the embodiment of procedural justice, and when the future development of the industry meets the specific requirements of "legality", the risk of legal proceedings brought by procedural justice can be reduced. The principle of "there are examples to follow" focuses on maintaining the "legitimacy" of the future industry, and is the embodiment of substantive justice by coordinating the production order and profit distribution of the future industry. From the perspective of sociology of law, the legal protection path of future industry needs to realize the effective unity of the actual and supposed effects of law. The contradictions and disputes arising from the operation of future industries are in essence the conflicts between efficiency and justice. The so-called efficiency value refers to the distribution of interests generated by future industries, and justice value not only includes the distribution of interests of future industries, but also includes the right to remedy the unfair distribution of interests of future industries. Soft law and hard law correspond to "legality" and "legitimacy" respectively. Soft law coordinates future industrial interest disputes by means of non-legal documents, which guarantees the fairness of interest distribution in essence. By means of legal documents and other means, hard rules institutionalize the pattern of interest distribution by means of rights and obligations.

5. Suggestions on improving the path of legal protection for china's future industries

5.1. Building the soft law protection path of future industry

The generation of norms needs to go through three processes: normative creation, normative advocacy and normative internalization. As one of the norms of social governance, soft law also has a similar formation process. The so-called normative creation process refers to the consensus of interest distribution pattern formed in the process of the coordination of interests of all parties. The so-called normative advocacy refers to the spread of the benefits distribution plan proposed by the relevant subjects to the stakeholders in the process of social governance. The so-called standardized internalization refers to the recognition of the benefit distribution pattern by the stakeholders. [] Therefore, the soft law generation norms of the future industry also follow the following laws. In terms of the creation of soft law norms, the standards for the creation of norms for future industries can be formulated by domestic researches according to the law of industrial development, that is, according to China's basic national conditions, the division of labor and profit distribution of future

industries can be coordinated. Taking data rights as an example, data rights are an important production factor of the future industry, and data rights can only be transformed into economic benefits through the flow, integration and even reshaping of data. Therefore, workers in the process of data generation, flow and even integration are entitled to the right to profit, and the distribution of such right of profit needs to be formulated by authoritative folk normative industry. In terms of normative advocacy, ngos and civil groups have natural advantages. Most of the ngos and civil groups are established for public welfare, which is neutral and authoritative at the publicity level, so the soft law initiative of future industries can be carried out through ngos and civil groups. In the process of standardization internalization, the generation of soft law can be recognized and promoted internalization through the way of national recognition.

Soft law norms for future industries are mainly divided into the following categories. The first category is the guidance documents of relevant science and technology associations and other academic authorities, which are the specific guidance for determining the distribution of future industrial income, so they can be used as the source of soft law norms for future industries. The second category is the internal resolutions and universal documents of international organizations, which are generally binding on member states. Member States realize the effective connection between international law and domestic law through domestic legislation. Therefore, resolutions and universal documents of international organizations related to future industries also have soft law effect on future industries. The third category is the unified industry norms formed by Chinese enterprises.

China can issue guiding norms through the resolutions and general documents of international organizations, and advocate that China's future industries learn from the resolutions and general documents of relevant international organizations, so as to realize the dual-track soft law operation mechanism of domestic and foreign countries, which mainly includes the following levels: (1) The Chinese government may periodically issue advanced future industry soft law system specifications through local administrative regulations and departmental rules for domestic future industry reference or as a management template; (2) Future industries can be guided by authoritative scientific research institutions, thus providing scientific and quantitative guidance for domestic enterprises' industry norms.

5.2. Suggestions for improving domestic legislation

The future industry will be dominated by artificial intelligence and network information technology, so the legislative improvement of artificial intelligence and network information technology is also crucial. At this level, China can draw on the European Union's Artificial Intelligence Act and enact relevant Chinese artificial intelligence laws. The European Union's "Artificial Intelligence Act" is the world's first comprehensive legal framework to regulate artificial intelligence technology, aimed at ensuring the safety, transparency and accountability of AI technology, risk classification management of various AI systems, and specifies the specific requirements that AI systems at different risk levels need to follow. As an important global force in the development of AI technology, China can learn from the relevant experience of the EU's Artificial Intelligence Act.

5.2.1. Improve risk assessment legislation

First of all, the Artificial Intelligence Act is divided into four categories according to the level of risk: unacceptable risk, high risk, limited risk and minimum risk. China can refer to this Act, classify the risk levels of artificial intelligence, and propose corresponding risk and legal interest

protection measures according to different risk levels. The first level is unacceptable risk, which generally involves national security, such as cyber espionage, theft of national security data and other related data. This kind of crime infringes on the national security interests, which is urgent and uncompromising. Therefore, it is necessary to establish the corresponding mechanism to connect with the criminal law, the counterespionage Law and the national security legislation. The second level is for serious violent crimes and drug crimes, such as intentional murder, intentional injury, smuggling and drug trafficking through artificial intelligence and other crimes against personal property security, and the legal interests protected by this level are the personal property rights of Chinese citizens. Therefore, this paper suggests that the second level of legislation should focus on the effective connection with the anti-terrorism and anti-drug provisions in the criminal law; The third level is common property crimes, such crimes are generally intellectual property infringement, theft of electronic cryptocurrencies, plagiarism of relevant documents and other economic crimes. This kind of crime infringes on property rights, and the relevant legislation of this kind should be connected with civil law and commercial law. The fourth level of crime is the Internet violence on public security punishment, and the "open box" crime, which is a non-violent crime that does not involve the right to physical rights, and infringes on the right to privacy and reputation of citizens. In this way, the regulation of such crimes can only be achieved by improving the Law on Public Security Punishment.

5.2.2. Make good use of "Maple Bridge experience" to resolve disputes

The diversification of future industries leads to the diversification of disputes, and it is difficult to regulate the same disputes by legal means alone. Under the background of the new era, the interests of the masses increasingly show complex and interlaced characteristics, indicating the practical needs of the transformation of the expression mechanism of the masses' demands under the rule of law. The "Fengqiao experience" in the new era and the expression mechanism of the masses' demands contain common elements of the rule of law, which determines that the latter can draw the power of the rule of law transformation in the scope of mutual interaction. However, the practice of the mass appeal expression mechanism is faced with the shortcomings of weak judicial force, insufficient system supply and urgent display of value rationality, which restricts the transition of the mechanism to rule by law. It is necessary to explore the beneficial experience from the "Fengqiao experience" in the new era, and promote the further improvement of different levels of norms while promoting the appropriate integration of judicial forces. In addition, we should pay attention to the shaping of value rationality, avoid the unreasonable tendency of emphasizing technical rationality, and finally realize the governance goal of standardizing the grass-roots dispute resolution through the mass litigation expression mechanism. It further points out that the theme idea of "from the masses, to the masses" advocated by Fengqiao experience should be analyzed in combination with the interests of the masses, so as to effectively apply Fengqiao experience to deal with social governance.

Future industries include artificial intelligence, network industry and other industrial fields, if on the one hand to reject the judicial, China can apply the "Maple Bridge experience" experience in the future industry dispute resolution, set up a special civil mediation expert group to mediate disputes in the future industry.

5.2.3. Build an "amicus curiae" system for future industries

Amicus curiae was first introduced in Roman law, influenced by this, most common law countries recognize amicus curiae as a constituent system of the court. Even in some civil law countries that do not have amicus curiae, there are similar rights to intervene. Generally speaking,

"amicus curiae" in the judiciary can be understood as any subject that has an interest in the case but is not a party to the dispute, such as state organs, non-governmental organizations or private entities, voluntarily submitting written opinions or oral statements on legal facts to the court or arbitral tribunal. From the definition of amicus curiae, it can be seen that in order to submit an opinion as amicus curiae, the subject shows an interest in the case, but it must be in the interest of the court or arbitral tribunal to better conduct the hearing. [4]In social practice, international non-governmental organizations generally play the role of "amicus curiae" of the judiciary. When ngos act as amicus curiae, they usually seek to provide help for social justice by submitting written opinions of "amicus curiae" to the court. [5]China can specifically introduce "friends of the court" to form domestic and foreign expert groups to provide relevant help in future.

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