The Russian model of energy law

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Abstract: This article presents energy law as complex branch of Russian law, including its subject matter and methods. Key theoretical and methodological concepts of energy law are discussed, including: energy, power engineering, and energy business. The article also reports the status and prospects of energy legislation.

Keywords: basic (traditional) legal branches, basic industries, chain of production and sales, common law, conceptual framework, electrical energy relations, energy carrier, energy code/energy conservation, energy ecology, energy efficiency, energy law theory, energy sector, energy source, federal energy systems, fuel and energy complex, general legislation, international law, inter-sectoral cooperation, natural science, non-fuel alternative energy, non-renewable energy, Partnership and Cooperation Agreement, primary energy sources, public and private legal leverages, renewable energy, research data, special legislation, standards of basic industries, subsoil mineral energy resources, technical law, technical regulations

I. Energy Law - complex branch of Russian law, its subject matter and methods.

1) The energy law is a body of law governing relations in the energy sector (energy relations) in the broadest sense of the word.

The Russian energy law includes the matters arising in the field of organization and functioning of the energy sector, non-fuel alternative energy and consumer sectors. In this framework we study the norm of energy law, the legal acts of the energy legislation, their interaction with the social relations (the mechanism of legal regulation) in the area of business, administrative, judicial and other practices.

These relationships are complex because they reflect the private and public legal interests, that is, the interests of individuals and society as a whole. The peculiarity of their legal regulation lies in a harmonious dichotomy of public and private legal leverages, which makes them similar to entrepreneurial attitudes. Because of this energy law is a complex (cross-sectoral) legal unit combining the norms of public and private law.

A well-founded question may arise - what we mean by this phrase - energy law (legislation)? It seems appropriate to use a phrase the way we talk about the environmental,
transport law, etc. Indeed, it is a set of rules, laws and legal sources that provide guidance to this important sector of the economy. Therefore, energy law is a complex system.

Of course, energy law is difficult to attribute to the classic (basic) industries in the traditional sense of industry-based division of our legal system. However, new elements of Russia’s legal system are emerging, such as corporate, information, transport, including motor, marine, etc., environmental and others types of law that are characterized by the holistic approach to the regulation of certain groups of public relations, based on the standards of basic industries. To the noun "industry" we add an adjective "complex", indicating the qualitative difference of a simple branch of law from the complex one. Although these are just doctrinal categories, results of academic theorizing. In real life, it is difficult to find a clear-cut field of law. Even in such characteristic branch of private law as civil law we find a lot of public elements. And it is vividly shown by the brightest representatives of the civil law (V.F. Yakovlev¹, V.P. Mozolin², etc.).

The energy sector is a classic example of the relationship between politics, economics and law, which operate against the backdrop of formation and development of market economy, both domestically and internationally, both globally and regionally.

The role and significance of energy, energy sector, including in our daily life, and as a result, the legal regulation of relations in this area, were the cause of a special trend of legal research - energy law that appeared at the end of the 20th century.


Currently (2013), these studies as well as legal development ensured the origin, formation and development of a relatively independent, complex, integrated, cross-sectoral group of laws drawn from basic (traditional) legal branches. The group that is called the energy law.

Part of the national law, the object of which is the national power grid, is called the **energy law**. This branch of law can be found in the legal systems in most of the world’s developed countries.

The main task of energy law in all countries is the same - to solve the energy challenges facing the Humanity using legal means and methods as well as other legal instruments. It is clear that energy systems of different states, as well as potentials of natural resources on which they are based, are not identical. Therefore the content of energy law and energy legislation in some states are not the same, as are the observed similarities and differences in academic research, understanding and of course teaching of energy law at the universities of different countries.

2) **Energy law theory** (energy law studies) is a system of reliable knowledge about its subject matter and methods of legal regulation of energy relations, sources, content, structure and its place in national legal systems with clear methodological features. It is a set of academic concepts about the legal regulation of energy relations.

Energy law studies have (as the object of this study) the patterns of legal regulation of social relations in the energy sector, including business activities, in a broader sense of the energy business as a whole. Research of these issues is very relevant both for theory and practice.

In the Russian Federation there is a notable increase of the influence of scholars and practitioners on the development of new research trends, areas of research specialization, and - due to this – on the change in the established disciplines.

Despite its youth, the theory of energy law has not only empirical background and achievements, but also clearly defined academic and practical goals, objectives, trends and, more importantly, significant results (achievements) created by such theory: ideas, concepts, categories and theories.

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4 e.g., the order of the Ministry of Education and Science of the Russian Federation of January 10, 2012 № 5 have been made significant changes to the list of specialties of scientists, in particular, a new specialty 12.00.07 - corporate law, energy law. See.: Номенклатура специальностей научных работников, утверждённая приказом Министерства образования и науки Российской Федерации от 25 февраля 2009 г. № 59 (зарегистрирован Министерством юстиции РФ 01.02.2012 регистрационный N 23091). СПС КонсультантПлюс.
Russian energy law theory in this area is closely linked to the achievements of legal scholars engaged in legal regulation of the energy business in the industrialized countries where this trend has a solid history and achievements. This, above all, is the European Union and its member countries\textsuperscript{5} - Austria, France, Germany, Italy, Netherlands, as well as Argentina, Australia, Brazil, Norway, USA, etc. The doctrine of law in these countries is justified by research and its advocates consistently support its position in a system of comprehensive, integrated and relatively independent branch of law - the energy law.

It should be noted that other countries, especially the United States, paid much less attention than we have to doctrinal aspects (theory) of the system of law and legislative system. Those countries focus on efficiency, completeness of specific legal regulation of relations and practical issues. However, theoretical studies of energy independence law, its distinctive features, the necessity of teaching as a separate academic discipline, received considerable attention in the fundamental works, including textbooks, of scientists in Australia, Europe, the United States\textsuperscript{6} and other regions across the globe.

The development of legal science, like any other science, goes according to the laws of generalization and differentiation of knowledge. These energy law processes are most intensive today, thanks to our efforts. In other words, we are engaged in creating of legal energy space, are the creators and witnesses of the rise and development of energy law, both in Russia and worldwide.

2.1) Understanding features of energy law

To understand the features of energy law, its content and structure, law and legal regulation of energy relations (law enforcement), together with the effectiveness of research and teaching should be identified how such terms as "energy law", "energy legislation" "research and Energy

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Law academic discipline", correlate with such terms of academic disciplines as "energy ","natural mineral energy resources", "alternative (renewable) sources of energy ","energy products and services", "energy security", "energy saving and energy efficiency", etc.

Lawyers working in the legal field of energy should know and understand the basics of energy, a relationship which are the subject of academic research, especially since this legal field is not an easy one. Even among physicists the phenomenon of wave and particle dualism, i.e., simultaneous existence of various properties of the matter, as demonstrated in light emission and such particles as electrons, came as a complete surprise and shock for many of those who had received training in the framework of the classical theories. Einstein in his famous formula linked matter and energy, once considered fundamentally different entities, and made them interchangeable.

Some lawyers also have such reaction - surprise close to the shock –when it comes to energy as a subject of legal regulation. However, energy relations, especially in its electrical, thermal and some other forms (and hence the energy itself), are something that legal science cares about. It's a fact of modern life. **Energy law is reality.**

Establishment of the conceptual framework for energy law theory is one of the primary tasks, and legal scholars effectively work to find the solution in this field.

We all know and understand the importance of the conceptual framework in law, as a means of production and realization of academic legal knowledge in legal science and practice. Any science (and law is no exception to this rule) operates on a specific set of rules and concepts. Conceptual framework serves as an informational platform for legal science. Clarity of terminology is the basis for an in-depth understanding of research and its correct application of both national energy legislation and international legal instruments in this field.

2.2) **General Theory and Methodology of Energy Law**

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7 See: Дэвид Боданис. Е=mc². Биография самого знаменитого уравнения в мире. М., 2009.
The national legal science several theories and concepts have been put forward and formulated: general theory and methodology of energy law, theoretical concepts and the concept of the legal aspects of its basic underlying categories mentioned above, peculiarities of legal regulation in the area of subsoil use in relation to mineral natural energy resources (the right of primary energy sources), especially business activities in the energy sector (energy business) - its concept, content, genesis and development prospects of the energy legislation, forms and methods of state regulation in the energy sector, establishment of conditions for functioning of energy markets, legal regulation of international energy relations, cooperation of states and international organizations in the field of energy, etc.\(^8\).

2.3) Separation of Energy Sub-sectors.

Energy law theory scientifically justified the separation of its relatively isolated sub-sectors, which differ by the nature of legal regulation of corresponding relations, due to natural and technical features of its (primary energy) management, namely, legal regulation of relations in:

1) generation, transmission, distribution and consumption of electricity and heat separately;
2) oil and gas industry, as well as petrochemical;
3) pipeline transportation;
4) the coal industry;
5) the peaceful use of atomic (nuclear) energy;
6) legal aspects of the use of alternative renewable energy sources;
7) energy conservation and energy efficiency;
8) energy-related environmental protection;
9) international energy relations - energy law in Europe: the European Union and its member states, industrialized countries in different regions, universal international energy law, etc.

3) Academic discipline, unlike science, is the system of knowledge about the industry, subject to certain methodological requirements.

Legal studies carried out by industry in each of the disciplines provide detailed description of the relevant areas of law. At the same time, identification of various legal areas can be done with

\(^8\) See: Лахно П.Г. Энергетическое право России: понятие и сущность. В кн. Новое в правовом регулировании бизнеса. Отв. ред. Губин Е.П., Лаутс Е.Б. М., 2013. С.164-224.
the help of various criteria. Along with a traditional approach, whose main selection criteria are legal branches and legal regulation methods, there are also alternative approaches.

Energy law as an academic discipline is a system of generalized information and knowledge about energy law as a complex legal entity, its legislation and its practical implementation, as well as its research. In this capacity energy law is studied by students, bachelors, masters and postgraduate students.

Energy Law as an academic discipline has its own system and consists of separate parts. It includes general and special part: the concept and features of the energy law, principles and methods of legal regulation and the sources of energy law, energy law entities, parties in legal regulation of property rights of energy, especially the insolvency (bankruptcy) of individual subjects of energy law, public regulation of business activity in the energy sector and, more generally, of all economic activities in this area; specificities of contractual regulation of energy relations; a lot of attention is given to corporate legal regulation and functioning of energy markets, protection of rights and legitimate interests of energy law subjects, legal regulation of international energy relationship.

4) Interdependence of Science and Educational Subject

While drawing a clear line between such different phenomena as science (academic research) and educational subject (college and university educational activities) we certainly should not forget their close relationship and their mutual influence. As well-structured academic discipline is impossible without a firm reliance on the relevant science, it, in turn, is not worth much, if it does not translate the knowledge to students in a comprehensive manner, if it does not constantly inform the public about its successes, challenges, etc. in plain language. Development and strengthening of comprehensive relations of science (cognitive research) and education (i.e, teaching activities and didactics) proves the urgent need to find the right answers to growing demands of the 21st century.
Real universities do not and must not have any unbridgeable gap between the research and lecture courses, and, therefore, between scientific and academic disciplines. On the contrary, students are most susceptible to the author's courses if the author is a researcher, who has made his or her contribution to science.

5) Distinction between branches of law and legislation.

Distinction between branches of law and legislation, the rationale for their autonomy is an important issue for legal scholarship and teaching law. But this is only one aspect of the problem, in our opinion, having most likely a legal nature and essential, first of all, to legal scholars themselves. Another problem is how to ensure adequate inter-sectoral cooperation at the junction between the branches of law in the traditional sense.

The result of such strong and long-established interaction are legal systems and frameworks, such as banking, marine, agricultural, transportation, environmental law, etc. In such complex legal associations the priority is not to identify specific, legally differentiated areas of law; on the contrary, to integrate various legal standards relevant for various spheres of public life (branches of economy, management, culture, education, healthcare, etc.), that is, standards for different legal subjects and methods of differentiation of law and legislation. Not long ago the energy law was taking the same path.

Today we are pleased to state that the energy law, which arose as a result of inter-sectoral coordination of the legal rules governing relations in the energy sector, is a reality of the Russian legal system. To some extent, the evidence of this is the fact that the Ministry of Education and Science of the Russian Federation on January 10, 2012 issued executive order No 5 that brings significant changes to the list of specialties of researchers. In particular, there is a new specialty 12.00.07 - Corporate Law, Energy Law.

6) Continuing Relevance of Traditional Areas of Law and Legislation.

Academics researching energy law issues, students of energy law and professors at the universities that include energy law into their curricula should be well-informed both in common
law issues (general theory of law) and in regulation of the traditional legal areas that govern one of the parties of energy relations. And this, as shown by the practice of regulation of energy relations means most, if not all, areas of law. **Formulating the subject of energy law and its content, we take the "energy cross-section" of the main traditional areas of law and legislation**.

Such methodological approach to some extent is being currently realized. In each of the traditional areas of law and legislation while studying the constitutional foundations of a certain branch of industry, such as civil, administrative, criminal, etc., we make the appropriate "cross-section" of constitutional provisions.

After all, the Constitution, being the Basic Law, contains the rules of law that are fundamental for each industry.

For energy law such provision is recorded, for example, in Article 71. “The jurisdiction of the Russian Federation includes…” item (н) “…federal energy systems, nuclear power …”

For civil law these is § 6 of Chapter 30 of the Civil Code. In natural resource energy supply, which in itself, in our opinion, is a complex industry it is the right to use subsoil mineral energy resources; in criminal law it is the liability for offenses in the field of energy (damage of oil and gas pipelines, illegal tie-in into pipelines), etc.

6.1) Complexity of Energy Law

The complex nature of the energy law (I am deliberately not using the terms “industry branch”, “industry sub-sector”, “entity”, “institution”, “institutional framework”, etc.), in essence, is demonstrated by the fact that its norms and traditional understanding of legal system all have their origin in these most traditional areas of the law.

Body of laws, regulations and legal institutions in the traditional areas of law, joined together based on their subject constitute the area of legal regulation (energy in our case) **is what we call energy law.**

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9 See: Белых В.С. Энергетическое право как правовая основа национальной экономической безопасности. В кн.: Европейско-Азиатский правовой конгресс. Правовое обеспечение экономической интеграции в Европейско-Азиатском пространстве. Доклады исполнительного комитета к Четвёртой сессии конгресса. УрГЮА. 2010.С.54-56.
We can say that energy law permeates all legal disciplines without losing its kinship with them, i.e. its family tree that member of Russian Academy of Sciences Y.K. Tolstoy calls "double residence". And vice versa, virtually all areas of law have standards regarding some aspect of regulation of energy relations.

In other words, energy law is perceived as a comprehensive integrated set of legal rules, regulations, or their parts, which regulate energy relations.

Energy law consists of the mix of public and private law. In fact, there is a considerable degree of private law - civil law (corporate law, property law, contract law, intellectual property rights), labor law, etc. On the other hand, public law is also reflected. Perhaps one of the main features of this legal complex is organic intertwining of private and public law, based on a combination of entrepreneurial freedom with state regulation through laws, not separate legislative acts. The state must ensure stability, security, availability of energy sources, their effective use, ensuring our national interests.

The Constitution of the Russian Federation establishes not only certain starting points, but its wording itself indicates to us that regulation of relations in this sphere should be combined and use approaches typical of public and private law. (See Articles 9, 36 of the Constitution). Some provisions of the constitutional, civil, business, administrative, tax, competition, corporate, land, natural resource, environmental law, intellectual property rights, regulation of investment, innovation, etc. - all this and much more is also available in the energy law. Today most important areas of legal energy regulation are energy efficiency and energy conservation.

Besides, we observe a close interrelation and interdependence of energy law issues with economics and environmental issues, strong influence of technical equipment, technology and technological environment. This are the most important features of the energy law.

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6.2) Relationship of Energy Regulation with Whole System of Regulation.

The distinctive features of energy law include: 1) crucial role of energy in social life, economics, politics and defense, and 2) the fact that energy is regulated by various traditional branches of the law due to its common points and overall pattern. In fact, common energy relationships in real life are governed by different (from a legal point of view) branches of law and legislation, such as civil and administrative. But for now, this is not enough. There must be a different, single cross-cutting approach to the regulation of the energy sector. It is important to see the relationship of legal regulation of energy with the whole system of legal regulation, and 3) because of the fact that within the framework of traditional branches of industry and traditional approaches to legal regulation of energy relations many issues in this area do not develop and cannot be solved by science, thus often remaining on the periphery (Prof. Knut Knoosen, Head of Department of Oil and Gas and Energy Law of the University of Oslo, Norway11), do not apply to "top class of legal thought."

On the contrary, the energy law the focus of legal regulation and research is exactly on relations in energy and energy business. The subjects of legal regulation are energy products and services. After all, the world is consuming is not just oil, gas or coal, and services that are created by various industries that sell certain types of fuel, produced from raw materials. This requires taking into account the specifics of subjects of regulation, in this case energy, or more precisely, its various forms. Energy industry, too, being the means of converting the potential energy of natural resources into goods that we need.

It should be noted that no one encroaches on the traditional system of law. Especially because it has proven its viability and passed a major exam - the survival test. Because we all know that if something serves its practical purpose, it must be true. It is hard to imagine a more practical branch of Russian modern legal system than the energy law.

7) Energy Relations Encompasses Various Aspects of Legal Regulation.

11 See: Коосен К. Регулирование безопасности в нефтяной отрасли. Энергетическое право. 2012. № 2, etc.
Comprehensive and integrated subject of energy law requires the use of various adequate aspects of legal regulation in energy relations. According to another point of view that recently dominated the traditional legal doctrine, each of the principal areas of law only matches its specific method of legal regulation (legal regime). Energy law, as well as in many other industries, uses not one, but several methods (legal regimes) of legal regulation: method of mandatory regulations, autonomous decisions, legal autonomy of the parties (matching method) and method of recommendations.

II. Key theoretical and methodological concepts of energy law: energy, energy industry, energy business.

1) Energy Law got its name from the word "energy."

Energy is the first fundamental concept of energy law.

What is energy? Everyone talks about it, but few people know.

"Energy" - (Greek ενέργεια – to do, to act (in reality) - Ancient Greek philosophy term meaning: 1) action, implementation, and 2) reality.

Energy is the name given to the effect (phenomenon) or a group of natural phenomena (events) demonstrated (shown) by various substances (materials), as well as by the phenomena themselves. For example, electric energy is the product of a stream of electrons. It is more complicated with other forms of energy, such as gravity, radiation, mechanical, etc.

Energy is being studied, discovered, converted, and used (consumed) according to the laws of nature and natural sciences. It is clear that in natural sciences - physics, chemistry, biology, etc. – it is different from point of view of the law, of the categorical system. With the development of science and technology, the concept is being crystallized, perfected.

We apply a perfectly obvious methodological approach, according to which law and legal studies use their own concepts, categories, patterns and techniques that are different from those of natural sciences. Figuratively speaking, the lawyers have to talk about energy, energy industry

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or oil and gas without using any formulas. If for Einstein and other physicists and representatives of natural sciences, energy is \( E = mc^2 \) (where \( E \) is energy, \( m \) is mass, and \( c \) - the speed of light), it is understandable that it is hardly enough to know and understand this is the most famous equation in the world to understand the regulation of energy relations.

At the same time, in teaching, research, drafting of legislation and law enforcement, we must take into account the unique natural features of energy that distinguish it from other objects and phenomena of the material world, which will undoubtedly impose an imprint on the legal regulation of relations in this area.

In many ways, they determine the need for self-regulation of energy relations, including the full range of problems associated with the conversion of energy from natural resources for the benefit of Humanity. Its unique nature lies in qualitative, natural characteristics of energy, in specific features of transformation of energy from one form to another, for example, from mechanical to electrical, electrical to thermal, etc., in its all-encompassing social value. Embedding energy into the conceptual system designed for physical objects and its inability to relate to the category of things (Vitryansky V.V., Lapach V.A., Lapach L.V., Oleinik O.M.)\(^{13}\) reflects the discrepancy between the theoretical provisions of the classical civil law and the actual economic relations over a special type of product - energy.

It is therefore possible to speak about energy, or more precisely about some of its forms, as an independent object of legal regulation of energy law.

The product of energy industry is energy and energy services that determine the quality of our lives. In a market economy, they receive the properties of the goods. That is why it is important to understand what constitutes a legal point of view on energy, energy industry and services.

1.1) Key Concepts of Energy and Energy Industry are Embedded in law

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Key concepts of energy and energy industry are included in the legal vocabulary and used in legal acts of all levels, legal literature, general law enforcement activities and in court practice. For example, the term "energy" and its derivatives are used in the Constitution of the Russian Federation (item "i" of the Article 71), in the names of major regulations: the laws of the Russian Federation "On the Electric Power Industry", "On the Peaceful Use of the Nuclear Energy", "On Heat Supply" and in a number of other laws and numerous by-laws, international treaties and agreements. In the § 6, Article 539, Chapter No. 30 "Power Supply" of the Civil Code of the Russian Federation energy is indicated as a subject of energy supply agreement. Name of the article and the fact that the concept of energy and its derivatives are used in the text for more than ten times speaks for itself.

This indicates that the energy and primarily electric power and thermal energy from the very beginning of their use are studied not only by physicists but also by lawyers asking themselves what is energy from the legal point of view.

To say that energy is "manifestly outside the law" \(^{14}\), deliberately or otherwise, is to ignore the truth, in the least.

1.2) Legal Characteristics of Energy

For an adequate understanding and full disclosure of the concept of energy, its types, forms and derivatives, efficiency of research activities, law making and practice of the legal regulation of energy relations, teaching energy law, along with the general scientific definition of energy, it is necessary to give a legal characteristic to the energy. First of all, it includes the legal definition of energy, secondly, determination of energy in the system of subjects of civil rights, and thirdly, an explanation of how the term energy refers to other terms such as energy law, energy regulations, etc.

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\(^{14}\) Селиверстов С.С. К вопросу о понятии энергетического права. Энергетическое право. 2008. № 1. С.52.

Features of natural and technical qualities of energy so far do not allow legal scholars, mainly (but not exclusively) civil law researchers studying this issue, to come to a consensus – whether it is possible to recognize energy as a thing (item of goods) which, by the way, is not the same, that is bought and sold as an object of proprietary right, or it is something else, a separate independent phenomenon of the material world.

It must be borne in mind that the allocation of energy to the objects of law, including constitutional, administrative, business, tax, civil, customs, or environmental law remains practically unchallenged.

The question of the place for energy in the system of civil law is being discussed. As of today this place is not determined. We can see that despite the frequent use of the term "energy", the energy is not named in the Article 128 of the Civil Code, which is essential for consideration of objects of civil rights, even after making significant changes and amendments to the Civil Code of the Russian Federation.

The energy shall be considered by lawyers not only in terms of the Civil Code. At the legislative level and in legal doctrine it is clearly defined that the energy is not only the subject of the energy supply agreement and other related contracts, but also is the subject of constitutional, tax and other legal relations.

On the other hand, attempts to develop a common legal definition that reflects the diversity of the essential characteristics of this complex phenomenon (object) are likely to have no significant practical value. The existing terminological base is sufficient for state regulation of energy area.

More promising for the national legislators is to solve the problems of convergence of regulatory definition of energy (energy materials and products) in Russian legislation and the terminology used in international legal regulation of energy relations, both at the regional level and in a global context. Gradual approximation of Russian energy law and, for example, energy law of the European Union, provided that Russia stands here as a producer and the EU as a consumer of energy, is considered by the leading Russian legal scholars who study academic and practical issues.
and prospects of development of Russian energy law (A.G. Lisitsyn-Svetlanov, E.P. Gubin, S.S. Zankovsky, N.I. Mihaylov). This convergence entails the need for Russia to improve its internal energy legislation.

We believe that energy, more precisely some of its forms, is an independent object of constitutional, administrative, tax, civil, business, and other legal rights and obligations.

2) The second basic concept of energy law derived from energy is that of energy industry. According to the traditional definition, energy industry is an area of the economy covering natural energy resources and their surveying, exploration, extraction, production, conversion, transmission, transportation, storage, sale and use (consumption) of different types of energy.

Energy industry, as a system of interrelated industrial branches, enterprises, organizations and institutions of the fuel and energy complex, alternative energy and consumer sectors, is a set of organizational, technological and other structures which converts natural potential (energy of natural resources, energy potential) to final consumer products and services (human goods), which determines quality of life of both the individuals and society as a whole, meets national needs for fuel and energy resources, on the basis of unity of construction and operation of energy industry facilities, mining, production, transformation, storage, processing, transportation, sale and use of energy carriers and energy services.

2.1) Scope of Energy Industry

Traditional understanding of energy industry implies the relations connected to production, generation, use and consumption of electrical energy. In other words, energy industry as a technology of energy production, distribution and consumption (use) as part of complex electric and thermal energy plan.

Energy industry is generally understood to include all areas of the fuel and energy complex, i.e. coal, gas, oil and production industry, including petrochemical industry.

\[\text{References:}\]

\[\text{15 См.: Энергетическое право и энергоэффективность в Германии и России. Под ред. проф. Б. Хольцнагеля, проф. А. В. Санниковой. Москва-Берлин. 2012. С.196-204.}\]
Even broader interpretation of energy industry occurs when trunk pipelines are added to the first two issues. Relations in the use of renewable sources of energy are the most important part of the energy and are receiving increasing attention. The nuclear power stands apart.\textsuperscript{16}

Energy saving and energy efficiency, given their role and importance in the modern world especially in countries such as the Russian Federation, also shall be included as an integral part of energy concept. Some authors like Adrian Bradbrook\textsuperscript{17} (University of Adelaide, Australia), consider energy efficiency as a separate source of energy. And indeed this is so; energy saved equals to energy produced.

Energy concept also includes construction and production of energy equipment.

Therefore, energy as the most important infrastructure part of the economy and relations connected hereto, including relations of exploration, production, transportation, processing of primary sources of energy generation, transmission, distribution, use and consumption of energy, \textbf{are the basis on which energy regulations are imposed}. An essential role in this regulation is


\textsuperscript{17} Energy Law and the Environment. Rosemary Lyster (University of Sydney), Adrian Bradbrook (University of Adelaide). Cambridge University Press. 2011.
played by the rules for the development and implementation of measures aimed at reducing the negative and harmful impact of energy on the environment (energy ecology).

3) Energy cannot exist without a source and without an energy carrier.

Energy is used for all sorts of equipment (electric light, gas stoves, gas tanks, computers, Internet, etc.) and is produced from a number of natural resources: renewable and non-renewable energy sources. It is necessary to know and understand how to use them in order to study energy law. The fact is that legal regulation of energy relations, its qualitative characteristics and features to a large extent depend on legal regulation of relations in exploration, production and use of energy and its carriers - energy resources.

Understanding of the energy law to a greater extent relies on the concept of resources, energy sources and the way they are produced, transported, processed and used. Since energy cannot exist without the source and without its carrier, moreover - the power is generated from specific sources (natural resources), primary sources of energy such as oil, gas, coal, uranium, hydropower, renewable energy sources, etc. have the fundamental importance for the energy business. In this context, it is essential for energy law to provide a clear understanding of energy resources (primary sources of energy) from a legal point of view.

Energy lawyers need to know the laws governing primary energy sources and to understand how to use them\(^\text{18}\). We recognize primary energy sources law as the third basic concept of energy law.

The thing is that non-renewable energy, in contrast with renewable energy, exists in nature in a bound state and is released by deliberate human action. Each type of primary energy sources requires a special process of artificial transformation in order to receive the required energy. These processes are carried out according to special rules as part of technology, such as oil refining technology. It is unlikely that the rules of processing of oil, gas, or uranium can be called legal regulations. However, these rules arise from the laws of nature, formulated by physicists, chemists,

\(^{18}\) See: Правовое регулирование добычи и реализации полезных ископаемых. Учебник. Под ред. О.М.Олейник, В.А.Сивицкого, О.М.Теплова. М., 2010.
biologists, etc., and without the adherence to them energy conversion is impossible. It is interesting to note that some legal scholars, for example in Germany, talk about technical law. There is successful consulting law firm in Russia called Technopra (Techno-Law).

4) Another basic concept of energy law derived from the first three concepts is the concept of entrepreneurship in energy area (energy business).

Business in the energy sector covers the entire chain of production and sales, from geological exploration, prospecting and exploration, production and transportation of natural mineral resources to the processing and marketing of finished products. According to OAO LUKOIL, its activities are defined by seven verbs: explore, drill, produce, deliver, process, supply and sell. But there is also the eighth verb - to create. To create new technologies, to create a strategy for tomorrow, finally, perhaps the most important thing - to do good. To give people not only the energy of machines, or the heat of burned fuel, but the joy that gives us the art that is sponsored (and often rescued or restored) by charitable activities of the Company.

In a broad sense, energy business is any business activity in the fuel and energy complex and non-fuel, alternative energy area, including the sphere of energy use and consumption. Its final result is a variety of energy services and products, i.e. goods intended for sale in the respective markets.

III. Status and Prospects of Energy Legislation Development

1) Energy legislation, its concept, content and structure, quality characteristics and features are the fifth basic understanding of the doctrine of energy law.

In the Russian Empire, the Soviet Union and the Russian Federation increasing attention was paid to the legal regulation of relations in energy area.

With the conversion of energy relations on a market basis the role of legislation, regulation in this area of the Russian economy has increased and intensified. This is clearly evidenced by the number of regulations adopted in the recent years.

19 See: Николай Черников. Вагит Алекперов и его команда. Вертикаль Алекперова. М., 2005. С. 13; see also: Джон Браун. Больше чем бизнес. М., 2011.

The system of relations in the energy business gave rise to an adequate system of legal regulation. In its turn, this required establishment, development and adoption of appropriate regulations, sources of law, across the entire hierarchy. We find provisions relating to energy law in many legal acts at various levels: from the Constitution of the Russian Federation, federal laws and laws of subjects of the federation and bylaws to agency-level and local regulations.

The system of legal regulation of the fuel and energy sector, non-fuel energy industry and energy consumption area includes elements of general law and special laws containing special provisions reflecting the specifics of this area of relations.

General legislation is represented by the Civil Code, the Land Code, the Tax Code, the Budget Code, the Customs Code, etc.

Also, specific legislation has been established governing subsoil use, production sharing agreements, electric power industry, gas supply, coal-mining industry, nuclear power industry, renewable energy, state regulation of prices and tariffs for energy, etc. Along with the general provisions, each area of energy has its own characteristics, including legal regulation. The laws regulating the relations in the energy sector, in terms of content are very different from what existed prior to their adoption. Take, for example, the laws "On the Peaceful Use of Nuclear Power", "On Gas Supply in the Russian Federation", "On Electric Power Industry", "On Energy Saving and Energy Efficiency Improvements and on Amendments to Certain Legislative Acts of the Russian Federation", "On Heat Supply", etc. These laws provide a special terminology and were influenced by engineering and technology. However, they all form a single legal framework of the energy.

Thus, we see several levels of legal regulation: general and special legislation, as well as the development of technical regulations and, finally, the regulation of international law, first of all, in the form of international treaties21.

21 See: Яковлев В.Ф. Правовое регулирование энергетического комплекса России. В кн.: Энергетика и право. Вып.2. Под ред. П.Г.Лахно. М., 2009. С.9-12; Салиева Р.Н. Правовое обеспечение предпринимательской деятельности в сфере торговли энергоресурсами в условиях вступления России в ВТО. Энергетическое право. 2013. № 2; Селиванова Ю.С. Регулирование энергии правилами Всемирной торговой организации и Договором к Энергетической Хартии: возможности для России?// Право ВТО. 2012. № 2. С. 16-23.
With this respect, Partnership and Cooperation Agreement (PCA) between the Russian Federation on the one hand, and the European Community and its member states, on the other hand, signed in Corfu on June 24, 1994 is especially important. The PCA entered into force in 1998 and has been repeatedly prolonged. The PCA was the basis for the road map for reforming the Russian legal system and the road map for the development of cooperation in the energy sector\(^22\).

According to the PCA, the process of legislative harmonization extended to a wide range of areas of law, including entrepreneurship, competition rules, environmental protection, technical norms and standards, energy laws and regulations, including nuclear power regulations\(^23\).

Fundamental multilateral agreements in the energy sector for Russia were the Energy Charter signed in 1994, the Energy Charter Treaty (ECT) and other relevant documents\(^24\).

The use of ECT has generated a lot of controversy, mainly of a political nature. As a result of the Russian-Ukrainian gas conflict (January 2009), the Russian government has decided to withdraw from the provisional application of the ECT\(^25\).

The Russian side preferred to go the way of the parallel legal regulation of energy issues by offering in April 2009 a "Conceptual Approach to the New Legal Framework for Energy Cooperation (Goals and Principles)"\(^26\) and developed drafts of international instruments, namely the


\(^{23}\) See: Шевченко Л.И., Грищенко А.И. Опыт разработки и реализации магистерской программы «Правовое регулирование международного энергетического сотрудничества». Энергетическое право. 2013. № 2.


\(^{26}\) See: Гудков И.В., Лахно П.Г. Международное сотрудничество в сфере энергетики нуждается в новой правовой базе. Российская инициатива. Предпринимательское право. 2011. № 2; Гудков И.В. Российский концептуальный подход и Договор к Энергетической Хартии. Нефть, газ, право.2009. № 6; 2010. № 14; also: Третий энергетический пакет Европейского Союза: основные дискуссионные новеллы. Нефть, газ, право. 2010. № 3; also: Энергетическая стратегия Европейского Союза: правовые проблемы и практика применения. Нефть, газ, правило. 2011. № 3 ст.54-62.

Most of the basic principles contained in the "Conceptual Approach" were adopted from the text of the ECT, but the Russian approach provides separation of energy suppliers and consumers, and transit countries. It declares their responsibility for ensuring global energy security, etc. One of the main differences of "conceptual approach" is that it recognized supply and demand security principle (transparent and predictable sales) as a basis for cooperation and a key aspect of global energy security.

Policy documents known today as "soft law" in the form of strategies, concepts and doctrines like the Energy Strategy of Russia until 2030, approved by the Resolution of the Government of the Russian Federation No. 1715-r dated November 13, 2009 are crucial for ensuring an effective system of legal regulation in energy area.

These documents are very important, although they are not recognized as sources of law, they determine future development and evolution of law and define the scope of strategic policymaking. Such documents usually precede the publication of legally binding acts.

1.1. Analysis of the current state of the bulk of regulations governing the establishment and functioning of energy sector and non-fuel, renewable energy of Russia and areas of consumption allows us to conclude that the legislative system of the Russian Federation has formed and continues to develop a relatively independent special legal framework associated with the entire legislative system called \textbf{energy legislation}.

Energy legislation governs essential features of legal relations with the help of which the law ensures legal regulation of the fuel and energy complex, including the governance of business activities and business relations in market economy.


\textsuperscript{28} Доктрина Энергетической безопасности Российской Федерации, утв. Президентом РФ 29.11.2012 г. ПР-3167, приложение к Протоколу заседания Комиссии от 23 октября 2012 г. № А-60-26-170 (not published).
The primary task of energy legislation is to regulate the relations in the energy sector in order to meet the needs of the population and economy for energy resources and their rational use, as well as to facilitate business activity for entities of all types of ownership in energy sector and to protect the environment.

The legislative and regulatory framework of functioning and development of the energy sector of the economy and relations in the energy area that, as we see it, eventually comprises the Energy Code of the Russian Federation is the main instrument (mechanism) of the practical realization of the goals and priorities of the country's energy policy on all stages of its development.

2) Creation of a complex and effective legal framework for the regulation of energy relations is impossible without solid data supported by research.

To solve this difficult and crucial issue is the task for energy law theory. In other words, as noted by many experts, effective and prudent management of energy business requires a proper legal framework, including relevant legislation developed and supported by research data.

There is a need for a more thorough scientific analysis of the issues regarding the consolidation of energy legislation and its harmonization into one system.

First of all, it is necessary to ensure the development of a united complex energy law, for example, the law on basic principles of federal energy policy and afterwards the Energy Code29.

The proposed regulations need to define national energy interests and establish the basic principles of legal regulation in the entire energy area, as well as basic rules for all participants of energy relations (both public bodies and economic entities of all forms of ownership) based on the principles of justice, clarity and transparency, and ensure participation in international relations on civilized market conditions, to provide the most important provisions that should be implemented in special laws, regulations and policy documents. Such act should serve as a basis of energy law and legislation.

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As professor A.G. Bykov wrote, "The Energy Code is not a highly specific piece of legislation on the operation of power systems and fuel industries, but is the most important cross-sectoral legislative act designed to provide complex legal regulation in the energy area. It has to combine in one system the whole variety of existing relations, maintain the original rules contributing to establishment and development of fuel and energy complex as well as non-fuel energy, to determine the level and basic criteria of energy regulations that will be mandatory for all energy laws and other legal acts subordinated to the Code."

Professor V.S. Belykh agrees with him noting that the adoption of the Energy Code is not only a legal action, but also a political and even international one. In this case it is better to leave aside debates about the existence of the energy law (and entrepreneurial law as well). Pragmatism and practicability rule the day!

From this point of view, the adoption of the Russian Energy Code fits into the concept of development and adoption of the Global Energy Code, as it was mentioned by Valery Yazev, Deputy Chairman of the State Duma, President of the Russian Gas Society, at the XXIV World Gas Conference - WGC Exhibition- 2009 (Buenos Aires, Argentina).

Years of experience in dealing with representatives of Russian and foreign business community in the area of energy business convince us that an entrepreneur does not want to consider the differentiation of legal regulations existing in the doctrine. They need a complex legal regulation of their business. It is our deep conviction that the Energy Code of the Russian Federation should become such an act.

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31 See: В.С.Белых. Энергетическое право как правовая основа национальной экономической безопасности. В кн.: Европейско-Азиатский правовой конгресс. Правовое обеспечение экономической интеграции в Европейско-Азиатском пространстве. Доклады исполнительного комитета к Четвёртой сессии конгресса. УрГЮА. 2010.С.54-56.