

Research Article

THE VOIDS OF FAIR WATER DISTRIBUTION LAW: A CASE STUDY OF KERMAN

*** Marjan Nezhad Malayeri**

M.A Student in Law, The Legal Expert Of Kerman Regional Water Company

**Author for Correspondence*

ABSTRACT

For some decades, supporting environment is one of the components of the third generation of human rights is considered by legal system of the countries in the world and the issues of water, soil, and air are of great importance in the internal level, regional and international levels. The importance of these issues about water in Iran is revealed by making some laws as Ghanavat (1930), irrigation center law (1943), water law and its nationalization (1968) and water fair distribution law (1982). Unfortunately, some legal challenges and weaknesses not only paved the way for those misusing it but also by ignoring the criminals due to inefficiency created crime repetition in future. Fair water distribution law is now one of the most important water rules and is not an exception and due to the lack of separation and exact definition of offence, the lack of clarification in concepts and examples, the lack of criminology of some of the offences, the inconsistency between crime and punishment, lenient approach to committed crime, the lack of adequate good performance and the lack of inhibition of punishments has some criticisms. The present study evaluated the law approach of Iran law maker in crimes of water and investigated the problems of fair water distribution from criminology and penal aspects (emphasizing on legal procedure of Kerman province). It is hoped the study and recommendations help to improve rules and protecting the water resources in our country.

Keywords: *Water Fair Distribution Law, Crime, Punishment*

INTRODUCTION

The right to have healthy environment as one of the components of third generation of human rights or correlation right or collective right is taken into attention of the countries in the world and among the issues of environment, water support and water resources are one of the important and concerning issues at domestic, regional and international level.

Water resources include two types of surface water and subsurface levels and via natural process, we call as water cycle and they are changing. When there was more raining in our country, low population and industry and agriculture were not developed enough, this cycle was renewed very easily and no one was thinking about water importance. When raining conditions, population, industrial and agricultural factors were changed, water supply is turned into the first issue and even crisis for authorities and people. Here the first goal of Iranian authorities to avoid water waste was shown by approving underground water resources protection right on 1966. As this law didn't eliminate the existing concerns on 1968 by approving water law and its nationalization, the waters were out of the private exclusion and were introduced as public assets and by government supervision on water use, supervision was strong and using it was given to the next rules. Thus, water fair distribution law was approved on 1982 in Islamic council parliament and some regulations were determined by the new nature of waters for operation and protecting it and its execution was given to energy ministry .

Thus, the required law was not without any problem and the problems of this law reduced effectiveness and inhibition of punishments and by considering the crimes and votes, it can be said that ignoring the legal aspect and compensation of the damage, penal support is ignored by issuing the votes with minimum cash fine by judges and also by ignoring the penal aspect of these crimes. This issue is more evident in some regions as Kerman province with various dryness and water supply is problematic and it increased water value in this province. In addition, some offences as unallowable use of underground

Research Article

water resources in the region via digging any well, more water taking, bottom use and dredge without permission, creating unallowable dams in river and behind the dams, transferring water without legal water right and etc. increased the crises and it required the stringent support of rules and behavior of authorities. Thus, the investigation of legal problems regarding coping up with some crimes as mentioned crimes as legal and environmental issues of the province should be taken into attention.

METHODOLOGY

This paper is a review with library studies and is collected by describing the challenges and analysis of legal procedures of the courts of Kerman province.

1. The problems of criminology

The law of each country shows its direction to order and honor of that country. The more exact the law and as it is formulated completely, the more its stability and effectiveness will be balanced. In most cases, law is a replacement for collective intellect and social intellect (Mohammadian Roshan, 2009). Unfortunately, based on criminology in Iran legal system, ignoring the general rules shortcoming supporting environment as dispersion, old nature, the lack of comprehensibility or the lack of coverage of all environmental fields, it can be said that law maker approach regarding the support of water resources is inefficient as this passivity with the lack of precision in defining the criminal titles, the lack of determining the examples of crimes, the lack of criminology of some offences and the lack of comprehensive and up to date law regarding support of water resources is exacerbated and the main goal of making these rules (protecting water resources and prevention of its reduction) is not fulfilled. In this regard, fair water distribution law is presented in 1982 including 5 chapters and 52 articles with (mission of supporting water resources) and it was approved by Islamic council parliament and is not an exception as in criminology, due to the lack of separation and definition of some offences, the lack of clarification and explanation of concepts and the lack of criminology, some of the offences of violation of law are revealed and this led to the misuse of some people in unallowable use of water. The present study determined some damaging acts to water resources that didn't underwent criminology .

1-1- Wells dredging

Cleaning the well of mud is called dredging (Rashidi, 1999). For dredging, the users should get the permission from energy ministry and take the following stages: 1- Application, 2- Receiving land documents and address, 3- Completing obligation form, 4- Paying expert fee, 5- Visit, 6- Inquiry of statistical record and well yield, 7- Providing expert report and sending to commission of issuing permission, 8- issuing well dredging permission.

As any measurement regarding wells dredging in water fair distribution law from Iranian law makers is without good performance and there is no name of the crime of dredging without permission, this led to the relaxation of criminals as there is no legal element to cope up with this measurement and the offence is not explained from the legal courts and the file No. 91-0303 of general court of Zeidabad of Sirjan town and the complain of water resources affair of the town from Mr. Rahmatollah D for the charge of dredging without permission of Amirabad well showed that:

In the claim No. 92-0626 on 92/5/29, fifth branch of revision court of Kerman province to the protest of regional water company exempted Mr. Rahmatollah from the charge as: Protest of regional water company of Kerman to the claim issued by general court of Zeidabad is not justified as the protest of revision company is based on the fact that in accordance to article 11, executive regulation of chapter 2 of water fair distribution by permission of new well instead of the old one, the mentioned well has no border and it is deserted. The mentioned well had such condition and using it is in contradiction with water fair distribution rules and in accordance to article 45 of this law is crime. Ignoring that well deserted area is not proved, based on the file content and expert theory, the accused only repaired and dredged the well and this was not crime and the initial court is correct about this issue.

Research Article

In the mentioned vote, wells dredging (the wells in which instead of use permission of a well is given and is considered deserted in accordance to law) is as repair without penal title. The question is that what is the obligation of people to receive permission for wells dredging if the people are obliged to receive dredging permission, what is the good performance of dredging without permission?

1-2- Wells increasing depth and dredging

Regarding Ghanat dredging, any dredging or increase of depth about the wells should be done in accordance to the permission by energy ministry. In this offence, the well is having permission and the excavation on it is without any permission. It is said that any measurement to increase the use of well if it is without permission is in contradiction with the article 21 of water fair distribution law and in accordance to article 45 is unallowable and the offender should be punished. This question is raised if a person dredges his well and don't use it beyond the permitted amount or before any use, offence is discovered by the law makers. The mentioned act is pursued under which penal rules? ON the other hand, ignoring the lack of criminology of offence and as each of the mentioned measurements (increasing depth and dredging) should be done based on permission, the good performance of the lack of permission is in which legal items?

1-3- Water transfer

Item 27 of water fair distribution stated that “water consumption permission is dedicated to land and all related to it unless another decision is made by government in the region. The mentioned article defined the credit of the permission as first “the permission is dedicated to the land issued for it and second it is consumed for the items for which permission is issued and based on the article, if a person uses the water for irrigating the land except the drinking water land of the well, this is in contradiction to the article and it should be pursued. This is what that is mentioned as water illegal transference to outside the drinking water land. Unfortunately, for the lack of clarification of the article, the offence is ignored by authorities and by issuing inefficient votes, this is not coped up. For example, in file No. 92-0097 branch 101 of general court (penal) of justice court of Sirjan town in a claim 92-0631 on 92/7/14 regarding the charge of Mr. Mokhtar Kh for water transfer to the non-drinking water land is stated: The court didn't determine any punishment for the act and the charge has no legal criminal title and based on the general principle of interpretation, we can not consider the act as the examples of unallowable use of water resources and the court referring to article 2 of Islamic penal code in 2013 and section a) of article 177 of procedure law in criminal affairs exempted the accused.

1-4- Changing the type of consumption and the lack of penal complaint

According to article 28 of fair water distribution “No one is entitled to consume water except what is mentioned in the permission and without energy ministry, is not entitled to transfer the permission to another person without the permission of energy ministry unless for the land and for the same consumption with the information of energy ministry and this article regarding water consumption ban is in contradiction with the permission or the forbidden change of water type and it obliges the users to consume water in the determined use and no one is entitled to use water of well that is excavated by agriculture use and use it for industrial consumption. Regulations of article 28 of water fair distribution to prevent disorder in economic system of the country is mentioned. The law maker restricted the consumption permission to its type of consumption that people don't change their consumption without coordination with economic system of the country or don't delegate this right to another one that cause the land, factory or a city is without water. Notification of energy ministry or permission of transferring this right obliges the items that are assumed the water consumer is faced with some problems as land salinity or its unsuitability and the lack of optimal use of water in land and change their economic goal or the consumer change his job, abandon agriculture and invest in trading and in this case he can transfer water permission to at third party with the notification of energy ministry (Sarmad, 1971)

Research Article

This question is raised whether offence of contract conditions in water use or excavation in terms of consumption type and change without permission “from industrial consumption to agriculture” together based on article 28 of water fair distribution, it can be adapted with the offence in article 45 or the complaint in this regard is not heard and the issue lacks criminal description and the complainant (water organization) based on section 3 of article 24 of executive regulation of second chapter of the law mainly or by the mentioned law can act accordingly. Based on articles 28, 45 water fair distribution law, the items in section 45 of the mentioned law are not consistent and it lacks criminal description (theory No. 7-4837 on 2004 legal office and formulating judiciary power regulations .

1-5- Extra water taking

In some cases, a person after well excavation and receiving use permission, without considering allowed yield use the well extremely. One of the important problems regarding unduly water taking of underground water table is water level loss and density of layers and sediments. This phenomenon causes subsidence of earth as suddenly in sand or gradually in clay water table. This issue potentially can create problems as gap in earth, change of gradient of rivers and roads, gradually subsidence of structures and falling of the wall of wells, the change of earth gradient and increase of earthquake regions.

Another outcome is continual loss of underground water level or water extra taking, gradual salinity of underground water and salty water face to sweet water face in coastal regions and if the underground water loss continues in plains, besides water salinity leads to its full emptiness and all the investment and living facilities are eliminated and it will have considerable environmental problems (Velayati, 2002). The importance of this issue requires that a separate part in the rules is dedicated to this issue and separately, the importance of the issue is considered and it undergo criminology and inserting this item in section of article 45 based on environmental effects and weak punishment of article can not determine acting against this measurement.

2- Problems of determining punishment

To achieve the goals of penal law, we should have suitable penal responses. If the suitable penal good performance is not predicted, penal justice system fails to achieve its goals (Ghalajuri, 2012)

It is obvious selection criteria and determining punishment should be done regularly by policy makers. One of the criteria of success or failure of penal good performance is inhibition as the criminals don't commit crime again and others don't select crime to achieve their goals based on the type of crime (Dabiri, 2001)

If we consider punishment as a factor to compensate the criminal obligation to society, as serious crime creates heavy debt, its compensation should be heavier (Yazdian, 2008)

In addition, the punishment should be threatening in this case negative prevention is discussed, deviating the potential criminals via punishment threat or via purification effect of penal law (Ebrahimi, 2008)

As it was said, most of the good performances in water fair distribution law can not be described and doesn't fulfill the goals of law as supporting the water resources. For example, Iran law maker instead of considering clear punishment to any offensive behavior by mentioning some of the crimes in article 45 identify the items as crime and determine the punishment and besides referring to the previous stage and compensate without penal aspect due to light punishment, the lack of fear dominance and the lack of inhibition aspect is not efficient and lenient approach of Iran law maker to the crimes of water is mentioned. This issue is linked with the light verdicts or minimum cash fine from the judges and this reveals passivity aspect of Iran law and sometimes for considering the offender regarding the probable punishment and profit of the crime leads to crime repetition.

The important point regarding crimes of water is that majority of these crimes as the crimes mentioned in article 45 excavating well or Ghanat, using water resources and etc. by informed people to achieve more pro fit or previous computation is done. If the selected punishments by law maker doesn't make the strong balance for the benefit of protecting environment, we observe the lack of suitable effect of punishments .

Research Article

We investigate some of the crimes without good performance or with inadequate good performance.

2-1- Water pollution

Article 6 of water fair distribution law of well and Ghanat, the users and owners are responsible to avoid water contamination and they are obliged to act in accordance to health regulations. If the pollution degree is as out of their scope, they are obliged to inform environment protection organization or health ministry.

Although the good performance of the lack of responsibility is not determined, based on the legal procedures in negligence and non-intentional act should consider financial responsibility and in case of intention should consider penal responsibility of owner or user. In this article, spring pollution is not mentioned and responsibility of owners and users is not explicated and this should be criticized (Mirzayi, 2011)

In addition in article 46 of water fair distribution law: It is forbidden to pollute water” and in this article, contamination is forbidden absolutely and by any way. Thus, this article and environment crime is contaminating water as this water is consumed for urban or industrial, mineral or husbandry. Its consumption type is not considered and only water and its various consumptions are considered. The way to create this pollution is not mentioned and it can be created from any way (Mirzayi, 2011). The important problem in article 6 is that in any law, there should be specific executive performance for omission of any act committed by people. If the users or owners of wells by considering intentions, the spiritual element as the main element of criminal acts, pollute the wells, what is their punishment and what is the executive performance for their obligation? In chapter 5 of water fair distribution law, some rules are considered for crimes and for owners of wells, no punishment is considered (Mirzayi, 2011)

2-2- Taking sand and gravel of river border

The rivers are not only the important source of water supply but also they are one of the production resources and sediment transfer.

The rivers gravel and sand are transferred with a flow and due to the abrasion of weak materials are eliminated and a durable sand and gravel with suitable grading are achieved and created more demands in construction, road and civil projects industry. Due to the proximity of rivers with transportation roads and availability of gravel and sand of river, these resources are used more (Nouruzi, et al., 2012). Taking materials, sand and gravel of rivers is one of the important resources of providing construction materials. The effects of this taking in rivers sometimes causes the bed and river regime is changed (Nohegar and Mahmoodi, 2003).

Thus, if sand and gravel is not done in the form of technical regulations in accordance to the controlled instructions, it creates adverse effects in imbalance of river, loss of underground water level in the region, destruction of the surrounding land, environment of aquatic creatures and habitat of birds and animals in the region. The rivers bed erosion, loss of water surface and the outcomes, endangering the technical installations, suspension of sediment materials and the effects as the effect on aquatic plants, population of fish and reproduction of fish and arterial river are the negative outcomes of extra use of gravel and sand resources of river (Nouruzi et al., 2012)

When gravel and sand mines are in rivers border , legal borders of sea coasts and lakes, in accordance to article 48 of water fair distribution law, permission of gravel and sand issuance depends upon the previous success of energy ministry and regional water companies by observing article 48 (Mirzayi, 2011). Making new law of mines made some changes in issuing the permission of river materials and responsibility of issuing the permission of all kinds of gravel and sand in industry, mine and commerce of provinces and based on the specific nature of river mines compared to other mines and the differences of ministry rules in case of not observing the technical issues of river engineering issues and continuing the present trend, serious damages are on rivers in the country (Nouruzi et al., 2012). As it was said, as people without permission used gravel and sand or with permission did it but without observing the technical

Research Article

regulations, this is forbidden due to the adverse environmental effects as besides article 47 of water fair law as any taking depends upon permission, note 3 of article 2 of the mentioned law banned any excavation and using rivers border and etc (without permission) but as good performance of none of the offences is determined, we are faced with the lack of punishment. In other words, the good performance of this banning is not mentioned in any of the offences, article 45 of the above law doesn't determine its punishment. What is the obligation of authorities to this risky measurement to water resources. We can find the good performance of the above offence as environment destruction in article 690 of Islamic penal code 1996 and determining clear good performance without any ambiguity with inhibition aspect is more appropriate. Finally, it is hoped that by giving the responsibility of issuing water use permission and supervising taking water" totally to ministry of energy and making effective penal good performance to cope up with these water taking have great step to cope up with these crimes.

2-3- Creating excavation and manipulation of river border

According to note 3, article 2 of water fair distribution, creating any excavation and manipulation in river bed and general channels and river passages and natural ponds and legal border of sea coasts and lakes as natural or reservoir is forbidden unless with the permission of ministry of energy.

If in case of Ayani, a seasonal river can not be directed to its natural way seasonally, in rainfall and flood from the upstream in case of narrowing the water path, it damages the land or the houses of down stream. Based on the note of article 2 and the conditions considered for determining crime and the report of energy ministry experts, it can be accepted as report or in case of any difference in legal court can use the experts their knowledge is supported in accordance to article 49 of water fair distribution law (Mirzayi, 2011)

If based on the experts view and the law, a part of it is in the common owners' documents as river bed, the rules of note 2, article 2 can be used (theory NO. 7/4710 on 1993)

The mentioned article determined the elimination of the existing ayani in their border in note 4 and it stated that if ministry of energy determines the existing Ayani for water or electricity as disturbing, notifies the owner to empty Ayani within the definite time and in case of rejection, ministry of energy by the supervision of the prosecutor or his agent can eliminate it. Then, the damages obligation is determined and is given to articles 43, 44 for paying them. By determining the obligation of the existing Ayani and civil responsibility of the offender, the punishment of the offender and penal act is considered. As in the notes, none of them determined penal response or type of punishment, this question is raised for punishing the offender, can we use penal performance of article 45? The answer is no as by careful consideration of the mentioned article, it can be said there is no executive performance for this offence.

It is better to refer to the solution in claim NO. 92-0908 on 92/8/7 from branch 101 of penal court of justice court of Anbarabad town in file NO. 92-0050 of water resources complaint of that town for the behalf of Mr. Ali S. for evil occupancy. In the claim, it can be said based on the complaint of the legal agent of water resources office of Anbarabad, the security researches, the claims of accused in court session, the punishment issued by general court of Anbar Abad town and the lack of presence of accused and the lack of sending defense bill despite notification of the time of dealing, offense was proved and the court by evidence referred to articles 18, 690 of Islamic penal code and besides returning to the past condition imprisoned for four months by deducting the previous imprisonment days.

As it can be said, the court in the vote referred to article 690 of Islamic code for punishing the offender and considered the reason the lack of effective performance for this article and it seems that the only solution of penal support in the issue is occupancy inserted in article 690 that seems correct. It can be said if the river border is defined, new construction in river and natural paths and note 3, article 2 of water fair distribution law includes article 690 of Islamic penal code. Thus, construction of Ayani and in river border, the mentioned note is not including penal rules of article 690 (theory No. 7/6425 on 2000).

It can be said that to eliminate the problem of the lack of performance of article 2 of water fair distribution law, we can refer to article 690 of Islamic penal code and by the lack of execution

Research Article

performance of the recent section of note 3 about manipulation of the legal borders of coasts and lakes, what we should do?

2-4- Water transfer

As it was said before, based on article 27 of water fair distribution law, operation permission is dedicated to the land that is issued and no one is obliged to transfer the water to outside the drinking water land. If a person transfers this water to the non-drinking land, he committed water transfer act and he should be punished. As it was said before, the above measurement not only is not a crime from the courts but also it is not prosecuted and in case of any punishment, determining punishment is problematic as there is no punishment for it. According to article 1 of water fair distribution law, the water of water resources including surface and subsurface belong to government and based on article 3, 21 of the law, any use of these resources should be based on ministry of energy permission otherwise he is punished in article 45. Operation in this article is including all illegal use of water resources as well water using without permission, releasing the plump of well and using it, selling water to those who are not qualified, extra taking and etc. In this case, the person transfers water to outside drinking water land and this is illegal use of water as water is used in a place for which permission is issued. ON the other hand, a person doing it and transferred water is transgressing water resources and this is included in article 690 of penal code of 1996. Thus, ignoring this measurement and the lack of prediction of punishment can not be consistent with legal logic.

DISCUSSION AND CONCLUSION

Protecting water resources is one of the basic values and concerns of legal system of any country and this is not possible except by strong good performance eliminating transgression. Based on making various rules and the problems in current rules as water fair distribution law, supporting water resources is challenged. Thus, recognizing the weaknesses of this law and presenting some recommendations to eliminate them are necessary in Iran legal system. In the study, the problems of law are investigated from criminology and penal code. The lack of precision in defining the criminal titles, the lack of determining the crimes examples and lack of criminology, some of the offences are criminological problems of law as some of the acts with adverse environmental effects on water resources exist and it didn't underwent criminology and in most cases it is abused by people. These cases are unallowable dredging of wells, increasing the depth without any permission, water transfer and extra taking. The votes issues in this regard supported the above claim. The lenient approach of the law maker to the crimes, weak punishment, the lack of efficient performance, not considering the inhibition factor of punishments are problems of penal rules. For example, the most important problem of cash fine (that is considered in the courts order) is its influence of the fluctuations of currency and this leads to the issuance of votes with low prices without effect and avoiding the crime repetition. In addition, some examples of crimes are found in law undergoing criminology and no punishment is considered for it and it is water contamination, taking sand and gravel of river, occupancy, destruction and excavation in river border, water transfer and etc. Thus, the necessity of formulating a comprehensive law to replace all rules of water is revealed well, the lack that can do correct criminology by eliminating all problems of previous law and by formulating clear good performance support this capital.

REFERENCES

- Ebrahimi, Shahram. 2008.** Inhibition from the legal and criminology view. Workshop. Year 2. NO. 5, 139-156.
- Dabiri, Farhad. 2001.** The study of environmental evaluation rules in Iran. The articles of the first conference of environmental effects evaluation
- Rashidi, Hamid. 1999.** The dictionary of legal terms of water and electricity industry. Dadgostar. First edition. Tehran.

Research Article

Sarmad, Morteza. 1971. Water law. Seke publications. Tehran.

Ghalajuri, Ghazale. 2012. The supports and challenges of Iran penal system from the view of environmental crimes. The first international conference of environmental crises and its improvement solutions. Kish island.

Mohammadian Roshan, Masih. 2009. The features and considerations of a good law of improving energy efficiency. National committee of energy of Islamic Republic of Iran. Tehran.

Mirzayi, ALireza. 2011. The rules of land in present legal system. Behnami publications. First edition. Tehran.

Nohegar, Ahmad; Mahmoodi, Farajollah. 2003. The study of the effects of taking materials (gravel and sand) on bed form and Minab regime of river, Geographical researches. No. 45, 45-58.

Noruzi, Sahar, Jafari, Ghazal, Meybodi, Javad. 2012. The study of legal challenges of taking sand and gravel of river. The 9th international seminar of river engineering. Ahvaz.

Velayati, Saadollah. 2002. The effect of extra taking of wells in salinity of acquifer of forest plain (Torbat Heidarie). Geographical research journal. No. 67, 91-105.

Yazdian, Jafari, Jafar. 2008. Consistency principle of crime and punishment. Name Mofid. NO. 67. 139-156.