

A Legal Study of the Ownership of Religious Property

Peng NAI^{1,a,*} and Yan-Lin LI^{2,b}

¹Yunnan University of Finance and Economics, Kunming, Yunnan, China

²Yunnan University of Finance and Economics, Kunming, Yunnan, China

^anpeng315@foxmail.com, ^b530263998@qq.com

Keywords: Religious property, Religious corporate, Property ownership, Regulatory system.

Abstract. For a long time, the unclearness of the ownership of religious property has caused many problems such as the commercialization of religion, the abuse of religious property and many other issues. Giving legal groups and places of religious activity legal personality is the key to solving the problems related to the tenure of religious property. Recently, China has confirmed religious groups of legal personality by law, religious activities have donate legal personality by the law. China should improve the religious system on this basis, confirm the religious legal person as the main body of religious property, establish and improve the religious property management and supervision system, and regulate the legal and reasonable use of religious property. In line with the province's actual, it's guiding the provinces to establish and improve religious legal system and religious property protection system. So that religious property is clear, religious property is effectively protected, religious organizations are more healthy and active development to develop legally religious activities.

Introduction

In 2010, Yuxi City, Yunnan Province, according to the monks of the Buddhist monks were killed after the robbery, the name of the bank deposits of more than 474 million yuan, more than 20 million yuan of claims. His daughter Zhang Yiyun asked to confirm its ownership of the property. Ling Zhao Temple Management Committee that the name of the deposit under the name of the temple property, It does not belong to personal property, Zhang Yiyun hasn't inheritance. Zhang Yiyun sued the court. In September 2012, Yuxi City Intermediate People's Court made a decision to dismiss the request for the plaintiff Zhang Yiyun.

State Administration for Religious Affairs Joint United Front Work Department, Development and Reform Commission and other ministries issued a document in October 2012 urgent "for dealing with comments on issues related to the Buddhist temples, Taoist temples management" should be made to effectively regulate the commercial phenomenon of religion, but the file to religious property issues with ownership, use rights, management rights, usufruct and distribution rights were not mentioned. Religious Property ownership is not clear, cause religious inheritance to property ownership dispute, relatives whether religious people have the right of inheritance also caused great concern.

On March 15, 2017, China promulgated "the General Principles of Civil Law" and became the beginning of the compilation of "the Civil Code". This article will combine the newly promulgated "the General Principles of Civil Law" and the local legislation on the ownership of religious property at present, study the problem of religious property in depth, explore the key to the settlement of religious property related disputes. Based on the actual situation in provinces and cities to explore and innovate the ownership of religious property, to provide theoretical support for the establishment and improvement of the legal system of religious property management and protection, to clarify the rights and interests of religious property and other related rights belong to the religious legal person, so that the religious property is clear, religious property is valid Protection, religious organizations more healthy and active development, the legitimate development of religious activities.

Summary of Religious Property

Religious property is the material basis of the religious activities of religious organizations. The existence and development of religion requires the transmission of religious property, and for the connotation of religious property, China's existing policies and laws and regulations don't give a clear definition. The provisions of chapter 5 of "the Regulations on Religious Affairs" enumerate the scope of religious property, and the connotation of religious property is not clear, and the "other legitimate property gains" is broadly broadened. From the level of local legislation, Guangdong Province, Jiangsu Province, seven provinces and cities will be clearly attributable to a religious property, but also did not give the connotation of religious property. It is argued that religious property refers to property that is legally owned or used for religious purposes [1].

Religious property is divided into religious property and religious general property. Religious facilities used to carry out religious activities, the realization of religious purposes, temples, faculty, residence, statues, instruments, treasures and other religious facilities, property, religious special property. Religious general property refers to income from religious activities, including contributions received, government support for funds, and income from various business activities. In addition to the special resources of the church and the financial support given by the government, the general religious property mainly comes from three aspects: one is the donation of the believers; the second is through the faith with the reward of the activities of the income; the last one is engaged in business activities to obtain the benefits. At this stage most of the religious property disputes are caused by business activities.

The Existing Problems of the Existence of Religious Property Rights

China has made some achievements in the management of the tenure of religious property, but there are still some problems on the way to the rule of law.

The Legal System of Religious Activities is Immature

The place of religious activities is an important subject of religious activities in our country. For a long time, the place of religious activities in our country lacks the legal authority to declare the rights and interests of religious property by civil subject qualification. China's legal system for religious activities to the legal system started late, on March 15, 2017 issued the "The General Principles of Civil Law" was formally granted legal personality, According to "The General Principles of Civil Law" Article 92, paragraph 2 provides: "Where a place of religious activities established in accordance with the law has legal person conditions, it may apply for legal person registration and obtain legal personality for the donation. If Laws and administrative regulations has stipulate for the place of religious activities, according to it's provisions.

Before promulgated "the General Principles of Civil Law", China lacks awareness of the importance of religious property. China also has produced and left a large number of religious activities, property rights and interests of the urgent need to address: The place of religious activities is not recognized as a civil subject, the ownership of property and property owned by a place of religious activity can not be registered in its name; the place of religion can not open a bank account in the name of a civil subject, donated by the faithful or other proceeds; In practice, religious property is often deposited into the private account of religious faculty, leading to the interpersonal private property and religious property can not distinguish between confused, causing a large number of religious property rights and related rights disputes.

The Regulation of Religious Property Rights is Absence

Since the founding of the PRC, China's management of religious property is mainly the use of policy instruments, but the policy mixed and numerous, scattered in a variety of provisions, and didn't form a unified and clear system. The theory of the protection of religious property rights is more based on the basic religious policy of the Party. In 1980, the State Council provided for the real estate policy of religious groups, and made it clear that local governments had to return the

property rights of religious groups and to religious activities [2]. But so far because of China's religious historical conditions and the reality of the particularity, individual places to be returned. At the same time there are many places to teach the problem of birth and death is still a long time not properly resolved [3].

Although China has been from the administrative approach to a certain laws and regulations to be managed, but there are still problems. According to Article 77 of "the General Principles of Civil Law" provides that only the legitimate property of a religious group is inviolable, but didn't clear the legitimate rights and interests of religious groups, the right to use, management, income rights, the owner of the other related interests is also not clear. In the process of drafting "the Property Law" in 2005, scholars emphasized the importance of religious property rights legislation. But in 2007 formally promulgated and implemented the "Property Law" only provides that the social groups according to law all the property protected by law, avoiding refers to the religious property rights and related rights and interests. Professor Wang Liming in the "Draft of the Chinese Civil Code" draft article 789 proposed that Religious groups, temples and other religious organizations have independent rights, benefits, domination and other related rights and interests of religious property, and not interfering with others [4]. Although China has promulgated for the first time through the enactment of Article 92 of the General Principles of Civil Law, it can obtain legal personality according to law, the place where the property of a place of religious activity shall be punished and proceeds. But because of the special nature of religious property, the handling of the related rights and interests of the religious legal person has not been formulated and needs to be improved.

Religious Property Lacks the Management and Supervision Mechanism

The use of religious property relates to the smooth development of activities of religious groups and religious activities. The use of religious property needs to be religious and must be used for religious activities consistent with religious purposes.

Religious groups and religious activities within the lack of a viable property management system, the property acquired by the self-sustaining business at the present stage of religious activity has become a major part of religious property. Due to the lack of property management and supervision system for religious activities, and leading to the mixing of religious property with personal property; Faculty members use lusts to abuse of religious property, resulting in religious property in a state of disorderly management. Used for activities that didn't conform to religious purposes and are inconsistent with religious purposes. There are also problems with the monitoring mechanisms used by religious property, according to the March 2010 implementation of the "religious activities of the financial supervision and management approach (Trial)" requirement that there are formed the government, religious citizens, internal financial officers three kinds of supervision. But in the long-term activities, the three monitoring methods didn't work completely, resulting in the lack of professional property management and supervision personnel in religious venues; the oversight content is too simplistic; Supervision of the feedback channel is not smooth and other issues deep-rooted. Although article 93 of "the General Principles of Civil Law" also provides for the supervision of religious property: "The donor company shall set up supervisory organs such as the board of supervisors." However, in the long-term historical practice, the formation of the supervision mechanism can not be easily changed, and can not effectively regulate the use of religious property.

Innovation of Religious Property Rights

In the long-term laws and regulations and practice, China didn't make specific provisions on the religious property rights, therefore, the local legislation of our provinces are complicated and inconsistent with the tenure of religious property. Some provinces have made more detailed provisions on religious property content, and recognized the religious organizations, including religious activities on the religious property management, the use of the right. But some provinces neglected the provisions on the tenure of religious property.

To clearly regulate the tenure of religious property, it is necessary to clarify the ownership of the property. For a long time, the religious status of religious groups and religious activities in China is blurred, only to confirm the religious groups to the qualifications of corporate associations. Until the recent promulgation of the "the General Principles of Civil Law" provisions in china that if religious activities possess legal conditions, it can be established donate legal personality. It's confirmed the legal status of religious activities. On the basis of the legal religious status, China should further establish and perfect the system of religious legal system, confirm the religious legal person as the main body of religious property, and provide the theoretical basis and legal basis for the provinces to solve the problem of religious property ownership. With the implementation of "the General Principles of Civil Law", provinces should be combined with reality to regulate the activities of the province's religious organizations, establish a religious legal system, and make the appropriate specific provisions on the legal personality and property rights and other issues.

Implement and Perfect the Religious Legal System

It is imperative for the provinces to grant legal persons and religious activities. China is a multi-religious country, these religions are distributed among different provinces. Religious beliefs vary from province to province, such as Sichuan Province is a multi-religion, gathered in Taoism, Buddhism and Islam and so on; Yunnan Province also has a strong religious distinguishing feature, the territory of the existence of various religions. Religious organizations handle religious affairs independently in China, and according to the need to set up religious institutions, the establishment of social welfare and other religious activities. In this mode of autonomy for religious affairs, the province of religious commercialization and other issues becomes increasingly serious. The provinces should be combined with the actual situation of the province, as soon as possible in accordance with the existing laws, formulate the corresponding local laws, regulations administrative regulation and rules, in order to implementation and improvement of religious legal system. It is clear that religious ownership and other property rights is owned by religious parties, so that religious organizations can be legally safeguarding the legitimate rights and interests of religious property to developing religious activities.

Improve the Management and Supervision System of Religious Property

For a long time, in the management and supervision of religious property, the absence of government supervised is more serious. Compared with the Chinese enterprises, the existing laws and regulations don't make clear the provisions on the management of religious property, and the financial and accountant of religious property are not standardized. According to "the General Principles of Civil Law", Religious organizations can obtain legal personality and religious property may be punished and proceeds in accordance with the articles of association or the rights institution. The provinces shall, in accordance with the provisions, formulate administrative regulations and regulations to specify the administration of religious property, Standardize the financial organization of religious organizations and accounting system to prevent the abuse of religious property. It is vital that the supervisory mechanism of religious property in using to ensure the purpose of religious property. Because of religious property supervision mechanism is lacking pre-existing, the content is too simplistic and other defects, the According to using of religious property in the province, provinces can establish a religious property supervision mechanism in local legislation, specifically set up a supervisory organization within the religious organization, give the supervisory authority responsible for the use of religious property in decision-making, urge the use of religious property and other rights. In establishing and improving the internal supervision of religious organizations, at the same time local governments also need to strengthen external supervision, continue to strengthen the government, religious public, internal financial staff of the three monitoring methods, form government supervision, judicial supervision and social supervision of the integration model, Supervise religious organizations to use property in correspond with religious purpose and legally carry out religious activities.

Summary

In summary, to solve the widespread phenomenon of religious commercialization and other issues, clarify the issue of religious property rights is imminent. Give religious organization to legal personality is the key to solve the problem of religious property ownership. Under the guidance of "the General Principles of Civil Law", the religious legal system should be established and perfected nationwide, that is, religious groups shall be granted legal personality and religious activities shall be granted legal personality. The provinces combine the particularity and complexity of religion, establish a unified mechanism of religious property management and supervision, to address the long-standing abuse of religious property and to prevent the illegal use of religious property. We should make effort to the legitimate use of religious property by religious organizations and to promote the more active development of religious organizations.

References

- [1] J.P. Hou, M.C. Wang: Study on Party and Government,(2016) No.4, p.89(In Chinese).
- [2] H. Ma, Y. Xue: Journal of Wuhan University of Technology, (2007) No.4, p.469 (In Chinese).
- [3] Z.P. Zhang: Theory Research, (2006) No.1, p.121 (In Chinese).

Reference to a book:

- [4] L.M. Wang: *Proposal and Explanation of Draft of Chinese Civil Code* (China Legal Publishing House ,China 2004) (In Chinese).