



A Research on Legal Institutions of Social Pension Insurance for Chinese Landless Farmers

ZENG Qinghong^[a]*

^[a]Southwest University, Chongqing, China.
 *Corresponding author.

Supported by Fundamental Research Funds for the Central Universities in 2015 “Research on the System of Basic Public Services in the Precision of Poverty Alleviation” (SWU1509181); University-region Cooperation Project of Southwest University in 2014 (HZ201402).

Received 25 October 2014; accepted 22 December 2014
 Published online 26 January 2015

Abstract

Nowadays in China, enormous explorations have been made towards solving the problems in social pension insurance for landless farmers, producing some revelatory experience. Guided by the general trend of mergence of pension insurance institutions, China is expected to construct the relevant legal system with its own characteristics by establishing basic principles and setting up the basic law, the specialized law and relevant laws and regulations at different levels.

Key words: Landless farmers; Social pension insurance; Legal institutions

Zeng, Q. H. (2015). A Research on Legal Institutions of Social Pension Insurance for Chinese Landless Farmers. *Cross-Cultural Communication*, 11(1), 1-5. Available from: <http://www.cscanada.net/index.php/cc/article/view/6379> DOI: <http://dx.doi.org/10.3968/6379>

INTRODUCTION

In recent years, enormous explorations in pension insurance for landless farmers in some areas of China have led to three institutional patterns including social pension insurance, commercial pension insurance and a combination of both. It is revealed in the practice of some areas that the adoption of commercial pension insurance is not beneficial for regulating and developing fragile

social insurance in the countryside, therefore, the wide implementation of social pension insurance serves as the major force.

1. GENERAL REVELATION OF THE SOCIAL PENSION INSURANCE PRACTICE AMONG CHINESE LANDLESS FARMERS

Due to the lack of overall and systematic standards for the security of Chinese landless farmers, different patterns are displayed in different areas. In reality, local governments establish pension systems with local characteristics in accordance with their economic development realities (Wu, 2011). Zhejiang, Shanghai and Jiangsu have taken the initiative attempt in establishing landless farmers’ social pension insurance policies and achieved some effects by adopting the method of gradual extension from pilot programs. Some experience can be sorted out of their practice which can be shared and revelatory in perfecting the social pension insurance system for landless farmers.

1.1 The Primary Issue: Choosing Proper Institutions for Landless Farmers’ Social Pension Insurance

Although Chinese government has made great efforts to promote the reform in pension insurance for state organs and institutions and establish a unified system for them and urban employees, currently we have different systems for urban employees, state organs and institutions, rural residents and migrant workers which, divided and in disorder, lead to fragmentation of the pension security system. (Zheng, 2008) While these fragments can be sorted into urban social pension system and rural social pension system, landless farmers cannot be covered by either of them.

Theoretically, landless farmers no longer belong to farmers, therefore it does not make sense for them to rely merely on rural social pension insurance security. Meanwhile, such insurance in China is based on accumulation in personal accounts so it is a luxury for landless farmers who have not enough savings for that. On the other hand, despite their so-called urban identity, they have no full access to urban residents' benefits. In many areas of China, landless farmers have displayed some obviously special characteristics: due to laggard economic development in the rural area, official compensation cannot fulfill the landless farmers' long-term survival, as a result of which they have no stable and reliable channel to make a living and are lacking in basic social security (Liu, 2013). Accordingly, when designing such an overall system, reality should be relied on to establish different institutions in accordance with government's ability in fulfilling insurance obligations and these farmers' age characteristics in order to achieve the interweaving and merger of rural and urban social pension insurance with different subjects and treatments taken into account at the same time.

1.2 The Key Issue: Solving the Problem of Capital Source

In all the sub-items of China's social pension insurance, capital source is the core which restrains the functioning of these sub-items including social pension insurance for landless farmers. The principle that the government, the community and individuals pay for their respective part should be adopted in pilot programs, in which individuals pay for the major part, supported by state policies and the community, to guarantee the stability and reliability in capital source. Some areas have made some breakthroughs in capital supply by adopting the pattern that the one who utilizes the land will take the pension responsibility for landless farmers. Payments can be deducted from land-transferring fees or incremental benefit and can be pre-paid prior to the shift in land ownership in the pre-paid fees included in the land cost. Such measures can better guarantee the capital supply for landless farmers' social pension insurance.

It is due to the significance of capital sources that it was pointed out by the state government that social security fees have to be guaranteed before the land is requisitioned. Another issue next to the capital source is the amount of capital with "the more, the better" serving as an idealistic result. According to some simple quantitative analysis on the required amount of capital for landless farmers' social pension insurance, in the annual land transferring fees of roughly 150,000,000,000 yuan, if 30% can be spared for the construction of social security system for landless farmers, the construction process of the whole social security system can be facilitated to a large degree (Lu, 2003). In reality, however, there has been a lack in government responsibilities. Apart from

government's institutional rent-seeking and fighting against farmers for profits during land requisition, only 10% of the state revenue is spared for social security the majority of which is distributed to urban employees (Zhu, 2014). For one thing, due to government's huge profits from land transferring, it should pay for a high portion of landless farmers' social security; for another, the relevant community should extract a part from their settlement profits and land compensation or make use of their profits from collective assets and the land-requisitioned villages are expected to make use of their former collective assets to pay for landless farmers' social pension insurance. In addition, in terms of the purpose of capital utilization, the part paid by individual farmers should be reduced and the payments and expenses for the establishment and maintenance of landless farmers' social pension insurance should be covered by the fiscal budget at the same level, hence giving support for the establishment of an allowance system for farmers' participation in pension insurance in diverse ways.

1.3 The Major Guarantee: Legislative Transfer

Generally, legislation should come first in terms of establishing the social security system due to its significance for people's benefits and relevance to the adjustment of the interests of government, enterprises, society, families or individuals. That is to say, relevant laws should be laid down by legislative bureaus, be supervised by administrative departments and be implemented by special public or society institutes. It is the pattern adopted by foreign countries prior to the implementation of specific security institutions, which help to guarantee the legal and scientific nature of the rural pension insurance system as well as maintain the stability of current policies.

Chinese government is usually the decision maker of social security reforms and institutional choices and the conductor of social assistance and insurance, forming a typical three-into-one institution combining administrative decision, supervision and implementation. Due to different subjects are involved in the social pension insurance for landless farmers, the establishment of relevant system is actually the adjustment of interest structure and has to be conducted in an open and transparent atmosphere in order to ensure effective participation especially that of landless farmers themselves as well as of legitimate departments. As a result, only by achieving the legislative transfer of landless farmers' social pension insurance, elevating policies to laws and regulations and implementing them under public supervision can its authoritativeness, stability and reliability be ensured. In view of the current practice, regional segmentation and administrative dominance of this category of insurance is the most severe among all sub-items of social pension insurance, covering a long cycle of legislative transfer and calling for a cautious way in two steps. First, decision making by local government

should be converted into that by central government to change random decisions made by different regions and therefore to facilitate the legislation of social security; second, the right to establish and adjust such an insurance system should be taken over by the legislative department from the administrative department to effectively avoid ignorance of the interests of other subjects due to government's one-sided dominance.

2. MACRO-CONCEPTION OF THE LEGAL SYSTEM FOR CHINESE LANDLESS FARMERS' SOCIAL PENSION INSURANCE

As is revealed in the experience of social security for landless farmers all around the world and relevant practice in China, it is required by urbanization and industrialization to establish a complete legal system including the institution for landless farmers' social pension insurance, especially to define the basic legal principles and overall legislative framework above all.

2.1 The Basic Principles of the Legal System for Landless Farmers' Social Pension Insurance

The basic principles of the legal system for landless farmers' social pension insurance should be defined based on the characteristics of landless farmers and the existing principles for the Constitution, the Labor Law and relevant laws related to social security.

2.1.1 Based on the Survival Right and Emphasizing the Development Right

Social security is initially intended to protect citizens' right of survival, provide basic conditions for individuals' right to develop and therefore secure people's development right and expand their development space by establishing the pension security institution, the minimum living security institution and the medical security institution and so on. Obviously, it is out of tune with objective rules to maintain social security at the level of merely securing the survival right when the economic conditions have improved and the state macro-policies have gradually elevated the poverty standard. Actually, Chinese government has replaced its survival poverty line by a development poverty line covering basic medical and educational requirements. Social security for landless farmers with the widest coverage should not only provide these people with sufficient food for survival, health and residence and environment for dwelling but employment, labor and resources, with the former serving as the materialistic basis for individual survival and the latter as the means for individuals to exist and develop (Xia, 2004). Therefore, in addition to being based on the survival right and emphasizing the development right, the standard for pension should be elevated accordingly.

Besides, when distributing and receiving pension, more humanized consideration should be given to periodical changes in the material basis or economic conditions of these landless farmers.

2.1.2 A Combination of Government Dominance and Responsibility Sharing

Since fundamentally the legal institutions for landless farmers' social pension insurance fall into the category of social laws in which government's roles are changing constantly in accordance with its duties in these laws. Sometimes it only plays a coordinative role in legal relations while sometimes it is one party of them, hence making it difficult for the government to decide when to be on and off duty. Such reality must be changed when establishing pension insurance legal institutions for landless farmers by reflecting on the roles of state and government from the perspective of legal relations of social insurance and sorting out the dilemma in government's responsibility during the process of legislation.

Due to its double nature of public politics and social welfare, social pension insurance for landless farmers involves not only individual farmers' risks but those for them as a collective group. While individual risks can be solved with the help of families or communities, collective risks can only be resolved by relevant legal institutions and policies. By converting from the main body of the requisition transaction to the policy maker, coordinator and monitor, the responsibility for making policies, regulations and guaranteeing their effective operation is taken over by government. On the other hand, for farmers, they lose their land passively, while government is strongly active in designing the interest allocation of land and social pension insurance schemes. It seems improper to rely only on the dominance of government under such circumstances. In addition, due to the overall poor economic development in China and the huge amount of capital required by landless farmers' social pension insurance, it cannot be dependent on state revenue and relevant responsibility should be taken by government, community and individuals together. In proper conditions, farmers' land loss can be related to specific working units to combine these people's social pension insurance with the working units requisitioning their land with government's role confined only to coordination and monitoring in order to guarantee farmers' maximum compensation for the loss they suffer from land requisition.

2.1.3 A Combination of Coordination and Diversity

In any country's development history, dualistic economy is an inevitable stage during the transition from an agricultural society to an industrial one. Obvious duality exists in politics, culture and psychology in Chinese rural and urban areas, which is different from that in other countries in terms of formation channels as well as means

to continue and strengthen such structure. The principle of combining rural and urban practice of legal institutions for landless farmers' social pension insurance is to take it as the legal objective to change the dualistic structure and achieve cohesion of urban and rural practice. Initiating from the groups with the easiest access to such cohesion, efforts can be made to change the excessive division of pension insurance step by step.

Confronted with such reality, disparities between the rural and urban areas due to historical factors should be taken into account to establish a universal policy framework and a diverse pension security system for landless farmers based on imbalanced regional development and economic development in different regions in order to satisfy these farmers' request for collective security at different levels. In addition, with the stiffness effect considered, the initial standard can not be too high. Even in quite a few areas with advanced economic development, there shouldn't be a wide disparity between the pension standard for landless farmers and normal standard since segmentation in social insurance can be increasingly severe. Rather, a variety of security forms or flexible complementary pension insurance can help to ensure a high level of security.

2.2 Construction of the Legal System for Landless Farmers' Social Pension Insurance

There have been debates in the academic field of the pattern and construction of such a legal system with special significance since it is raised as an issue to be discussed. In my eyes, the legal system for landless farmers' social pension insurance should be reflected upon in the framework of social security legal system with Chinese characteristics and be established at different levels based on the basic law, the specialized law and relevant regulations.

2.2.1 The Basic Law of Social Insurance

The basic law of social insurance should be the Social Insurance Law, which, as the core and basis of the social security legal system, permits no confliction from any specialized or supporting laws. China's Social Insurance Law issued in 2010 defines not only the purpose, the subject of adjustment, basic principles and legal responsibilities of social insurance legislation but the applicability and capital source of different kinds of social insurance. In addition, according to supplementary provisions, when collectively-owned land is requisitioned, sufficient social insurance fees for requisitioned farmers should be provided and they should be included into corresponding social insurance institutions in accordance with relevant regulations issued by the State Council. Despite lacking details in this law, it offers fundamental evidence for landless farmers' social pension insurance. With further reflection and practice, it is found that there are many authorized articles in this law which is of poor operability for landless farmers. Some elements such

as government's capital responsibility, the rates and standards for pension calculation are altogether authorized to government, which is out of line with the original intention to establish the basic law, hence calling for further perfection on it.

2.2.2 The Specialized Law for Landless Farmers' Social Security Insurance

The specialized law for landless farmers' social security, established according to the applicable subject, is a second-level law following the basic law. The specific items on social security for such a special group are the embodiment of relevant items in the basic law of social insurance. In terms of the manifestation and the legal effect of the law, it is proper for the specialized law to be issued by the State Council and take the form of administrative regulation. In the law a social security pattern guided by government should be clearly defined to exert government's intervention with pension, medical care and employment and therefore to establish a complete and reasonable social security institution system for landless farmers in all sections including capital collection, organization establishment and supervision institutions. To be specific, the basic pension institution for landless farmers, the medical care institution, the career training institution, the minimum living security institution should be established. On the premises of no violation against the basic social insurance law, pension insurance funds and insurance management should be specifically laid down to exert its functions together with local regulations issued by local governments. However, it should be noted that such local regulations can be omitted without substantial and meaningful innovation since otherwise the previous form with excessive segmentation and disorder in legal institutions will be recovered.

2.2.3 Laws and Regulations on the Requisition, Compensation and Placement of Rural Land

There are comparatively more laws and regulations in the legal system for landless farmers' social pension. For instance, the Land Management Law includes not only the items on land ownership, the protection of cultivated land and constructive land but the issue of requisition and compensation and displays some setbacks such as one-fold means of compensation, over-simple items and unreasonable compensation standards. Meanwhile, the compensation in mere cash cannot cover these farmers' basic living security and long-term survival, hence failing to provide solid security for them. (Xu, 2008) The Property Law also makes some arrangements for these issues, suffering from the same problems such as difficulty in practice and failure to offer long-term protection of farmers' survival.

In order to avoid the damage on landless farmers' interests from the source, the key lies in compensation and placement which can lessen the pressure on landless farmers' social security although they are not direct

legislative issues. It is suggested by some scholars that a land requisition law in conformity with China's reality can be issued with reference to the Japanese one, emphasizing scientific definition of the main body of collective land ownership, reasonable confirmation of land compensation standards and following requisition procedures strictly. Specific items on compensation can be listed to gather the previously scattered regulations on compensation, hence making them coherent and offering clearer standards and more reasonable forms. Similarly, another way is to amend those articles in the Land Management Law which are out of line with the requirement of the market economy and protection of farmers' interests in order to change the low compensation standards given by the current requisition institution. Meanwhile, the hearing system should be introduced to the land requisition process and judicial relief should be employed as an important relief for land requisition. (Li, 2007)

In addition, some other measures such as amending regulations on household registration management, establishing the institution on government responsibility and on risk precaution should be taken to promote the establishment of social pension insurance legal system for Chinese landless farmers in an all-round way.

REFERENCES

- Li, S. M. (2007). *A research on the social security institution for landless farmers* (p.87). China Economics Press.
- Liu, S. (2013). A research on landless peasants' social security: A case study in a county in Shanghai. *People's Tribune*, (06), 227.
- Lu, H. Y. (2003). Exchanging land for security: Basic conception on the placement of landless farmers. *China Rural Survey*, (06), 48-54.
- Wu, C. M. (2011). An exploration on pension security institution for landless farmers and its sustainable development. *Agricultural Economy*, (11), 70.
- Xia, Q. X. (2004). An exploration of the individual development right. *Politics and Law Tribune (Journal of China University of Politics and Law)*, (6), 174.
- Xu, Y. X., & Xu, F. (2008). On the legislation of landless farmers' social security. *Social Science Journal*, (4), 56.
- Zheng, G. C. (2008). *Strategies for the reform and development of China's social security: Idea, objective and action schemes* (p.116). China People's Press.
- Zhu, C. B., & Shuang, C. X. (2014). On the citizen identity of landless farmers and fairness of social security for them. *Nanjing Social Science*, (11), 78.