# Improving the quality and efficiency of lawmaking against the backdrop of modern social transformations

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In the modern era, social transformations contribute to the dynamic development of basic legal frameworks governing public relations. Consequently, the lawmaking process is facing a certain crisis due to the rising legislative inflation and a gap between the pace of social change and lawmaking mechanisms. In these circumstances, improving lawmaking activities should be based on doctrinal developments, including those concerning lawmaking quality and efficiency. The article uses constructivism methodology to illustrate the inextricable connection between the legal process and law enforcement, which is seen as the first stage in the process of shaping the legal reality. The authors analyze how domestic legal thinking has evolved in relation to the efficiency and quality of lawmaking. A list of the criteria and parameters proved by Soviet and post-Soviet scientists was compiled. It is shown that lawmaking activity efficiency and quality are dialectically related. It is justified to consider the social determinants that affect lawmaking efficiency. Accordingly, it is concluded that the efficiency of legal norms should be measured by what impact their application has had on society, in what extent they have met the goals of social management at the given stage of social development. The authors propose three levels of measuring the efficiency of legal norms in modern society: formal-legal, axiological and general social. The value of legal monitoring is highlighted in assessing the quality of lawmaking and determining the extent to which legal norms are efficient.

*Keywords:* lawmaking, efficiency of lawmaking, quality of lawmaking, legal norms, society, law enforcement, legal reality.

## 1. Introduction

Legal science and practice place a great deal of emphasis on the lawmaking issues. From a scientific standpoint, improving lawmaking activity is a major part of the state's legal policy, and it can be viewed as the first step in shaping legal reality.

While a large number of works have been written about lawmaking theory and practice, rapidly evolving social relations, which determine the dynamics of legal regulation, require further research in relation to new realities and taking into account modern methodological approaches to this challenge.

Today, society is experiencing several trends that directly affect the lawmaking. The observed legislative inflation combined with a significant increase in the number of the

adopted regulatory acts has changed the relationship between laws and by-laws. As the number of laws is sharply rising, their regulatory role is being diminished, both in terms of quality and practical relevance as a means of regulating public relations. Furthermore, legislative activity has always lagged behind the development of public relations, which is continuously accelerating due to digitalization, and laws often become outdated right after they are passed. Aside from that, the adopted regulatory acts are not always free of contradictions and gaps from a legal and technical perspective.

Accordingly, the study of issues directly related to the quality of lawmaking activity, as well as its effect on social relations, remains relevant in a highly dynamic environment.

The study is based on the insights of scientists from the Soviet and post-Soviet periods regarding the quality and efficiency of lawmaking. Methodologically speaking, in the study, an interdisciplinary approach is used to examine issues of lawmaking from a broad perspective, identifying the social conditions that influence quality and efficiency of lawmaking. Additionally, applying constructivism methodology, which considers all phenomena of social reality as constructs, seems promising. In this case, to construct legal reality, lawmaking is viewed as the primary element.

## 2. Basic research

The development of legal theory and practice is intrinsically linked to the overcoming of many important challenges. The task of improving the quality and efficiency of law making occupies a prominent place among them. These parameters determine to a large extent the purpose of lawmaking activity, its role in shaping legal reality and the perception it has among wide segments of society. Meanwhile, improving the quality and efficiency of lawmaking requires a theoretical substantiation of these phenomena and possible methods of updating them.

It was the Soviet legal theorists who provided a solid foundation for the main ideas about the quality of lawmaking (Pigolkin 1968; Polenina 1993). Furthermore, the dynamics of social relations in the context of a new technological reality and global challenges makes it necessary to keep addressing the lawmaking quality and efficiency issues.

A number of other legal phenomena affect lawmaking quality. The quality of lawmaking is a complex, more general notion than such concepts as the quality of legal process and the quality of regulatory acts. In studying the quality of lawmaking, one is challenged by the fact that it can only be judged with due regard to the results of law enforcement activities. A regulatory act does not become a new legal reality by itself, its development and adoption is simply a first step in shaping it. Regulatory acts should be realized by the participants of public relations, their norms should receive adequate intellectual and emotional reflection in their legal consciousness, and then they must be reflected in the daily mass behavior of the participants of public relations. It is only through the results of all three stages that one can determine the success or failure of a new legal reality, so the quality of lawmaking will be determined by whether the ultimate goal is achieved or not. Scientists write: "The law is not an end in itself, but rather a mechanism that mediates the achievement of a significant result, which is relations in society. There is no place for the quality of a law in this context. A quality criterion is only the state of social relations based on this text" (Tikhomirov, Boshno 2018, 11).

Even though assessing the quality of lawmaking is complex, it can be done based only on the first indicated stage, that is, lawmaking itself, adjusting for the fact that this is not a complete assessment in any case.

Generally, the quality of lawmaking can be divided into two parts: the quality of the adopted regulatory act and the quality of the legal process, meaning the procedures for its adoption. Furthermore, formal and substantive parameters contribute to the quality of the law.

Conformity with the requirements of legal drafting is a formal criterion for evaluating the quality of laws and bylaws. An act should be flawless by form and have all the necessary details accepted under the established procedure. The language of regulatory legal acts is also subject to special requirements. Scientists note: "The correct use of legal constructs, terms, definitions, professionalisms, technicisms, legal symbols and specific legal means of rule-making legal drafting allows the legislator to more accurately and pointedly influence the subjects of law, activating their legal awareness" (Popova, Gergieva 2019, 34).

Substantive criteria suggest internal consistency of an act. Its norms must reflect the general direction of the government's legal policy, as well as the current stage of the development of public relations, to which they are intended to apply. Furthermore, these norms must be implemented, otherwise all their meaning will be lost. Implementing the norms depends heavily on their compliance with the current stage and the general state of the development of public relations.

Additionally, laws, in a narrow sense, should substantially relate to general norms, without unnecessary details, complicating their application, which differentiates them from by-laws.

Furthermore, the law should not only regulate existing relations but also model relations that may emerge in the future, thus acting as a prognostic tool. It is only through the combination of science and practice, the involvement of scientists in legislative activity and the active use of legal science achievements that such a challenge can be overcome.

Generally, the quality of laws and by-laws is a rather complex concept. Particularly, E. V. Syrykh, in her study, noted that "the law of proper quality is viewed as a law with whole set of properties inherent in it as a source of law, as well as having the optimal intensity of manifestation of properties (criteria) of normativity, completeness, specificity, consistency, legal correctness of non-normative elements of the law, simplicity, accuracy, clarity, brevity (economy), logical correctness, social conditioning and adequacy of the method for legal regulation of social validity" (Syrykh 2001, 8). These features illustrate how many requirements are placed on a regulatory act in order to qualify as high-quality.

S. V. Polenina, who was concerned about the quality of a law, wrote that "improving the quality of a law requires action on all three plans — legal, social, and political" (Polenina 1987, 12).

The legal parameters of the quality of a law, according to S. V. Polenina, are as follows. First of all, the law should be precisely a legal prescript set out in proper form.

Additionally, the quality indicator of a separate regulatory act "is also the correlation between its main typological features: legal force, the circle of regulated public relations and the specifics of the norms contained therein" (Polenina 1987, 13).

By-laws have another important requirement: they must not contradict the laws, including those for execution and concretization of which they were adopted.

Besides, the quality of a law is determined not only by its form and content, but also by its corresponding ties within the legal system. It is essential to harmonize laws within separate branches of law; they should also provide the necessary relations within the legal system as a whole. One of the factors contributing to the quality of lawmaking is whether the new regulatory acts fit into existing legislation.

There are many factors outside the legal sphere that determine the quality of lawmaking. Economic, political, social, cultural, demographic, national, religious and other factors fall into this category. The cumulative influence of all these factors on lawmaking results in a final vector whose direction is directly correlated with the quality of lawmaking activity. In the legal process, minimizing their "excessive" impact on lawmaking activity seems to be an important and challenging task, whose successful completion will also determine the quality of legal norms in each specific case. Taking these factors into account in drafting regulatory acts requires serious scientific research. The study should not be limited to a formal-legal approach, but rather should be conducted within an interdisciplinary synthesis framework due to the multifactorial nature of the studied processes. One can share the viewpoint of T. Ya. Khabrieva, who writes: "Lawmaking is surely the realm of legal scholars, but it will be successful only if the latest knowledge is used, including that of economics, sociology, history, political science. Only then is it possible to create a legal space worthy of the very idea of law" (Khabrieva 2015, 12).

In addition to these external factors, such as their attitude toward the law and lawmaking, there are also procedural factors. In this regard, it is pertinent to consider the position of the monograph authors, who emphasize organizational, scientific and programming factors (Kazimirchuk, Polenina 2010, 38–39). Together, these factors encompass the organizational procedures for drafting and adopting regulatory acts, the peculiarities of the use of information in this process, the consideration of public opinion, scientific validity and the use of forecasts for the development of law. Furthermore, all of these factors provide assurances that the adopted regulatory acts are of high quality.

The legal norms are adopted to regulate public relations. Lawmaking is not an abstract activity, but the application-oriented one based on theoretical developments. The concept of the quality of a regulatory act is inextricably linked to its social value. Thus, only acts whose axiological content corresponds with the value guidelines and dominants of society can be considered qualitative.

"The social feature of the quality of a law," writes S. V. Polenina, "implies more than simply an adequate reflection of the processes taking place in society in it, but also their projection into the future, forecasting of possible development pathways" (Polenina 1987, 13). In this case, the author is not referring to a particular legislative act, but rather to all lawmaking, which, in solving important social problems, must have a predictive orientation and a proactive impact on social relations. Lawmaking transforms social phenomena into legislative norms, giving them legal significance. Such a reflection can acquire not only "catching up", stating nature but also have advanced, promising potential. The full sociological integration of lawmaking with a deep study of the processes taking place in society by the scientific community, coupled with an adequate perception of the results of such a study by lawmaking practitioners will make all of this possible.

Political aspects of lawmaking arise from the fact that the relevant activities should not be undertaken in a chaotic manner, but according to the state strategy enshrined in strategic planning documents. In this regard, S. V. Polenina writes aptly that "legislators

should complement their substantive and functional activities related to achieving high indicators of legal and social quality by their substantive and targeted activities that guarantee the appropriate political parameters for the quality of each law, each branch of legislation and the legislation system as a whole" (Polenina 1987, 17).

Thus, a crucial factor in the quality of lawmaking is the presence of a clearly structured and documented political line in the state, which will serve as the basis for strategic planning of lawmaking activities, accurate determination of its goals and targets. It is important for society to have an idea of its development vector, which will be reflected in its regulatory acts united by a common strategy.

As the regulatory act adopted within the lawmaking process should become an efficient regulator of public relations, the quality of lawmaking is inextricably linked to its effectiveness.

Pre-revolutionary scientists, both legal theorists and specialists in international law, addressed issues of the efficiency of law. After analyzing the existing positions, A. A. Dorskaia showed that the main criteria for the efficiency of law and legal regulation were: "1) reliance on the best achievements of legal theory and branch sciences; 2) codification of certain branches of domestic and international law; 3) change of the ideas underlying the legal norms; 4) the gradual universalization of legal norms (for example, in the field of human rights' protection); 5) the social nature of legal norms, ensuring public interests; 6) restrictions in the rights of states…; 7) timely revision of legal norms that are either outdated or did not justify themselves for any reason; 8) the existence of mechanisms for restoring the violated right; 9) study of currently irrelevant issues that have the potential to develop into a problem; 10) development of the legal liability institution" (Dorskaia 2020, 13).

The Soviet legal doctrine actively investigated the efficiency of law and its norms. These issues were explored by M. D. Shargorodskii, V. I. Nikitinskii, V. P. Kazimirchuk and later by Yu. A. Tikhomirov and other scientists. Research in the 1960s and 1970s began to distinguish between the legal and social efficiency of legal norms. In the first case, efficiency was associated with legal behavior and the degree of its compliance with these norms. In the second case, an emphasis was placed on a broader understanding of efficiency, which had implications beyond the specific legal sphere, manifesting themselves in public relations, contributing to societal progress. Law enforcement practices as well as sociological research methods were emphasized as crucial to measuring all aspects of the efficiency of law (Lazarev 2007, 82–83).

V. I. Nikitinskii believed that "the efficiency of legal norms should be very tentatively understood as the efficiency of their impact on social relations" (Nikitinskii 1971, 12). According to the scientist, the law can only be efficient if it meets a number of formal and substantive requirements. The formal requirements include compliance with legal and technical parameters, stability, systematization, the absence of gaps and contradictions. Substantive requirements cover scientific validity as well as compliance with objective patterns and the level of development achieved by society (Nikitinskii 1971, 16).

The law is subject to certain requirements, some of which are expressed in legal principles. We are talking about legality, law and order, legal culture and legal education. Each particular legal norm can be efficient only if all these requirements are met. It is also necessary to assess the effectiveness of a particular norm under the specific circumstances of its application, taking into account the effect of the law as such.

V. I. Nikitinskii proposed a distinction between the efficiency of the legal norm and the efficiency of its mechanism. A first case of efficiency implies achieving a social goal, while a second case involves ensuring people behave legally (Nikitinskii 1971, 19).

While there are many approaches to understanding the efficiency of legal norms, the scientist concludes that efficiency should only be understood as a public phenomenon in one sense — as "the relationship between the achieved tangible outcome and the social goal for which the relevant norms were adopted" (Nikitinskii 1971, 32).

The provisions substantiated by V. I. Nikitinskii were developed and supplemented in the work of F. N. Fatkullin and L. D. Chuliukin. In their opinion, the efficiency of socialist legal norms is defined as their ability to positively influence public relations and the attitudes of their participants in the given direction under the social conditions that actually prevail during their period of action in that country at the lowest cost (Fatkullin, Chuliukin 1977, 26).

These scientists have greatly contributed to our understanding of the factors affecting efficiency by urging us not to confuse the efficiency of legal norms with what it is dependent on: the efficiency of legal norms is dependent on a number of factors, but those factors play a role in defining not efficiency as such, but rather its conditions (Fatkullin, Chuliukin 1977, 26).

F. N. Fatkullin and L. D. Chuliukin found fault with V. I. Nikitinskii on distinguishing between the efficiency of the legal norm and the efficiency of its mechanism. According to them, such a position means assessing the efficiency of a legal norm in statics, without considering its mechanism, but also arguing that "the mechanism of a legal norm is inseparable from its form and content, which means its efficiency cannot be isolated from the efficiency of a legal norm" (Fatkullin, Chuliukin 1977, 29).

The work cited essentially finds that the efficiency of a legal norm is inextricably linked to its social value. In turn, the features of the society in which a norm operates determine its social value.

A similar view on the dynamics of legal efficiency was expressed by V. V. Lazarev: "The efficiency of legal norms can be clarified only when considering law in practice, and the application of law is, as is known, one of the forms of its implementation, thus a criterion for the utility of regulations as well as any other form of practical activity, though" (Lazarev 2010, 125–126).

O. E. Leist linked the efficiency of law to its feasibility in practice, "which is determined by the well-known status, clarity and consistency of legal norms… the proportionality of the social goals of the norms and legal means of achieving these goals, the provision of law by an efficient system of justice bodies and other law enforcement agencies" (Leist 2008, 111).

Here it appears that what matters is not so much how efficient legal norms are, but rather those conditions that make them efficient. Even so, these conditions do not yet constitute an indispensable guarantee of effectiveness. Also, it is worth considering the view expressed by A. A. Dorskaia who claims that the legal efficiency of a legal norm differs from its social efficiency (Dorskaia 2020, 12). Although an activity may be considered efficient according to existing legal principles and criteria, from a social perspective, it may not have the desired impact. It is enough to recall the recent legislation on the "monetization" of social benefits as well as raising the retirement age; all this has been observed more than once in our country's history. Although the reformers largely took into account

all the necessary legal aspects, they neglected to consider social perception and the associated negative public reactions. In the opposite case, the most efficient ways of influencing society might be those that work against the established legal norms and current legislation; moreover, they are simply illegal.

Efficiency of lawmaking differs from the efficiency of law and the efficiency of legal norms. Nevertheless, all concepts must take into account the social aspect, i. e. how the legal impact affects social relations.

Constructing a new legal reality begins with lawmaking, its first step (Pashentsev 2022, 17). Law enforcement is the result of this process. Until it becomes part of a daily mass behavior of the subjects of public relations, the legal norm as an outcome of lawmaking activity is not a full-fledged law. In this way, it is possible to fully assess the efficiency of lawmaking activities only by taking into account the results of law enforcement. The development of criteria for evaluating the efficiency of lawmaking in a new scientific rationality also involves monitoring law enforcement.

Lawmaking can only be called effective when it achieves its ultimate goal, which manifests itself in a certain impact on social relations, in bringing a qualitative change into these relations. One can agree with V. V. Lazarev who writes: "The efficiency of legal norms can be clarified only when considering law in practice, and the application of law is, as is known, one of the forms of its implementation, thus a criterion for the utility of regulations as well as any other form of practical activity, though" (Lazarev 2010, 125–126).

It has been noted by Soviet scientists that domestic legislation is poorly adapted to test its efficiency, since it does not sufficiently disclose the goal-setting process (Samoshchenko, Nikitinskii 1969). This problem still persists. The goal-setting needs to be strengthened at all stages of lawmaking activity in order to improve its efficiency and quality. On the one hand, establishing clear goals in lawmaking will help them be achieved more completely, and on the other hand, will provide important criteria for assessing its efficiency.

Western jurisprudence connects the efficiency of law and, therefore, lawmaking with economic criteria. This idea originates from the concept of the American jurist, the founder of the economic analysis of law R. Posner. In his opinion, the efficiency of law is determined by its economic efficiency, the principles of maximizing wealth and minimizing costs (Posner 2020). Several objections can be raised against this approach.

Firstly, it applies only to market economies, which severely limits its applicability and theoretical significance.

Secondly, a full focus on economic efficiency ignores the cultural and spiritual dimensions of efficiency, which undermines the potential of the legal norm in terms of social utility.

Thirdly, although it is possible to measure the economic effect of law in property relations, it is extremely difficult to do so in a public legal area, where other criteria are just as important for society.

In general, one can agree with S. A. Sinitsyn, who argues that the need to spread "an economic analysis of law is primarily motivated by business interests", and further writes that "in all potential diversity, economic and social assessments of reality are interconnected and cannot be viewed separately or in opposition to each other" (Sinitsyn 2022, 48).

Due to a number of social and legal transformations, quality and efficiency of lawmaking are of particular importance in modern times. The following are among them.

Firstly, in the modern Russian state, legislation is highly variable, with a steady rise in both laws and bylaws. A growing number of laws amend existing laws, making the process of updating legal norms almost continuous and exponentially increasing.

Secondly, the general growth of the legislative array has not been accompanied by an adequate increase in system-forming acts vital to the development of a dynamic structure of social relations.

Thirdly, the balance between public and private law norms is shifting towards the former, legal regulation is becoming more public and imperative and legal prohibition has increased.

Superimposed on the postmodern reality, these factors have a higher negative potential. In modern society, there is a "blurring" of value guidelines, a lack of official ideology and understanding of the core direction of social development. This leads to uncertainty regarding the social utility of law. Consequently, it is significantly more difficult to find and apply relevant criteria for assessing the quality and efficiency of lawmaking.

Generally, it seems logical to begin with the basic purpose of law — to regulate relationships in society — when assessing the quality and efficiency of lawmaking. As the first step in shaping legal reality, lawmaking determines its further development and, therefore, determines the directions in which law influences social relations.

Efficiency of lawmaking should be measured by how well relevant activities contribute to society, i. e. to what extent do they achieve the goals that fall under the scope of social management at this stage of social development. Meanwhile, lawmaking activity can achieve its social goals as long as it follows the necessary procedural and formal legal parameters, with the adopted regulatory acts becoming the "living" law embodied by participants of public relations on a daily basis.

## 3. Conclusions

Today's social transformations, the dynamics of social relations in the transition to a new technological mode make the task of ensuring the quality of lawmaking more relevant than ever. Since the quality of legal act is intertwined with its social value, having a state's scientifically based strategy for lawmaking activity is critically important. In turn, such a strategy should be grounded in the clearly defined guidelines for social development and specific goals that society wants to accomplish. The goals will have ideological overtones, but this seems objective and explicable. It seems necessary in this context to establish a strong connection between the adopted regulatory acts and strategic planning documents.

It is efficiency that determines whether the law achieves its goals.

Whether a legal norm is efficient depends primarily on the type of legal awareness each scientist has and the methodology they use. A regulatory approach to law considers the efficiency of a legal norm based on the relationship between its purpose and outcomes. Sociological jurisprudence focuses on how a legal norm has affected specific social relations as well as how it applies to everyday legal practice. Jusnaturalism uses human rights guarantee and fulfillment as the main criterion for determining the efficiency of legal norms. The economic analysis of law considers the economic effects of each legal rule to calculate its effectiveness using mathematical methods.

In our opinion, one should proceed from the basic purpose of law — to regulate relations in society. Thus, legal scholars of the Soviet era who focused on social

mechanisms of law seem quite justified in their positions. It is important to measure the efficiency of legal norms in relation to the outcomes of their application to society, to what extent they have achieved Meanwhile, it is also possible to achieve the social goals of a legal norm if the legal drafting parameters are met as well as if the legal norm becomes the "living" law embodied in the daily legal behavior of the participants of public relations.

One can propose three levels of measuring and assessing the efficiency of legal norms in modern society.

The first comes a formal-legal level. It implies evaluating a legal norm through the lens of its compliance with the stated goals when it is adopted, and the specific outcomes obtained when it is applied, including those manifesting in the everyday legal behavior of the society's members.

Second, axiological level refers to a value assessment of a legal norm effect, which, on one hand, must correspond to the values prevalent in society and, on the other hand, should create a positive perception of basic legal values among the norm addressees.

The third level is general social one. At this level, efficiency is determined by the overall impact of a legal norm on social relations and their evolution. In this case, it is necessary to consider the basic parameters of the existing level of social development, to determine the main interests of society in their dynamics.

A systematic study of legal norms at all three levels using a huge potential of legal forecasting can make a significant contribution to ensuring their quality as well as social-legal efficiency and on this basis achieve the desired outcomes in the legal regulation of public relations.

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