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Legal Encouragement of Entrepreneurial Activity

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Abstract:

The article reveals the mechanisms of entrepreneurial activity encouragement. Much attention is given to legal incentives as a kind of legal norms and an integral part of law. Legal incentives and their effect on business entities are considered through the prism of modern legal understanding. As the object of the study, the authors chose the formation of legal incentives' theory considering the achievements of both Russian and foreign legal framework, philosophy, economics, psychology, biology.

The article also includes the analysis of legal incentives' discussion issues. Particularly, authors considered not only positive but also negative consequences of legal incentives and the possibility of legal incentives' applicability for the environmental legal framework development.

As a result, the authors concluded that the theory of legal incentives should be considered by authorities when developing concepts and programs to support entrepreneurial activities.

Legal incentives are the vital tool of public administration that allows combining public and private interests in the process of legal regulation of entrepreneurial activity.

Keywords: *Legal act, entrepreneurship, legal incentive, encouraging legal relations, incentive parties.*

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1. Introduction

Today's society makes special demands on legal sciences. Creating a scientific- base of a legal prescriptions' system fully reflecting on the essence of law, providing the legal-assisted achievement of maximum effect in the interests of the development of private businesses that actively participate in solving social problems being one of social transformations' vectors. Legal incentives represent the strongest lever of encouragement as the most important feature of the modern entrepreneur's education. The encouraging impact of legislation is an objectively developing pattern of social development providing increases in the power of law as well as increasing its relevance and value.

The topicality of studying legal incentives is explained by the need in accountability of modern legal framework understanding features in the system of legal understanding, the creation of effective legal system that encourages the development of entrepreneurial activities, providing increases of incomes of both state and private business.

2. Literature review

The theory of legal incentives was formed and developed in close connection with other sciences. Academics have been taken into account the results of scientific works on psychology, economics, philosophy, and a number of other areas. Schopenhauer (1917) made a significant contribution to understanding the individuals' behavior. He noted the features of great names: they live for the future, they prefer the future reward to the present one. The conclusions of the English philosopher Jeremy Bentham (1748) who formulated the "utility principle" are notable as well. The principle is represented by the following; any act must be either encouraged or blamed. He considered the benefits as legal incentives. Every benefit is a pleasure. The maximum encouragement is the benefit that most intensively affects a person for a long period of time.

The benefits appeared as the subject of the famous German economist Menger's (1871) studies. He presented the benefits as the all that can satisfy the needs of a mankind. Menger distinguished several types of benefits satisfying the corresponding types of needs. He defined the stages as satisfying the needs of a man: the existence of a need; definite object's features that are necessary to satisfy the need; person's awareness of a thing that can satisfy the certain need; the possession of a man by the thing. The beginning of a serious legal incentives' study in the Russian legal science was laid by the well-known representative of the psychological school of law Petrazhitzky (1908) who proceeded from the fact that the norm "is a mental factor of social life". He was sure that the norm could improve the human psyche and consequently of the person himself by encouraging him. The conclusions of the well-known German scientist Heinz Hechhausen (2006) turned out to be very important for the theory of legal incentives. He concluded that the

grounds are formed in the process of individual development. Behavior of a person at a certain moment of time is encouraged by the strongest ground which is mostly related to the prospect of achieving the certain target state. Encouragement is the process of choosing between various possible actions.

The studies of Ludwig von Bertalanffy (1968) were essential for the development of the legal incentives' fundamentals. His theory of open systems represents the entrepreneurial activity as a single whole. Private business is not isolated from the external environment. The core objective of business structures is to ensure the normal activity by adapting to the ongoing alterations. Moreover, it is necessary to consider that the elements of any organization are real people. Business managers should mind the features of human behavior's encouragement.

A completely different theory of encouragement was presented by the American psychologist Clark Leonard Hull (1935). He suggested that human behavior determines biological needs. In the theory Hull applied the term "disk", suggesting the state of the human body's tension caused by biological or physiological needs. Disks form the motivation (thirst, hunger, the need for warmth or cold). To reduce or eliminate the state of stress a person seeks ways to meet biological needs.

The work of contemporary scholars studying the features of religious motivation is also of interest. In particular, Yasin (2016) identifies four models of encouragement: the theory of self-determination, expectations, search activity and sacralization.

3. Research methods

Various research methods (both general scientific and specifically legal) were used in this study namely; logical, system, sociological, linguistic, methods of interpreting law as well as methods of analysis and synthesis, induction and deduction, scientific classification, expert assessments and forecasting.

4. Results

Thus, legal norms make a significant impact on the formation of interests of business entities and the motives for their behavior as well. From the functional approach point of view, legal encourage is a set of legal norms that fix certain means of affecting the mind and psyche of business entities to enhance the encouragement for lawful behavior. Legal incentives are legal regulations that determine the grounds and procedure for obtaining state and public awards, rewards and incentives, goods and benefits, grants, and other types of support for entrepreneurial activities.

A legal incentive could be defined in a different perspective considering the features of modern legal understanding. A legal incentive is defined as a law-captured public opportunity of an entrepreneurial activity to satisfy its needs and interests through receiving a material and moral reward as a legitimate consequence of lawful

behavior that exceeds usual requirements. The award as an element of a legal incentive contains a huge potential, energy affecting the consciousness and will of private business. This was clearly understood away back in ancient times. Thus, the laws of Manu (introduced between the second century BC and the second century AD) noted that *"It is not commendable to act solely due to the desire for rewards, but no independence cannot be found from such a desire in this world: this desire is a basis for the study of the Veda and the fulfillment of the actions prescribed by the Veda. There (on earth) is no anything that would have been committed by a man free from the desire of reward; everything the man does is the result of desire for reward"*.

There is a certain identity built on the principle of rewarding good for good forms the basis of legal incentives that generate stimulating legal relations. As Rudolf Von Iering (1892) noted: *"The social organization of retaliation is a civil turn, but the organization of retribution for social evil one could find in criminal justice. The payoff for the social good is provided by the state, public opinion, and history."* Depending on the encouraging subject, legal incentives could be individual (affecting only the consciousness and psyche of individual entrepreneurs, for example, the opportunity to receive public recognition for the results of charitable activities) and collective (subjects of influence both are individuals - individual entrepreneurs and business entities, for example a public-legal opportunity to receive a grant for the development of its business).

Public relations regulated by legal incentives take the form of legal relations. Stimulating legal relationship is always a certain form of social interaction, the emergence of which completely depends on the initiative of all its participants. Here, the public relations regulated by legal incentives are the result of the interaction of its parties.

The process of interaction and its development arises on the basis of mutual behavior expectations of both parties from the standpoint of certain criteria. Individuals start a stimulating legal relationship in order to achieve certain results, socially significant consequences. Subjects of law-making, legally fixing positive tools of encouraging the mind and psyche of subjects of entrepreneurial activity, hope to increase social and civil activity of society. Entrepreneurial activity subjects become participants of stimulating legal relations and strive to receive legally given moral, material benefits to change their social status i.e., to satisfy their urgent needs. Entering the stimulating legal relationship is a manifestation of their private will. The performance of legal incentives largely depends on a clear legislative consolidation of such principles of legal incentives as following:

- availability of clear legislation that determines the mechanism and procedure for recognizing the merits of a person;
- the validity of legal incentives which was reflected in number of law monuments.

In particular, the book of the Shan province regent (Shang Jun Shu) notes: *"All privileges and salaries, administrative posts and ranks of nobility should be given only for army duties; there should be no other ways. For this way one could squeeze all the knowledge from an intelligent and stupid, noble and commoner, brave and coward, worthy and worthless - from each of them. The whole strength of their muscles and make them risk their lives for the sake of the ruler. And then, like streams of water, outstanding people from all over the globe, capable and worthy, will flow. Therefore, the army (of such a regent) will have no equal, and the entire Celestial Empire will accept his orders";*

- the complexity of legal incentives, reflected in the legal consolidation of a legal incentives' set;
- publicity and attribution of legal incentives providing the strengthening of the legal incentives' educational impact.

Notably, that there is no universal legal incentive. A certain system of legal incentives should be developed for a specific entrepreneur or a specific business group with similar dominant needs.

5. Discussion

The issues of formation of lawful behavior of subjects of entrepreneurial activity remain debatable. Behavior of many people including those engaged in business is formed under the influence of religious norms, referring to which the Supreme forces reward or punish a person in the other world, assessing his real activity. That's why the dialogue between science and religion is a point of great interest. As Kyrlezhev *et al.* (2015) noted, this is explained by the common responsibility of "religious reason" and "scientific reason".

Using the conclusions of the legal incentives' fundamentals, it is possible to consider a number of phenomena taking place at the international level in a different perspective. For example, Katzenstein (2014), is trying to find the answer to the following question; why do many governments agree to create the international courts voluntarily, thus limiting the sovereignty? We suggest another question; what legal incentives contribute to the unification of the efforts of states to establish international courts?

Emad (2014) believes that legal incentives have a negative impact. They "push" such feelings as a sense of civic duty, the desire for personal growth, mercy out of the system of motivating citizens. The desire to get a financial reward "darkens" other forms of motivation.

Cherry (2017) notes that human behavior can be explained by an inner desire or desire to receive an external reward. Theories of motivation allow determining what factors can lead to the emergence of a desire to receive a reward and which ones are

in repelling from committing acts of a negative nature.

Fisher (1988) pays much attention to the peculiarities of American law which considers the right of intellectual property as a stimulus for the development of intellectual activity - the activity of creating new works of art, science, and technology. According to the constitutional norm, the purpose of copyright is to stimulate creative activity.

American academics Clearwater and Scanlon (1991) in the early nineties analyzed the problems of reducing the emission of hazardous waste products. In their opinion, environmental legislation must include legal incentives. Notably, that the position of scientists was supported by legislators of many countries. Particularly OECD countries apply legal incentives to promote environmental protection:

- environmental taxes, fees and charges - are paid by entities that pollute the environment; payment stimulates the use of environmentally friendly technologies;
- environmentally motivated subsidies - legal incentives in terms of grants, subsidized loans, tax incentives to stimulate the implementation of environmental measures;
- tradable permits and quotas - issue of quotas for pollution. Business entities acquire quotas for pollution; in case of a decrease in the amount of emissions, the remaining quota may be resold under favorable terms; in case of exceeding the emission quota they are obliged to acquire a quota at an inflated price.

6. Conclusions

Legal encouragement is a targeted process of the legal incentives' impact on the mind and psyche of business entities. The value of a legal incentive is in its content, since this legal institution contributes to the choice of best behavior, forms a mechanism for self-regulation of behavior, promotes the entrepreneurial activity development. A legal incentive cannot be violated. It contains positive prescriptions which are welcomed by stimulating actors. But the person involved in entrepreneurial activity is the one who choose whether to use the legal incentive or not, to become a party of these legal relations or to remain a passive observer.

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