

§ 1 Introduction

I. Why studying the law of natural resources with a comparative approach?

- for a *better understanding* of the own law of natural resources, its particularities, strong and weak points, possible alternatives and possible perspectives of its development
- as a *source of inspiration*: many of the problems the state faces in economically effective but socially fair and responsible, sustainable and ecofriendly use of the natural resources are similar in many countries, and legal solutions developed in one country may be useful in others too (→ you do not need to reinvent the wheel...)
- for some parts and aspects of the law of natural resources there has been a certain history of *legal reception*: countries have adopted legal concepts, instruments and legal institutions from countries with a more advanced legal system
 - there were in particular spectacular examples in the field of administrative law, which in many countries comprises large parts of natural resources law
 - however, a simple "copy and paste" would fail: before a possible transfer, any *foreign concepts must first be adapted* to the particularities and systematic of the own national legal order
 - for the *law of natural resources*, which is particularly *influenced by natural, civilisational, social and historical factors*, this is even more true than for other areas of law
- *not only the success stories* but also the failures of the foreign law are interesting (→ you must not repeat the mistakes of others...)
 - example: solutions that rely on voluntary self-restraint in the use of natural resources instead of government regulation and control have failed in most countries

II. "Natural resources law" or "law of natural resources"?

1) A heterogeneous but usually wide definition of "natural resources"

- no universal definition of "natural resources", but a widespread *extensive definition* that includes *all kinds of resources* that are available on the planet and explored, exploited and utilised by humans but *not made by humans*
- classical distinction of two main categories:
 - a) *renewable resources*:
 - air (incl. wind power)
 - water (incl. hydropower)
 - sunlight (incl. solar power)
 - geothermal energy (extracted from the Earth's crust)
 - *biotic resources*:
 - plants (forests, crops, wildplants)
 - animals (livestock, wildlife, fish)
 - marine life (fish, seafood, algae)
 - b) *non-renewable resources*:
 - land (limited availability requires land use planning)
 - soil (incl. stones, gravel, sand)
 - minerals (most valuable, mostly metals)
 - fossil fuels (black coal, lignite, natural gas)

2) A discrete field of "natural resources law" or a cross-sectional collection of law relating to natural resources?

- in some common law countries and newly industrialised countries, all law relating to the natural resources forms an integrated and discrete field of "natural resources law"
 - see, for example, the American (even Native American), Australian, Canadian & New Zealand natural resources law, but also the South African and Indonesian natural resources law

- in other countries the law on natural resources is spread across various fields of law with different traditions, basic concepts and primary objectives:
 - administrative law (esp. business administrative law and planning law)
 - environmental law (against pollution in the process of exploring & exploiting nat. res.)
 - public economic law (economic incentives for sustainable use of nat. res., e.g. in energy law)
 - climate protection law (which is currently developing to an independent field of law)
- *difficult distinction between "natural resources law" and environmental law:*
 - "natural resources law" usually relates to the *exploration and exploitation* of nat. res.
 - environmental law combats more specifically the *pollution* of or by the use of nat. res.
 - the distinction is difficult for the rules that serve to limit pollution in the process of exploration and exploitation of nat. res.
 - some scholars therefore prefer the term "natural resources and environmental law"

3) No coherent discrete field of "natural resources law" but a wealth of law relating to natural resources in the German and European legal systems

- a wealth of law spread across various fields of law (see supra, II.2)
 - most of the classical parts, such as mining, forestry, hunting and fishery law, form components of special administrative law [Besonderes Verwaltungsrecht]
 - mining law is, more precisely, part of business administrative law [Wirtschaftsverwaltungsrecht]
- some areas of the *economic law on natural resources* fall into several fields of law
 - example: renewable energies law is partially part of public economic law and partially part of environmental law
- these chaotic systematics can make the understanding of the law difficult, because it is often not clear whether doctrines from one or another field of law apply
- not everybody happy: experts have long called for a genuine, comprehensive and coherent German resource conservation law or European natural resources law

4) A consequence: no general principles of natural resources law

- since there is no coherent "natural resources law", there *cannot be* "general principles of natural resources tenure" as in Indonesia (see week 2 of the course)
- instead, the general principles in the fields of administrative law, environmental law, public economic law and/or climate protection law apply
 - which one depends on the relevant sub-area of the law of natural resources
- most of the Indonesian principles of natural resources tenure are specific to the Indonesian history and situation and do not apply in Europe
- *principles that limit the access of foreigners to land ownership* are generally excluded in the European Union, as far as EU citizens are concerned, by the principles of nondiscrimination on grounds of nationality (art. 18 FEU Treaty) and of an open market economy with free competition in the European internal market (art. 119 FEU Treaty)
- some Indonesian principles are shared in German and European law but derive directly from fundamental rights
 - the principle that all land rights have social function is in German law an inherent part of the fundamental right of property (art. 14(2) phrase 2 Basic Law)
 - the principle of non-discrimination of citizens in relation to land rights is included in the various equality rights under art. 3(1, 2 and 3) of the German Basic Law and art. 20, 21 and 23 of the EU Charter of Fundamental Rights
- the principle favouring planning in the dealing with natural resources is shared by German and European law and implemented in numerous laws and regulations

III. Backgrounds and tendencies of the German and European law of natural resources

- some classical areas of law with a long and vibrant history of up to 2.000 years
 - there was already a developed mining law at the time of the Roman Empire
 - hunting law (in particular the right to hunt) has been a controversial issue in Europe for many centuries...
- but also some new and innovative areas of law that respond to the technological development
 - e.g. renewable energies law
- a *high degree of fragmentation*: not a coherent system of a few well-coordinated comprehensive laws but an intransparent, fragmented multitude of highly specialised legal sources, each with its own purpose, background and technique, which are barely harmonised with each other
- a dominating traditional regulatory (intervention-orientated approach (→ prohibitions, surveillance, licensing), but also tendencies towards a more economical (incentive-orientated) approach (e.g. in renewable energies law)
- a domain for *highly specialised experts*
 - dominated by a small group of legal practitioners, often neglected at universities
 - in Germany not a mandatory subject in academic legal education or practical legal training

IV. In particular: the plurality of national, European and international law of natural resources

- a complex and dynamic *multi-level system of law* that combines
 - national law (still dominating in most classical areas of the law of natural resources)
 - in the Federal Republic of Germany also sub-national law (Land law, complementing the federal law)
 - European Union law (mostly European environmental, climate protection and economic law)
 - global international law (mostly international environmental, climate protection and economic law)
- in this system, usually the law at the higher geographical level sets objectives and targets that the law at the lower geographical level must achieve
 - some sources of European Union law even apply directly in the EU member states and supersede domestic law

V. Sectors of the German law of natural resources (overview)

1) Mining law [Bergrecht]

- see § 2 of this course contribution

2) Agricultural law [Landwirtschaftsrecht]

- a comprehensive cross-sectional area of law that combines many specialised parts of public and private law
- regulated in numerous legal sources of national and, more important, European law

3) Forestry law [Forstrecht]

- see § 3 of this course contribution

4) Fisheries law [Fischereirecht]

- see § 5 of this course contribution

5) Hunting law [Jagdrecht]

- classical law of natural resources (although often not seen from this perspective)
- regulated in the Federal Hunting Act [Bundesjagdgesetz] and complementing or deviating hunting laws of the Länder

5) Water resources law [Wasserhaushaltsrecht]

- see § 4 of this course contribution

6) **Renewable energies law** [Recht der erneuerbaren Energien]

- important for the *common European goal of greenhouse gas emission-free energy supply*
- regulated at EU level in the **Renewable Energy Directive (RED)** (Directive 2018/2001) and at German level in the **Renewable Energies Act 2023** [Erneuerbare-Energien-Gesetz 2023]
- German law considers the construction and operation of renewable energy installations an overriding public interest (renewable energy privilege)
- German law grants citizen the *right to connect private photovoltaic installations to the electricity grid and claim remuneration for electricity fed into the grid*
 - this has made private photovoltaic systems, even balcony power plants, popular

7) **Land-use planning law**

- regional planning law provides for *regional (spatial) plans* [Raumordnungspläne]
 - also maritime spatial plans
- public construction law [öffentliches Baurecht], regulated in the Federal Building Code [Baugesetzbuch], provides for
 - *preparatory urban land-use plans* [Flächennutzungspläne] and
 - *concrete binding land-use plans* [Bebauungspläne]
 - the decisive instrument for the planning of the development of the municipality
 - developed from the preparatory urban land-use plan
 - contain the concrete and legally binding stipulations for the construction of buildings in the covered area