

# An Analysis of the Functional Structure of Rural Collective Economic Organization

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**How to cite this paper:** Liu, Y. (2023). An Analysis of the Functional Structure of Rural Collective Economic Organization. *Beijing Law Review*, 14, 275-286.

<https://doi.org/10.4236/blr.2023.141015>

**Received:** February 13, 2023

**Accepted:** March 17, 2023

**Published:** March 20, 2023

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## Abstract

The special legal personality of rural collective economic organization is determined by their functional role, while the special legal personality position influences the legal person's duties and functions through the legal person's capacity for rights and action, and the resulting effects form the functional structure of rural collective economic organization. The functional structure of rural collective economic organization is a complete system of function composition, mode of action and function focus. By clarifying the logic and structure of the functions of rural collective economic organization, the role of rural collective economic organization in the development of a new type of rural collective economy can be more accurately understood, and a direction can be found for deepening the reform of the rural collective property rights system.

## Keywords

Rural Collective Economic Organization, Special Legal Person, Functional Responsibilities, Functional Structure

## 1. Introduction

The introduction of the General Principles of the Civil Law of the People's Republic of China in 2017 provided a legal characterization of rural collective economic organization as special legal persons, laying a solid legal foundation for solving the problem of the deficiency of rural collective economic organization, and the subsequent implementation of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) on 1 January 2021 reaffirmed the nature of rural collective economic organization as special legal persons, which the characterization of this "intermediate legal person" between profit-making legal persons and non-profit-making legal persons has led to heated

discussions in academic circles, which have respectively deconstructed the special nature of the special legal person from various perspectives, such as the establishment of legal persons, the membership of legal persons, the governance of legal persons and even the structure of legal persons, among many others. The purpose of the establishment of a rural collective economic organization is twofold, reflected internally as mutual public benefit and externally as restricted profitability (Song, 2020). The special legal person status of rural collective economic organization is rooted in the specificity of its members (Fang & Song, 2022a), which determines that their corporate governance must construct a special governance structure and governance mechanism. The corporate governance of rural collective economic organization is special in terms of both governance structures and governance mechanisms (Guan, 2019), and thus gives birth to the realistic value of the legal person function deconstruction of the rural collective economic organization. Moreover, although the General Part of the Civil Code formally adopts a “functionalist” approach to the classification of legal persons, it returns to a “structuralist” approach to the description of specific types of legal persons (Wen, 2022). This “pendulum” design in legislative logic forces the theoretical research to deconstruct the legal person function of rural collective economic organizations. The analysis, whether from a structuralist or a functionalist standpoint, is often still at the stage of justifying the perception of the special legal personality of rural collective economic organization, so a clear definition of the special legal personality of rural collective economic organization is still needed to further clarify their functional structure. The first is the lack of further analysis of the direct impact of the special legal person status of rural collective economic organization on the development of new rural collective economies; the second is the lack of logical reasoning on how the special legal person status of rural collective economic organization affects their functions and boundaries of responsibilities. These two issues have not been explored in the current study, which may make the setting of the duties of rural collective economic organization lacking in value orientation and logical support, and thus unable to provide doctrinal support for the legislation, and therefore require a comprehensive analysis of the predetermined functional structure of rural collective economic organization. The functional structure of the rural collective economic organization must be determined in the context of the definition of the functions and duties of the legal person.

On 30 December 2022, the Draft Law of the People’s Republic of China on the Organization of Rural Collective Economy (Draft) (hereinafter referred to as the Draft), after being considered by the Thirty-eighth Session of the Standing Committee of the Thirteenth National People’s Congress, has been made available for public consultation, and the Draft provides more detailed provisions on the special legal personality and functional duties of rural collective economic organization, which provide an analysis of the functional structure of rural collective economic organization. The Draft provides valuable clues for the analysis

of the functional structure of rural collective economic organization. In terms of logical relationships, clarifying the functional positioning of collective economic organizations is the primary condition for the construction of collective economic organizations as legal persons (Wu et al., 2022), while the determination of the legal person status is a prerequisite for the determination of their functional duties. It can be said that exploring the functional structure of rural collective economic organization is the key to understanding their legal person status and the legislative setting of their functions and duties, and is even a measure of the effectiveness of the exercise of the functions and duties of rural collective economic organization.

## 2. Literature Review and Analytical Framework

### 2.1. Review of the Literature

The biggest dilemma in the construction of a collective economic organization system lies in the difficulty of defining its functions, and a clear definition of the functions of collective economic organizations is a prerequisite for the construction of a rural collective economic organization system (Wu et al., 2022). The most important dilemma in building a system of collective economic organizations is the difficulty in defining their functions. A consensus has basically been formed in the academic community on the diversified functions of rural collective economic organization that dovetail with the demand for market services. This is because although rural collective economic organization are economic organizations, they are not only economic organizations, but also carry political and social functions, especially the organizational function of collective ownership as an important part of the socialist public ownership system (Qu, 2018). In terms of the composition of multiple functions, rural collective economic organization include economic, service and management functions such as resource development and utilization, asset management and administration, development of the collective economy, service to collective members, financial management and benefit distribution (Ding, 2022). Some scholars have also suggested that the modern functions of rural collective economic organization should be identified as four main functions, including the economic function of developing the collective economy, the political function of carrying innovation in rural governance, the cultural function of passing on rural civilization and the social function of promoting coordinated rural development, with the economic function being the most important function (Han, 2019). The design of the legal system needs to focus on the functions and performance of a certain organism in the social dimension, and the economic function of rural collective economic organization precedes the public service function (Li & Zhang, 2021). This is because rural collective economic organization are “quasi-ownership” management subjects whose function is to manage collective property and to make up for their lack of subjective function by using public authority (Li, 2022a). The management of collective business assets through the shareholding cooperative

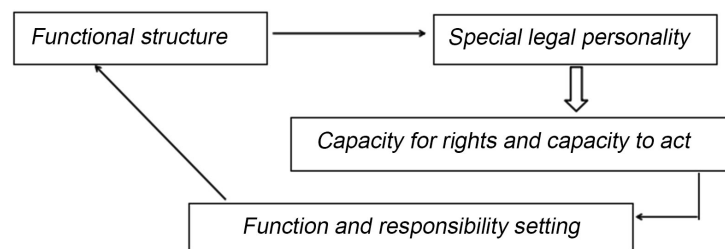
model is the main expression of the development of a new type of collective economy and the main function of the collective economic organization as a special legal person (Zhang, 2021), specifically the rules for the distribution of income that prioritize the social and rural functions (Fang & Song, 2022b).

In summary, rural collective economic organization have multiple functions, and their economic function constitutes the primary and most important function, which has formed a consensus in academic circles, but from the perspective of functional structure, it is necessary to further analyze the way in which their functional structure is realized. As a special legal person, the rural collective economic organization is externally a profit-making market-oriented subject, and internally a subject that safeguards the interests of its members, the handling of the relationship between the two becomes the key to the analysis of the functional constitution of the rural collective economic organization.

## 2.2. Analytical Framework

The qualification of legal person is considered from the dimension of the social functions it can actually perform (Li & Zhang, 2021), from this perspective, the deconstruction of the functions of rural collective economic organization can set the orientation of ideas for the accurate identification of the specificity of their special legal person status, while the characterization of special legal person is to give rural collective economic organization independent personality in the real sense as well as the rights and behavioral capacity closely related to it, which is directly externalized. This is directly translated into the legislative provisions on the functions and duties of rural collective economic organization. It can even be further deduced that the scientific design of the legislation on the functions and duties of rural collective economic organization and the adequacy of their implementation in practice will directly influence the structure of their functional realization. Accordingly, the following diagram **Figure 1** shows the logical relationship between the special legal personality of rural collective economic organization, the content of their functions and duties and their functional structure.

Based on the above logical relationship, the analytical framework of this article is determined, and on the basis of the insightful analysis of the positioning



**Figure 1.** Logical diagram of the characterization of special legal persons, the setting of responsibilities and functions and the construction of functions.

of rural collective economic organization as special legal persons in the Civil Code, the specific content of their functions and duties as stipulated in the Draft, the specific functional structure of rural collective economic organization is deduced in the reverse direction, using the clues of the academic community on the demarcation of the economic, political and public affairs functions (social functions) of rural collective economic organization.

### **3. Re-Conceptualization of the Characterization of a “Special Legal Person” of a Rural Collective Economic Organization**

#### **3.1. Perception of “Intermediate Legal Person”**

The Civil Code classifies special legal persons as “intermediate legal persons” between for-profit and non-profit legal persons, based on the profitability of the purpose of their establishment, and the law does not provide a definition of the concept of special legal persons, choosing instead to list four types of special legal persons. This formulation of the Civil Code indicates that the law tends to dilute the special legal person, and fill the gap of the dual framework of “for-profit legal person-non-profit legal person” with the special legal person system (Li, 2022b), at least in terms of whether it is established with a profit-making purpose, rather than recognizing it as both profit-making and non-profit-making. The reasons are: firstly, if the “intermediate legal person” is only an intermediate form of profit-making and non-profit-making, the concept of special legal person can be directly provided for in Article 96 of the Civil Code in the form of a special article, instead of enumerating the four types of special legal persons, in accordance with the style of Articles 76 and 87 of the Civil Code. Secondly, the enumeration of the four categories of special legal persons in the Civil Code does not allow for a uniform reference to special legal persons being established for both profit and non-profit purposes. Article 96 of the Civil Code provides that special legal persons include institutional legal persons, rural collective economic organization, urban and rural cooperative economic organizations and grassroots self-governing organizations. However, in Articles 97, 98 and 101, the provisions on institutional legal persons and grassroots self-governing organizations are definitive, while Articles 99 and 100 adopt the quasi-application rules for rural collective economic organization and rural cooperative economic organizations. Article 99 and Article 100 provide for the use of the quasi-application rules for rural collective economic organization and urban and rural cooperative economic organizations. In the two definitive rules mentioned above, it is clear that the organ legal person, as a special legal person, may engage in civil activities for the purpose of performing administrative functions, and that the grassroots mass self-government organization may also engage in civil activities for the purpose of performing mass self-government functions. It can also be deduced from this that organ legal persons and grassroots mass self-governance organizations, as special legal persons, may engage in civil activities dependent on their respective administrative and grassroots democratic management functions,

respectively, excluding the identification of their profit-making purpose. But in the case of rural collective economic organization and co-operative economic organizations in urban and rural areas, does the law's categorization of their intermediate legal persons include the consideration that the purpose of their establishment is both profit-making and non-profit-making? Since the Civil Code adopts the rules of applicability, it is not possible to make a definitive judgement from the legal provisions of the Civil Code, which indicates that the Civil Code adopts a flexible approach to this issue, with specific legislative clarity. Therefore, the concept of "intermediate legal person" should be regarded as a legal person that is neither a pure profit-making legal person nor a non-profit-making legal person of public interest, but a form of legal person whose "intermediate" boundary should be determined in accordance with the law's empowerment of its functions.

### **3.2. The "Intermediate Nature" of Rural Collective Economic Organization as Special Legal Persons**

From the above analysis, it can be deduced that not a special legal person, as an intermediate legal person, is necessarily both profit-making and non-profit-making, and its "intermediate nature" must be judged in accordance with the requirements of the applicable rules of the Civil Code, which cannot be clearly defined from the current legislation in force, but according to the relevant provisions of the Draft. However, according to the relevant provisions of the Draft, the law tends to identify the "intermediate legal person" of a rural collective economic organization as having both a profit-making and a non-profit-making purpose, which is clearly expressed in the provisions of Article 5 of the Draft concerning the functions and duties of rural collective economic organization. Although the Draft has not yet entered into force, the legislative intent and position can be broadly determined on this basis, as Article 5 incorporates the expressions on the functions and roles of rural collective economic organization as set out in the Opinions of the State Council of the Central Committee of the Communist Party of China on Steadily Promoting the Reform of the Rural Collective Property Rights System (hereinafter referred to as the Opinions), listing the functions and roles of rural collective economic organization in "managing collective property, developing collective resources, developing the collective economy and serving collective members". On the basis of these functions, 13 duties are specified, and the "4 + 13" items are compatible with both profit-making and non-profit-making activities. In addition, Article 6 of the Draft provides that rural collective economic organization may invest in or participate in the establishment of companies, farmers' professional co-operatives and other market entities. Article 7 even further specifies that "rural collective economic organization shall engage in business management and service activities in accordance with the law, abide by social and business ethics, be honest and trustworthy, and assume social responsibility." It is thus clear that the "intermediate nature" of rural collective economic organization as special legal persons should be both profit-making

and non-profit-making, and that the combined content of Articles 5, 6 and 7 makes the pursuit of profit-making by rural collective economic organization more prominent because of this core function of rural collective economic development. In this sense, after the reform of the rural grassroots governance structure and collective property rights system, the economic functions are taken away from the rural grassroots self-governance organizations, and the original purpose of the reform is to separate the government from the enterprises and the government from the society, in the hope that the rural collective economic organization can improve their non-profit service capacity by improving their profit-making business efficiency, and contribute to the development of the rural collective economy.

### **3.3. The “Intermediate Nature” of Rural Collective Economic Organization as Special Legal Persons**

The special legal personality, community and cooperative nature of the rural collective economic organization distinguishes it from the cooperative economic organization in urban and rural areas. The unified nature of a rural collective economic organization is that it is a legal entity that legally exercises collective property ownership on behalf of its members and has an unparalleled advantage in the management of collective property. The communal nature of rural collective economic organization is reflected in the fact that their membership structure is territorial, which gives them a distinctly localized and ethical character in the exercise of their functions. The cooperative nature of rural collective economic organization is directly reflected in the fact that after the reform of the shareholding cooperative system, the majority of village collective economic organizations nationwide have directly changed their names to village shareholding economic cooperatives, while village collective assets have been quantified in shares, forming relatively fixed interest links between village collective economic organizations and collective members, which some scholars have even described as collective business assets “embedded”. Some scholars even refer to this as collective business assets being “embedded” in the governance structure of rural collective economic organization (Song, 2021). The above three salient characteristics of rural collective economic organization are the most important indications that distinguish them as special legal persons from other special legal person types. At the same time, the intermediate, overarching, communal and cooperative nature of rural collective economic organization as special legal persons also serve as the main clues to reverse its functions.

## **4. Functional Responsibilities of Rural Collective Economic Organization**

The above analysis of the special legal personality of rural collective economic organization forms the basis for the content of their civil rights and civil capacity, and legislation often adopts functional duties to correspond to the specific

composition of rights and obligations respectively. However, it should be made clear that, although Article 5 of the Draft provides for the functions and duties of rural collective economic organization, this does not replace the functional structure of rural collective economic organization. From the perspective of distinction, functional duties are a definition of the manner of conduct, taking rights, obligations and responsibilities as the content, and belong to the connotation of the concept of the subject, while the functional structure focuses on the evaluation of the role of the formation of the consequences of the conduct, taking the manner of action as the measurement factor, and belongs to the extended scope of the value of the subject. From a related perspective, the results of the implementation of functional duties directly reflect the characteristics of the functional construct, and the two are causally linked by the intermediate variable of legal personality, i.e. the functional construct influences the setting of functional duties through legal personality.

According to the published draft of the Draft for public consultation, the first paragraph of Article 5 of the Draft stipulates the functions of rural collective economic organization, namely “rural collective economic organization shall exercise ownership on behalf of their members collectively in accordance with the law, and shall give full play to their role in managing collective property, developing collective resources, developing the collective economy and serving collective members”. Guided by this, the second paragraph of Article 5 of the Draft stipulates thirteen duties of rural collective economic organization, specifically including: 1) issuing contracts for rural land; 2) handling applications for and use of rural residential bases; 3) reasonably developing, utilizing, protecting and supervising arable land and other land resources; 4) using collective business construction land or granting or leasing the right to use collective business construction land; 5) a) organizing the operation and management of collective property; b) deciding on changes in the ownership of enterprises funded by the collective; c) distributing and using collective earnings; d) distributing and using land compensation fees, etc., for the expropriation and requisition of collective land; e) providing technical, information and other services for the production and operation of members; f) providing education, cultural, health, sports and elderly care services for members, or giving financial and other support to villagers’ committees in providing g) providing financial and other support for services provided by villagers’ committees; h) supporting and cooperating with villagers’ committees in carrying out villagers’ self-government under the leadership of the village party organization; i) supporting other economic and social organizations in rural areas to play their roles in accordance with the law; and j) other duties stipulated in laws, regulations and statutes. The clarification of the functions and responsibilities of rural collective economic organization sets the boundaries for defining their functional role areas and lays the main foundation for the development and growth of a new type of rural collective economy.



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## 5. The Functional Structure of Rural Collective Economic Organization

The functional structure of a rural collective economic organization is not a replacement for the concept of functions and duties, but is distinctly different from it. Thus, in the light of the above analysis of the characterization of rural collective economic organization as special legal persons and the provisions of the Draft for Public Comments on their functions and duties, we clarify the functional structure of rural collective economic organization in terms of their functional structure, their mode of functioning and their focus.

### 5.1. Components of the Functions of Rural Collective Economic Organization

As mentioned above, the special legal personality of a rural collective economic organization means that this legal person is established for both profit-making and public welfare purposes. The economic function of a rural collective economic organization is the core function, and its political and social functions all revolve around the realization of the economic function. The economic function of rural collective economic organization is to develop a new type of rural collective economy, which mainly includes the following: to govern and supervise the operation and use of rural collective resources and assets in accordance with the law; to decide on the attribution of property rights to rural land and the manner of realizing its value in accordance with the law; to promote the cultivation and development of new types of agricultural business entities; and to decide on the distribution and use of collective revenues. The political functions of rural collective economic organization are relatively auxiliary, mainly embodied in the maintenance and development of the basic rural management system and the rural collective ownership system, including two aspects of supporting the development of democratic management and autonomous activities of villagers at the grassroots level and promoting the effective realisation of the rural collective ownership system. The social function of rural collective economic organization is to support rural social governance and the development of rural public undertakings, which broadly includes providing economic and technical information services to members, providing financial and organizational support for the development of rural social welfare undertakings and maintaining order in rural social governance.

### 5.2. The Mode of Function of Rural Collective Economic Organization

Existing laws, regulations and policy documents do not specify the role of the functions of rural collective economic organization. In practice, the behaviour of rural collective economic organization can be broadly summarized into four types of role: operation, brokering, service and feeding. This approach differs from that of new agricultural business entities, such as farmers' cooperatives and

family farms, in that it is not oriented towards the pursuit of complete self-interest of the organization, but rather towards the common good of all members of the rural collective economic organization and the development of the countryside for the benefit of all. Brokering is a secondary form of business operation, whereby a rural collective economic organization uses its advantage of “unity” to integrate the scattered resources and assets of the members of the rural collective economic organization, and conducts entrusted transactions with third-party entities on behalf of the members, with the proceeds mainly going to the members. Service refers to the way in which a rural collective economic organization provides public services to its members and other entities carrying out agricultural business activities within the organization’s scope, including both public welfare services and business services. Feeding refers to the way in which a rural collective economic organization distributes the aforementioned operational and service revenues to its members and supports the development of social and public undertakings at the village level.

### **5.3. Focus on the Functional Role of Rural Collective Economic Organization**

Unlike rural grassroots autonomous organizations and grassroots party organizations, the legal person characteristic of rural collective economic organization as economic organizations determines that the focus of their functional role should be in the economic field, and the other two aspects of their functions are centred on the performance of economic functions; moreover, as the reform of the rural collective property rights system continues to deepen, the structure of rural grassroots organizations has already been adjusted, with rural grassroots party organizations, villagers’ autonomous organizations and rural Therefore, from the perspective of undertaking the main task of rural collective economic development, the intermediate legal personality of rural collective economic organization can be understood as the external economic activities are mainly for profit-making purposes, while the support for the development of the organization’s members is mainly for public welfare purposes, and the standard of being a legal person Therefore, between the profit-making and the public interest purposes, the profit-making purpose of the rural collective economic organization is more significant.

The subjectivity of the economic function of rural collective economic organization is still different from that of the general quasi-enterprise operation of farmers’ professional co-operative economic organizations. Compared to organizations such as farmers’ professional co-operatives, family farms and agricultural enterprises, the economic function of rural collective economic organization focuses on overcoming the shortcomings of individual smallholder farming through the advantages of organized operation, developing a strongly inclusive rural collective economy, and serving smallholder farmers as The economic function of rural collective economic organization is to overcome the shortcomings of individual smallholders through the advantages of organizational manage-

ment. The economic function of rural collective economic organization therefore has two other typical characteristics: firstly, it is community-based. This is determined by the relatively closed nature of the structure of rural collective economic organization, which means that the results of the economic function of rural collective economic organization are mainly enjoyed by the members of the organization; secondly, it is co-operative. Cooperation is determined by the representative nature of the exercise of collective ownership by rural collective economic organization, which means that the exercise of the economic function of rural collective economic organization has a distinctly human and capitalistic character, and that the way in which their benefits are distributed is necessarily of a special nature.

## 6. Conclusion

After the implementation of the Civil Code, the special legal personality characterization of rural collective economic organization has created the conditions for the development of new types of rural collective economic organization, but in order for them, as new subjects, to play a better role in the development of the rural collective economy, it is still necessary to further combine the characterization of legal persons and the boundaries of their functions and responsibilities. It is necessary to further clarify its functional structure, so as to provide main support for the continued deepening of the reform of the rural collective property rights system and the sustainable and benign development of the rural collective economy.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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