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Building the rule of law state as a guarantor of democracy in modern Vietnam

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Abstract

Building the rule of law state (referred to as the rule of law) is an objective trend for democratic countries in the modern world, including Vietnam. Thoughts about the rule of law in Vietnam, related to the people's desire to have an independent state that is organised and acts in accordance with the provisions of law, represents the will and aspirations of the people, protects human rights and citizens' rights under law, have emerged since the early years of the 20th century. Along with the national liberation struggle, the rule of law state in Vietnam was officially established in 1945, after the victory of the August Revolution (August 19, 1945). It has its own characteristics related to the socialist political regime under the leadership of only one party – the Communist Party of Vietnam.

As in many countries around the world, the promotion and expansion of democracy is one of the objectives of building the rule of law in modern Vietnam. The article clarifies some theoretical issues about the rule of law state, the rule of law ideology formation and the rule of law state characteristics in Vietnam. A number of issues that require attention when building a rule of law state to ensure democracy in modern Vietnam is considered.

Keywords: rule of law, democracy, civil rights, human rights, democratic state, ensuring democracy, Vietnamese state, Vietnamese politics

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Построение правового государства как гаранта демократии в современном Вьетнаме

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Аннотация

Построение правового государства (именуемого верховенством закона) является объективной тенденцией для демократических стран современного мира, включая Вьетнам. Мысли о верховенстве права во Вьетнаме, связанные со стремлением народа иметь независимое государство, которое организовано и действует в соответствии с положениями закона, представляет волю и чаяния народа, защищает права человека и гражданские права по закону, появились с первых лет XX века. Одновременно с национально-освободительной борьбой правовое государство во Вьетнаме было официально создано в 1945 г. после победы Августовской революции (19 августа 1945 г.). Оно имеет свои особенности, связанные с социалистическим политическим режимом при ведущей роли только одной партии – Коммунистической партии Вьетнама.

Как и во многих странах мира, продвижение и расширение демократии является одной из целей построения верховенства закона в современном Вьетнаме. В статье проясняются некоторые теоретические вопросы о правовом государстве, формировании идеологии верховенства права и характеристиках правового государства во Вьетнаме. Рассматривается ряд вопросов, требующих внимания при построении правового государства для обеспечения демократии в современном Вьетнаме.

Ключевые слова: правовое государство, демократия, гражданские права, права человека, демократическое государство, обеспечение демократии, государство Вьетнам, политика Вьетнама

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Introduction

The construction and operation of the rule of law in Vietnam is closely related to the country's historical conditions, political regime and the country's actual socio-economic development. The rule of law in Vietnam always aims to ensure human rights, citizens' rights and respect the law. However, in practice, its operation still reveals many limitations. Therefore, identifying issues that need attention in building a rule of law state ensuring democracy in Vietnam is very important, contributing to maintaining political stability as well as creating motivation for the socio-economic development of modern Vietnam.

The rule of law and the rule of law formation in Vietnam

The rule of law is a category of political science, appearing quite early in the history of human thought and the practice of building state institutions in many countries in both the East and the West. The term "rule of law" first appeared in Germany in 1813 in the research works on the state by Robert von Mohl and Carl Theodor Welcker who are considered classic theorists on the rule of law [Trần Ngọc Liêu, 2013]. Modern the rule of law is approached in close connection with other legal political ideas such as constitutionalism, separation of powers, pluralism. It is closely associated with democracy, that is, the people's mastery over the state apparatus [O'Donnell, 2004] and exists in constitutional democracy as well as in liberal democracy, including: law and democracy [Fukuyama, 2010]. A state is considered to guarantee the rule of law when citizens have the right to own it. This right is seen as an inherent social property of each individual [Shukhov and Naumov, 2007].

The rule of law state is recognised by its own characteristics and has its own criteria for evaluating effectiveness and efficiency. In this regard, we can consider Voigt's [2009] point of view, that the rule of law is composed of seven elements and these are also the basic criteria to evaluate the performance of a state. Those factors are: 1) separation of powers, 2) judicial review, 3) judicial independence, 4) judicial accountability, 5) prosecutorial independence, 6) fair trials, and 7) basic human rights. At the same time, it is possible to consider the position of the United Nations that the rule of law is the principle of rule, all organisations and individuals, including the state, must obey the law, apply the law fairly; conduct independent adjudication; the legal system of the country must be consistent with international regulations and standards on human rights¹.

¹ Report of United Nations Secretary-General (2004), *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, pp. 6–8.

More generally, the rule of law state can be understood as a state in which the law is enacted, applied fairly [Tamanaha, 2009] and associated with democracy and human rights [Voigt, 2012]. Currently, many viewpoints have expanded the concept of a rule of law state by adding other signs such as: the rule of law must have a constitutional mechanism or a characteristic sign of the rule of law is decentralisation, even, there is a view that:

- it is necessary to decentralise power in the political field, that is, to implement multi-party [O'Donnell, 2001];
- the rule of law is an attractive political ideal for liberal democracy [Adamidis, 2021] and nothing can prevent the supremacy of the law [Krygier, 2018].

In Vietnam, right from the founding of the Socialist Republic of Vietnam (September, 1945), Ho Chi Minh – the leader of the Vietnamese national liberation revolution, was also the first President of the Socialist Republic of Vietnam emphasised the ideological viewpoint of building a state "of the people, by the people and for the people" and operating on the basis of the Constitution and the law. A unique feature of Ho Chi Minh's thought on state organisation is that state agencies operate in accordance with their functions and duties as prescribed by law, and the law is not to punish people but to be tools to protect and realise human interests. That view has been inherited and developed by generations of Vietnamese state leaders during the country's renewal process. However, the term "state under the rule of law" in Vietnam has only just begun to be fully and clearly stated at the Second Conference of the 7th Central Committee of the Communist Party of Vietnam (November 29, 1991) with the view "Vietnam builds a true rule of law state of the people, by the people and for the people"². In 2001, when amending and supplementing the 1992 Constitution, this term was included in the constitution for the first time, creating an important legal basis for the realisation of the construction of the rule of law in Vietnam. During the process of ideological formation, the Communist Party of Vietnam has always emphasised:

- building a State of law in Vietnam is a socialist-oriented state and that state must have sufficient power and capacity to determine guiding the rule of law, building laws;
- social management by law;
- unify power (unifying three rights: legislative power, executive power and judicial power) and especially, that

² Vietnam Central Theoretical Council [Hội đồng Lý luận Trung ương Việt Nam] (2020), *30 years of implementing the platform for national construction in the transitional period to socialism [30 năm thực hiện Cương lĩnh xây dựng đất nước trong thời kỳ quá độ lên chủ nghĩa xã hội]*, National Political Truth Publishing House [Nhà xuất bản Chính trị Quốc gia sự thật], Hà Nội, pp. 246–253. (In Vietnamese).

state must ensure human rights and democratic rights of the people.

Along with this thought, scientists and experts in Vietnam research and offer different views and orientations on the Vietnamese rule of law model. That is the state operating by law with a scientific and reasonable division of labor, with a power control mechanism; the law is humane, fair, all for the benefit of people [Hoàng Thị Kim Quế, 2007]; demonstrating the democracy, the rule of law that needs to be progressed by mankind and the limitation of state power is one of the indispensable requirements [Nguyễn Đăng Dung, 2005]. Regardless of the approach, according to the author, the rule of law state in general and the socialist rule of law state in Vietnam in particular must ensure two basic factors:

- the state must build a system appropriate legal system and ensuring respect for the law;
- the state must maximise human rights and citizens' rights in society.

Features of the socialist rule of law state in Vietnam

1. The people's sovereignty

The current Constitution of Vietnam, the 2013 Constitution clearly indicates a very important feature of the rule of law in Vietnam, the socialist rule of law state and clearly shows the basic principle – the principle of people's sovereignty. The State of the Socialist Republic of Vietnam is a socialist rule of law state of the people, by the people, for the people. The people's character in the socialist rule of law state of Vietnam is expressed, first of all, in the right to stand for election and elect a system of powerful organs in the state apparatus (the National Assembly at the Central level and the People's Councils in different local level). These agencies will represent the will and aspirations of the Vietnamese people and have the power to decide on all important issues in the operation of the state apparatus at the central and local levels. This is the mechanism to exercise the right of representative democracy in Vietnam. In addition, the people's sovereignty is also expressed through the people's direct democratic rights such as:

- the state consults the people when there are major and important issues to be resolved;
- citizens have the right to supervise, complain, denounce and appeal decisions and acts of state agencies and competent individuals that damage their interests;
- contribute ideas to projects on policies and laws of the state.

2. The highest legal effect of the Constitution compared to other institutions in society

The Constitution of Vietnam states: "The Constitution is the basic law of the Socialist Republic of Vietnam,

having the highest legal effect. All other legal documents must be consistent with the Constitution. All acts of violating the Constitution will be handled"³. The Constitution of Vietnam is made by citizens as the supreme subject of state power. This is done through the constitutional activity of the National Assembly (a body directly elected by the citizens), and at the same time, before the Constitution is officially promulgated, the State of Vietnam will conduct consultations with citizens about the draft, after summarising opinions, the National Assembly will meet to approve. In addition to complying with the Constitution, the rule of law in the socialist rule of law state of Vietnam is also reflected in the fact that all state agencies, cadres and civil servants working in the state apparatus must use powers within their competence, to issue decisions must follow the legal processes and procedures and must always ensure the legitimacy.

3. The principle of unity and division of powers

The socialist rule-of-law state of Vietnam operates on the principle that state power is unified, but there is division and coordination among agencies in the state apparatus in the exercise of three rights: legislative, executive and judicial. This is a selective application of the decentralisation theory in organisation of the Vietnam's state apparatus. First of all, the Vietnamese state affirms that state power is unified and belongs to the citizens and cannot be divided, however, in order to effectively exercise state power, it is necessary to create a distribution mechanism between systems of agencies, it is not possible for any individual or agency to hold the entire state power. The three organs: legislative, executive, and judicial operate according to the mechanism of coordination, inspection and supervision of each other, and at the same time, do not allow to overwhelm the functions between agencies in the state apparatus. Accordingly, the National Assembly is defined as the highest representative body of the citizens, the highest state power agency of the Socialist Republic of Vietnam, exercising the constitutional and legislative rights, deciding on important issues of the country and exercise supreme supervision over the operation of the State apparatus; the government is defined as the highest state administrative body, the executive body of the National Assembly, which exercises executive power; The People's Court and the People's Procuracy are agencies that exercise judicial power.

4. The judiciary as an independent agency

The socialist rule of law state of Vietnam emphasises the role of the judiciary as an independent agency. On the basis of the principle that state power is unified

³ National Assembly of Vietnam (2013), *Constitution of Vietnam* 2013, Clause 11, Article 119, Judicial Publishing, 254 p.

but there is assignment and coordination among agencies, the Constitution of Vietnam affirms that the judiciary has the right to independently perform its functions and tasks. This emphasises that the fairness and justice of the country is most centrally demonstrated by judicial activities in the rule of law of Vietnam. The Constitution recognises: the judicial authority has the function of protecting justice, human rights, citizens' rights, the socialist regime and legitimate rights and interest of organisations and individuals.

5. *The recognition of human rights and citizens' rights*

The socialist rule of law state of Vietnam respects human rights and citizens' rights. The Vietnamese constitution recognises human rights as separate from citizens' rights. Citizens' rights is a right attached to the scope of a country, while human rights are the rights of each individual in a global relationship. Article 14 of the 2013 Constitution states: In the Socialist Republic of Vietnam, human rights and citizen's rights in politics, civil, economic, cultural and social are recognised, respected, protected and guaranteed according to the Constitution and laws. Thus, no one is allowed to arbitrarily mutilate or limit human rights and citizens' rights, except in necessary cases prescribed by law.

6. *Priority and fulfilment of international obligations*

In relation to the world, the socialist rule of law State of Vietnam must ensure the good performance of international obligations and commitments based on international treaties that Vietnam has joined and signed or recognize, recognize the priority value over national law. The socialist rule of law state of Vietnam consistently implements the foreign policy of independence, self-reliance, peace, friendship, cooperation and development; multilateralisation and diversification of relations, proactive and active integration and international cooperation on the basis of respect for independence, sovereignty and territorial integrity, non-interference in internal affairs, equality, mutually beneficial.

Some issues to be addressed in building a democratic state based on the rule of law in Vietnam

The socialist rule of law state in Vietnam is a state that respects the value of the law. At the same time, that state must always ensure the promotion of democracy, ensure the people's mastery and respect human rights. In the face of the development trend of modern society, the rule of law of Vietnam has put forward the requirement to renovate the state apparatus to be lean, clean and strong in order to realise the set goals. Based on theoretical and practical research, according to the author, this innovation process should pay attention to the following requirements.

1. *It is necessary to improve the law and enforce the law on citizen's mastery, and guarantee human rights*

It can be said that in order to build a really strong rule of law, democracy must be fully and seriously implemented in all areas of social life; ensure citizen participation in all stages of decision-making processes related to the interests and lives of citizens, including taking initiatives, participating in discussions and debates to monitoring implementation process. Currently, in Vietnam, there is a situation where at some levels of government, the reception of people's opinions is not really effective. In some areas of social life, there is still a situation where the people's right to mastery has not been fully respected and promoted; the reality of democracy loss, formal democracy, wastefulness still exists in the organisation of implementation, inspection, supervision and handling of violations [Phạm Văn Ba, 2021]. This poses a requirement that the socialist rule of law state of Vietnam needs to institutionalise and further improve the quality of forms of direct democracy and representative democracy. At the same time, more attention should be paid to the development and improvement of human rights legislation based on the characteristics of human rights and from the nature of each type of right. Accordingly, it is necessary to give priority to civil and political human rights, expressing the degree of freedom and democracy of individuals and citizens in a state.

2. *It is necessary to pay attention to improving the operational efficiency of agencies in the Vietnamese rule of law state apparatus*

The organisational structure of the socialist rule of law state apparatus in Vietnam includes three systems of agencies: the legislative body (the National Assembly), the executive body (the Government), the judicial body (the People's Court and the People's Court). The operational efficiency of each agency has a direct and great influence on the construction of the rule of law, because only when each part of the state apparatus works effectively will the state be truly strong. For the legislative body, first of all, it is necessary to improve the law-making capacity of the National Assembly. The current reality in Vietnam, the promulgation of legal documents still has some limitations such as: The law is still general in nature and needs guidance for implementation by documents of lower legal value such as: Decrees, Circulars, etc. This slows down the process of applying the law to society. In addition, there are still conflicts and overlaps between laws, for example: inconsistency between the Enterprise Law and the Competition Law regarding the procedure for notifying the competition authority in the event of a merger or consolidation companies; the conflict between the Investment Law and the Petroleum Law

in the implementation of oil and gas projects⁴. Therefore, in order to ensure a suitable legal system, ensure the rule of law, and meet the development speed of modern society, the requirement for the National Assembly of Vietnam is to improve the law-making capacity of the National Assembly. The promulgated law must ensure the specificity, uniformity and objectivity of legal regulations. For the executive body, the Government as the highest state administrative body, exercising executive power, bringing the law to life and ensuring the supremacy of the law, must have a compact structure and really efficient operation. The Vietnamese government is currently facing many challenges from the process of international integration, especially the increase of global linkage chains, which requires the government to always be flexible and responsive. However, there is an undeniable fact that currently administrative procedures in Vietnam are quite cumbersome, complicated, slow to innovate, hindering a part of citizens' activities and limiting the standardisation of law [Đỗ Thị Hoa, 2021]. Therefore, the current problem is to pay more attention to administrative reform activities, especially administrative procedure reform associated with building a unified and smooth executive agency system modern from central to local. The Government must renovate the process of organisation and implementation, apply information technology and modern scientific and technical advances to solve administrative tasks; focus on better performing the state management function in all fields as prescribed by law; well implement the planning of mechanisms and policies and develop solutions to create a favorable legal environment for socio-economic activities. For the judiciary, as an agency that upholds the law, ensures citizens' rights, social justice, and ensures the rule of law in the organisation and operation of the state apparatus, it is necessary to improve operational efficiency towards the maximum use of its power. The requirement is to build more legal consulting and legal aid organisations and create conditions for the rapid development of judicial support organisations so that these organisations can directly serve the activities of law enforcement, both as a support for the people, helping people to access judicial rights, and contributing to the protection of their rights and interests in accordance with the law.

3. *It is necessary to pay attention to the propaganda and dissemination of the law*

The rule of law requires the supremacy of the law. All citizens live and work according to the Constitution

and the law. Therefore, the dissemination of the law is very important. It is the bridge to bring the law into life, contributing to improving the effectiveness and efficiency of state management and social management. In fact, legal propaganda and dissemination activities in Vietnam currently still have some limitations such as:

- legal propaganda and dissemination activities are still mainly carried out by the State and organisations in the system politics from the central to grassroots levels are implemented based on funding sources guaranteed by the state budget;
- a number of policies on mobilising resources and promoting the responsibilities of organisations and individuals participating in law propagation and dissemination have been promulgated, but lack attractiveness and feasibility;
- a part of citizens are not fully aware of the need to master the provisions of the law, do not consider it necessary to actively and proactively study and understand the legal provisions.

Therefore, in the coming time, in order to continue to build the rule of law in Vietnam, it is necessary to pay attention to renewing law dissemination activities. First of all, it is necessary:

- to promote the socialisation of this activity to enhance social responsibility;
- research and propose competent agencies to consider and supplement a number of policies to encourage organisations and individuals in society to participate in this activity;
- clearly define the responsibilities of the subjects from central to local level and each agency, organisation and individual in the implementation of law propaganda and dissemination;
- strengthen the coordination relationship between agencies, organisations and individuals in the implementation of this task.

4. *It is necessary to pay attention to building a contingent of qualified and capable civil servants*

In any organisation, human resources are always the most important resource. The same goes for the state as an organisation. When the staff working in the state apparatus is really qualified and capable, the performance of the state will be guaranteed. Therefore, in order to perfect the socialist rule of law state in Vietnam, an issue that cannot be ignored is to build a contingent of qualified and capable civil servants to operate the state apparatus. The current situation of the contingent of cadres and civil servants in the Vietnamese state apparatus is still limited, such as:

- the contingent of civil servants is large but not strong, leading to a situation of both excess and shortage;
- the rate of young cadres and female cadres is still low;

⁴ Ha Chinh (2019), "Overlapping, legal conflicts – difficult problems to be solved", *Vietnam Government Electronic Newspaper*. Available at: <http://baochinhphu.vn/Thoi-su/Chong-cheo-xung-dot-phap-luat-Bai-toan-kho-can-duoc-xu-ly/372391.vgp> (accessed 11.08.2021).

- the capacity of the staff is not uniform, the presence is still limited and weak;
- many officials, including senior officials, lack professionalism, do not work in accordance with their expertise and forte.

Foreign language proficiency, communication skills and ability to work in an international environment are still limited [Nguyen Toan Thang, 2021]. Therefore, in the coming time, the Vietnamese government needs to pay more attention to training and fostering the existing contingent of civil servants, and at the same time, it should pay more attention to the development of mechanisms and policies on remuneration and income, attract and use talents; reviewing, amending and supplementing policies for cadres and civil servants in order to encourage them to improve their qualifications, professional capacity, professionalism and public service ethics.

Conclusion

The rule of law is not a new problem in the world as well as in Vietnam. However, research about the rule of law is always an extremely important task for political science. The idea of the rule of law state was formed very early in the history of human society and nowadays

it is constantly being renewed to meet the increasing needs of people, especially the demand for the exercise of democratic rights and protected by law. In Vietnam, in recent years, the Communist Party of Vietnam has paid great attention to building and perfecting the rule of law state model to ensure the promotion of democracy. However, in any social system or country, the activities of the state always have certain limitations. Therefore, in the coming time, in order to ensure the operational efficiency of the political system as well as maintain the ruling role of the Communist Party of Vietnam through the activities of the State of the Socialist Republic of Vietnam, it is very necessary to pay attention to the factors of perfecting the rule of law state such as: perfecting the institution of democracy, renovating the state apparatus, propagating the law, developing a contingent of cadres and civil servants.

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