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Legislation on direct democracy in modern Vietnam

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Abstract

In recent years, direct democracy has received more and more attention and has become the subject of much research in the field of political science. The development of direct democracy is seen as a mean of consolidating modern democracy. Therefore, most democratic countries in the world have been making efforts to build appropriate mechanisms to promote the positive effects of this form of democracy, including Vietnam. Characterized as a developing country with a single-party ruling political system, Vietnam aims to build a united and cohesive society on the basis of ensuring the people's mastery through direct and representative democracy. Since entering the period of renovation (since 1986), direct democracy has been of more interest in Vietnam along with the legal basis system for this form of democracy is increasingly improved. However, it must be acknowledged that, for a country that has not had a long history of implementing democracy, especially direct democracy, the Vietnamese legal system that regulates this field still has many limitations. The article gives an overview of the current legal system of direct democracy in Vietnam, thereby analyzing a number of limitations and shortcomings and orienting some solutions to overcome these problems.

Keywords: democracy, direct democracy, legislation on democracy, ensuring democracy, promoting democracy, elections, referendums, direct democracy in Vietnam

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Законодательство о прямой демократии в современном Вьетнаме

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Аннотация

В последние годы прямой демократии уделяется все больше внимания, и она стала предметом многочисленных исследований в области политологии. Развитие прямой демократии рассматривается как средство укрепления современной демократии. Поэтому большинство демократических стран мира, включая Вьетнам, прилагают усилия для создания соответствующих механизмов для содействия позитивным последствиям этой формы демократии. Характеризуемый как развивающаяся страна с однопартийной правящей политической системой, Вьетнам стремится построить единое и сплоченное общество на основе обеспечения власти народа посредством прямой демократии и представительной демократии. С момента вступления в период обновления (с 1986 г.) прямая демократия вызывает во Вьетнаме все больший интерес, а система правовой базы для этой формы демократии все больше совершенствуется. Однако следует признать, что для страны, которая не имеет долгой истории внедрения демократии, особенно прямой демократии, вьетнамская правовая система, регулирующая эту сферу, все еще имеет много ограничений. В статье дается обзор существующей правовой системы прямой демократии во Вьетнаме, тем самым анализируется ряд ограничений и недостатков и предлагаются некоторые решения для преодоления этих проблем.

Ключевые слова: демократия, прямая демократия, законодательство о демократии, обеспечение демократии, продвижение демократии, выборы, референдумы, прямая демократия во Вьетнаме

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Introduction

Direct democracy is on the rise worldwide. It has a lot to do with political interests [Talpin, 2018] and has a positive impact on a country's political decision-making process [Smith, Tolbert, 2007]. In fact, in the modern world, there is not a common pattern that applies to the model of direct democracy in all countries, because it depends on many different factors such as: the socio-economic development of the country, the degree of democracy in the government apparatus, intellectual level, national traditions, legal institution system, etc. For a developing country like Vietnam, building a democratic state, a civilized and modern society, strongly developing direct democracy is the goal that the Party and State of Vietnam strive to achieve. However, the process of achieving that goal has encountered many difficulties when the legal system on direct democracy still has many limitations and unreasonableness.

Direct democracy is a form of democracy with the principle that the people directly participate in discussions, vote and decide on the affairs of the state. It can be said that direct democracy appeared quite early in the process of organizing and exercising political power in the world. This is considered the original and authentic way to ensure the power and position of the people as the master of the state and society. Nowadays, along with representative democracy, direct democracy plays a very important and indispensable role in modern states. As the subject of state power, the people have the right to express their opinions, aspirations, propose views and recommendations in various fields. The result of this expression of opinion is decisive and must be enforced immediately (referendum, dismissal of elected deputies) or of a reference nature to the management of the state. Thus, it can be seen that direct democracy is not merely the people directly implementing decisions but also including the activities of the people that influence and affect the exercise of state power. Direct democracy can have an impact on increasing citizens' political knowledge and increasing their confidence in political institutions [Peters, 2016]. It allows and requires people to be actively involved in political activities, so it can lead to policy choices that are more suitable for the majority [Leemann, Wasserfallen, 2016]. In other words, it is seen as a way of exercising public power [Rudenko, 2003]. At the same time, direct democracy has a positive impact on promoting equality [Krämling et al., 2022]. Obviously, compared with representative democracy, direct democracy ensures more transparency in the exercise of state power. If for representative democracy, people still worry about how much of their

representatives can reflect the percentage of the benefits and aspirations that they have sent, then for the form of direct democracy, the people have equal opportunity to express their opinions. It is this equality and fairness that has had a positive impact, contributing to an increase in voter turnout [Dvořák et al., 2017] as well as political efficiency through their interest in political institutions and processes [Tolbert et al., 2005; Bowler, Donovan, 2004].

Direct democracy as one of the socio-political stability factors in Vietnam

In Vietnam, direct democracy is seen as a guarantee for socio-political stability. The law of objective development of human social history shows that political stability is the driving force of social development as well as democracy development, however, democracy has the opposite effect, it is a factor that ensures socio-political stability. When the people are truly in power, they will be more satisfied with their status, trust the management of the state, and take more responsibility for maintaining an orderly society. The Communist Party of Vietnam as the sole ruling party in Vietnam has specifically identified: to build a stable society, direct democracy must be promoted. Democracy associated with social justice must be implemented in real life and in all political, economic, cultural and social fields through the operation of state agencies elected by the people and by forms of direct democracy¹. At the same time, the state needs to focus on promoting direct democracy, ensuring that all state power belongs to the people. All lines and undertakings of the Party, policies and laws of the State of Vietnam must derive from the people's legitimate aspirations, rights and interests, and be consulted by the people. Direct democracy must be fully and seriously implemented in the fields of social life, and at the same time, it is necessary to clearly define the relationship between democracy in general, direct democracy in particular with the rule of law state, socialist-oriented market economy [Communist Party of Vietnam, 2005]. With the above concept, Vietnam recognizes the common forms of direct democracy, including: elections, removal of elected representatives, referendums, exercise of the right to take the initiative in legislation, and collection of opinions

¹ *Communist Party of Vietnam [Đảng Cộng sản Việt Nam]*, (10 June 1993), Document of the 5th Plenum of the 7th Central Committee [Văn kiện Hội nghị lần thứ 5 Ban chấp hành trung ương khoá VII], available at: <https://tulieuvankien.dangcongsan.vn/van-kien-tu-lieu-ve-dang/hoi-nghi-bch-trung-uong/khoa-vii/nghi-quyet-so-05-nqhtw-hoi-nghi-lan-thu-nam-bchtw-dang-khoa-vii-ve-trieu-tap-hoi-nghi-dai-bieu-toan-quoc-cua-dang-giua-1133> (accessed 03.07.2022)

and decisions in localities and some forms of expressing the will of citizens such as: complaints, denunciations, social criticism.

Overview of Vietnamese law on direct democracy

Vietnam's legal system provides quite fully on the form of direct democracy. It is expressed in documents of different legal value, the highest being the Constitution, followed by laws and documents under the law. Accordingly, Vietnam's latest Constitution, the 2013 Constitution, affirmed that the people have the right to use direct forms of democracy such as referendums, elections, dismissal of elected deputies, to participate in draft laws and regulations of the State as well as specific programs and policies promulgated by the State. The Constitution also affirms: "The state must create conditions for citizens to participate in the management of the state and society; publicity and transparency in receiving and responding to citizens' opinions and recommendations"². In fact, the implementation of direct democracy in Vietnam today, like many other countries in the world, is more focused on implementing direct democracy at the local level (also known as the grassroots level). Democracy is implemented with the motto: the people know, the people discuss, the people perform and the people enjoy. In addition to the Constitution, Vietnamese law provides for the form of direct democracy in laws of high legal value such as: Referendum Law, Law on Election of National Assembly deputies and People's Council deputies, Local Government Law, etc. It is possible to generalize some provisions of the current Vietnamese law on direct democracy as follows.

1. Legal provisions on citizens' right to participate in voting activities: Since the birth of the Socialist Republic of Vietnam (1945), citizens' right to vote has always been recognized in the Constitution and laws. Accordingly, Vietnamese law stipulates that the election of deputies to the National Assembly and the People's Council is the right and obligation of each citizen, and is carried out on the principles of equality, direct and secret ballot. Those eligible to participate in the election include citizens who are full 18 years of age or older and have civil act capacity. Persons who are being held in custody or temporary detention, or who are serving a suspended sentence, are still entitled to participate in elections. At the same time, the law also stipulates that Vietnamese citizens aged full 21 years

or older have the right to stand for election to the National Assembly and People's Council. Besides the right to vote, self-election, the electorate has the right to nominate (introduce the candidate) and the right to express opinions about the candidates. This is done through the form of constituency conferences in the localities before holding elections nationwide. In order to ensure democracy in election activities, Vietnamese law also stipulates that citizens have the right to complain about errors in making lists of candidates, complaints and denunciations about candidates in particular and election work in general. At the same time, the law also stipulates the actions allowed to be taken to ensure the voting rights of citizens such as: organizing mobile ballot boxes for elderly, sick voters who are unable to reach polling stations; sub-ballot boxes; support activities for disabled voters, illiterate voters during the voting process... It is these regulations that have contributed to the proportion of voters participating in elections in Vietnam in recent years always reached over 99 %: the turnout of voters participating in the 13th National Assembly of Vietnam (2011) was 99.51 %, the 14th session (2016) was 99.35 % and the 15th session (2021) was 96.60 %.

2. Provisions on the implementation of direct democracy through the right to dismiss delegates elected by the people: The removal of elected representatives is a very important issue in ensuring democracy. Delegates elected by the people represent their legitimate rights and interests, so in case they fail to fulfill their assigned tasks, the people have the right to dismiss them. Throughout history, the constitutions of Vietnam have always recorded this content. Vietnam's latest Constitution 2013 affirms that a member of the National Assembly and People's Council can be dismissed by voters or by the National Assembly or People's Council when they are no longer worthy of the people's trust. And this must be approved by at least 2/3 of the total voters.

3. Regulations on the right to give opinions on state activities: Vietnamese law recognizes that citizens have the right to participate in state and social management, to participate in discussions and recommendations with state agencies on local and national issues. The Law on Organization of the National Assembly 2014 of Vietnam stipulates: National Assembly deputies have the responsibility to regularly contact and stick with the people, collect and honestly reflect the opinions and aspirations of voters in each locality, at the same time have the responsibility to transfer such opinions to competent agencies and individuals for settlement. In the process, delegates must regularly monitor, urge and supervise the settlement of people's opinions, in case they consider the unreasonableness and dissatisfaction

² National Assembly of Vietnam (2013), *Constitution of Vietnam 2013*, Chapter II, Article 28, available at: [https://en.wikisource.org/wiki/Constitution_of_Vietnam_\(2013\)](https://en.wikisource.org/wiki/Constitution_of_Vietnam_(2013)) (accessed 05.07.2022)..

with the legitimate rights and interests of the people, the National Assembly deputies have the right to request the head of the agency, the organization directly resolves it. This has created a high consensus in Vietnamese society on issues managed by the state and also contributed to more effective implementation of state policies and laws into real life.

4. Provisions on the implementation of direct democracy through referendum activities: Referendums are an effective way for people to contribute their wisdom to social governance. This is also a way for people to access information and improve their sense of ownership. For the state, this is an important way to promote democracy, ensure democracy, and increase transparency and consensus in society. The Constitution of Vietnam states: “The people have the right to vote when the state holds a referendum”. Accordingly, the contents for the National Assembly to consider holding a referendum in Vietnam include:

- contents of the Constitution and amendments to the Constitution;
- issues under the national sovereignty and territory;
- security and foreign affairs issues affecting national interests;
- especially important socio-economic issues that have great influence on the development of the country;
- especially important problems arise in the process of social development.

To conduct a referendum, according to Vietnamese law, first of all, there must be an initiative to propose a referendum. This is approved by the National Assembly Standing Committee (the highest body of the National Assembly), the State President or at least 2/3 of the total number of National Assembly deputies. After the proposed initiative, the National Assembly will conduct a review and decide whether to hold a referendum or not.

Some limitations in the current regulations of the law on direct democracy in Vietnam and orientations to overcome

Legally, it can be seen that although the Constitution of Vietnam has affirmed the importance of direct democracy and recognized that direct democracy plays an important role in ensuring the people’s mastery, at present, Vietnam does not have a law specifically regulating, comprehensive on this issue. Therefore, in fact, direct democracy in Vietnam is mainly expressed through election activities and people’s opinions on the Constitution, laws and documents issued by the State, while other forms of direct democracy such as referendums, the dismissal of elected representatives has not yet been applied in practice.

Regarding the right to self-nominee and nominate deputies to the National Assembly and People’s Councils Vietnamese law provides that citizens have the right to self-nominate or nominate candidates, this activity is carried out at voter conferences in each locality before holding elections nationwide, however, because there are no specific regulations to guide, currently in Vietnam, conferences to get comments from voters only stop at voters giving opinions about candidates expected to be introduced by agencies, units and localities. Voters attend these conferences passively and do not introduce new candidates. In a few cases, people introduced more people, but most of them were candidates for the People’s Councils of communes and wards – the lowest level of government in Vietnam. At the same time, according to Vietnamese law, at a conference to collect voters’ opinions on a candidate, the voting can be done in the form of secret ballot or a show of hands. Because of this regulation, most localities choose the show of hands to reduce cumbersome procedures in the conference, but it loses its intrinsic democracy, because Vietnamese people often have an “afraid of conflict” mentality, so most of them will raise their hands in agreement whether they like it or not. This has made the organization of the consultation on the candidate a formality.

In addition, although there exists a regulation to publicize information about candidates is mandatory and allows candidates to interact with voters before the election, at present, the practice in Vietnam is that the disclosure of voter information is quite sketchy. The information that is made public only includes: full name, place of birth, workplace, education level, positions that have been held by candidates without focusing on information about their social activities, their contributions to the community... Voter contact, although regulated by law, is not mandatory, so very few candidates carry out this activity. This leads to a lack of information about the candidates and more emotional elections.

Regulations on the number of candidates participating in the current election in Vietnam are not really reasonable. The number of candidates introduced for election to the National Assembly and People’s Council is a bit small compared to the number of deputies to be selected. For example, in a constituency where the number of delegates to be elected is 3, the number of candidates is 5, and the unit with the number of delegates to be elected is 2, the number of candidates is only 3 [Nguyen Thi Dung, 2018]. This has made the weight of the voter vote very low.

Although the issue of referendum is regulated by the Constitution and Law, in fact, Vietnam has not conducted any referendum yet. From a legal point of view,

it can be seen that there are still many inadequacies to be studied such as: there is not yet a document specifying the process of holding a referendum, which raises a concern that in the case of the need to hold a referendum, the competent authority will not know how to organize accordingly: process and procedure, how to determine the validity of the results. On the other hand, the provisions on the legal value of the current referendum result are unclear. The law on referendums in Vietnam only provides in a general way: the Standing Committee of the National Assembly shall report to the National Assembly on the results of the referendum at the session. Based on the results of the referendum, the National Assembly shall decide on the necessary measures to ensure the implementation of the referendum result. This creates a loophole in the implementation of direct democracy, because in this case, the National Assembly has the right to view the referendum result as mandatory or only as a reference. As such, direct democracy in deciding important issues of the country is not guaranteed.

In addition, there is a lack of provisions on the control of power over agencies elected by the people. The State of Vietnam operates on the principle that state power is unified, assigned and coordinated among agencies in the state apparatus. Accordingly, all activities in the state apparatus are under the supervision of the National Assembly and the People's Council. It is clear that this creates favorable conditions for promoting democracy when all issues in the organization of operation of the state apparatus are under the inspection and supervision of the agencies elected by the people. However, currently, Vietnamese law does not have a mechanism to control power over these agencies. Therefore, in many cases representative democracy is much more decisive than direct democracy.

The limitations in the provisions of the law on direct democracy in Vietnam today stem from a variety of subjective and objective causes, including the following three basic causes.

Firstly, Vietnam is a country that has had to go through a long struggle for national liberation and reunification. Although the Socialist Republic of Vietnam was established in 1945, it was not until 1975 that Vietnam officially made peace, unifying the North and South and starting the process of national construction. Therefore, Vietnam has not had a long history of implementing democracy in general and direct democracy in particular, or in other words, the mechanism of modern democracy in Vietnam is still very young.

Secondly, the limitation from society's perception of direct democratic law. It can be said that democracy comes directly from people, from the specific

conditions of society, so the issue of perception has a great impact on the promulgation and enforcement of laws on direct democracy. In Vietnam, the level of social awareness of democracy in general and direct democracy in particular is not high. Most of the people are not ready to participate in the affairs of the state, they think that the management of society is not their responsibility and interests but it is the work of the state, therefore, they have a mentality of dependence and formal participation. When the state organizes to collect opinions on the draft Constitution as well as the laws, including some laws related to direct democracy, it hardly gets many opinions. On the part of civil servants, a large number of them are still not deeply aware of the role of direct democracy. They are also affected by the old management mechanism according to the centralized model, subsidized bureaucracy before the renovation period with a command-authority-oriented mindset. The Communist Party of Vietnam as the only Party in power and receiving the trust of the vast majority of the Vietnamese people, but within the Party there are still many party members who have the ideology of abuse of power, justification, authoritarianism [Mai Hai Oanh, 2020]; there are party members who hold leadership and management positions, including some senior cadres who suffer from deterioration in political thought, ethics, and lifestyle with different manifestations of fading ideals, falling into selfish individualism, opportunity, pragmatism [Communist Party of Vietnam, 2016]. This has created a barrier to the development of direct democracy and the development of direct democratic legislation in Vietnam today.

Thirdly, on the legal capacity of law-making entities. The legal capacity, qualifications and management of personnel and civil servants in the field of lawmaking are still limited. Intensive training and retraining in the formulation, policy analysis, drafting of legal documents was not carried out regularly, methodically, the regime of responsibility and sanctions for the elimination of violations in law-making also focused on general principles.

From the above limitations and reasons, the author proposes some orientations to improve the law on direct democracy in Vietnam today as follows:

Firstly, to perfect the law on direct democracy on the basis of strongly promoting the initiative, positivity and responsibility of the people in the realization of direct democratic rights. As stated above, currently, the awareness of the Vietnamese people about the implementation of direct democracy is not high, while it is the decisive factor for the effectiveness of modern democracy. Therefore, in order to perfect the law on direct democracy

as well as effectively implement this form of democracy, the state needs to pay more attention to raising people's awareness of their roles and responsibilities for the activities of the state and society. This can be done through the promotion of propaganda, dissemination, legal education in general and regulations on direct democracy in particular so that people are truly aware of their rights and obligations, more actively involved in the activities of the state.

Secondly, concretize the provisions on direct democracy in the constitution and the law. Currently, although the Party and State of Vietnam attach great importance to the form of direct democracy and clearly affirm this in the Constitution as well as some laws, in fact these provisions are still general, not clearly defined in the form and content, implementation subject. In order for direct democracy to be realized in practice, the State should soon issue a specific law on this issue, such as the Law on Direct Democracy or more specific laws such as: Law on social criticism, Law on supervision of the people, etc. When the interests of direct democracy are legislated, the people will be more confident in exercising their rights and obligations, from which they will create a favorable environment for the development of direct democracy.

Thirdly, perfecting the electoral law is an issue that needs more attention. Accordingly, the State needs to build a clear electoral campaigning mechanism, diversify the forms of election campaigning to create the right to be proactive for candidates. At the same time, it is necessary to add a provision on mandatory voter contact with candidates to ensure that voters are able to listen to the action programs put forward by the candidates as well as know information about them. This is aimed at overcoming the current lack of information about the candidate as well as ensuring that the choices in the election are wise and substantive. At the same time, it is necessary to conduct research to increase the number of candidates participating in the election in accordance with the number of delegates, overcoming the current low competitiveness rate in the election. At the same time, developing legal provisions has strong sanctions for violations in elections such as surrogate and household voting status.

Fourthly, form a specific legal basis for dismissal activities for National Assembly deputies and People's Council deputies. Theoretically as well as practically, the dismissal of elected representatives is as important political and legal as the electorate elects their delegates. This power comes from the principle that state power belongs to the people, the power of the people is the ultimate, the original power. Therefore, this activity needs to be carried out in a strong and substantive way. In order to do this, it is necessary to soon promulgate

specific regulations on the order and procedures for dismissing elected deputies in case the delegates fail to perform the tasks assigned by the people, which clearly stipulates:

- who has the right to propose the dismissal of delegates;
- under what circumstances are entitled to dismissal;
- where and in what form is the dismissal carried out;
- how is supervision to ensure openness and transparency in dismissal activities carried out.

Fifth, it is necessary to raise awareness and expand opportunities for the promulgation of laws on public servants. When civil servants realize the role and importance of promoting democracy in general and introducing direct democracy in particular, they will be more responsible in assessing and formulating laws. Opposing the idea of order and power, which exists among a small number of Vietnamese civil servants, is now a very urgent task, because for a democratic society, a democratic state, the state should be considered more as an instrument for serving the people. than an influential subject in society. Therefore, civil servants need to increase their legal capacity, the level of understanding and use of law. This can be achieved through training activities, strengthening legal knowledge in each professional field, especially knowledge about human rights and civil rights.

Conclusion

Despite the absence of a tradition of introducing direct democracy, Vietnam currently has favorable conditions for promoting the development of this form of democracy, especially the factor of socio-political stability, as well as a high level of people's agreement with the lines and policies of the party, the laws of the state. However, it should be recognized that Vietnam also faces many challenges in promoting direct democracy, such as: legal norms, intellectual level, culture of public service, legislative opportunities, in which the problem of improving legal norms is a complex and time-consuming problem. Therefore, in the near future, in order to ensure the construction of a truly democratic Vietnamese society, the party and the state need to openly recognize the limitations in the provisions of the law on democracy in general and direct democracy in particular, from there, there are additional directions that are adjusted accordingly. In particular, it is necessary to pay attention to the specification of the provisions of the Constitution and the Law in order to improve the legal framework on such direct democratic rights of the people as: the right to vote, the right to participate in a referendum, the right to legislative initiatives, the right to dismiss elected deputies in parallel with the promotion and awareness-raising of the population about this right in society.

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