



The changes of administrative law in Vietnam from central planned to the socialist-oriented open market economy

Phan Thi Lan Huong, Nguyen Thi Thuy*

Department of International Cooperation, Hanoi Law University, 87 Nguyen Chi Thanh, Dong Da, Ha Noi, Vietnam.

ABSTRACT

Since introducing the Doi Moi policy in 1996, Vietnam has embarked on a socialist-oriented market economy. The government has changed its role in public administration to meet the requirement of open market rules. Hence Vietnam has carried out administrative reforms to change its approach to serve people. Administrative law plays a crucial role in promoting rule of law state and good governance. However, Vietnam still faces many difficulties in promoting an accountable and transparent public administrative system. Individuals and organizations (business sectors) have not yet been satisfied with public services delivered by administrative agencies. Corruption remains a critical issue in Vietnam. In addition, administrative law has not yet developed comprehensively and consistently. Vietnam has struggled to reform local government, to control abused power and corruption, and to reform administrative procedures since the 1990s. It is essential to review the changes in administrative law enables to understand how it responds to open market standards.

The question remains as such how administrative laws have been changed to meet requirements of rule of law state and good governance in globalization and integration period. This paper will examine the key areas of administrative law including (i) Organization and operation of the administrative system; (ii) Public service delivery; (iii) Public participation; and (iv) Administrative dispute settlement mechanism. Hence, the solutions for reforming administrative law will be identified basing on current issues of these areas.

Keywords: Administrative law, Constitution, Economy, Public servants.

INTRODUCTION OF ADMINISTRATIVE REFORM IN VIETNAM

After unification in 1975, Vietnam enacted the 1980 Constitution which followed the socialist model. Under the socialist model, the centrally planned economy was the key factor that shaped the features of the administrative system. In other words, a centrally planned economy and concentrated power were key principles for the organization and operation of state organs. A centrally planned economy

seeks to control what is produced and how resources are distributed and used, therefore, the government played a dominant role in performing economic functions.

The socialist economic system is stipulated in Article 18 of Constitution 1980 as follows: " The State carries out the revolution in production relations, guides, uses and transforms the non-socialist economic sectors and establishes and consolidate the regime of socialist ownership of

production means to build a national economy consisting mainly of two sectors: the State-run economic sector under the entire-population ownership and the collective economic sector belonging to the collective ownership of the laboring people. The State-run economy plays the leading role in the national economy and is given priority for its development." State ownership enterprises (SOEs) were the key component of the economy. The private sector was not treated in the same way as the public sector. Public ownership is dominant and there is unfair competition between public ownership and the other different economic sectors. Article 33 determines that: "The State leads the national economy under unified plans". It is worth noting that there is no separation of state power and central government plays a dominant role. Democratic centralism principle is a key principle for the organization and operation of state organs. The Central planned economy created a hierarchical administrative system (top-down model) in which local government is the subordinate organ of the central government. Consequently, laws and regulations were enacted to guarantee the role of the central government in all aspects. Application – approval remains the key feature in the relationship between administrative organs and individuals/organizations. Hence, the administrative system is considered the most bureaucratic system.

In 1986, Vietnam started to transform its economy from a centrally planned system to a market system under the Renovation Policy (Đổi Mới) of the Communist Party. However, until 1992, Vietnam amended the 1980 Constitution to officially recognize the open market under socialist orientation. The market economy under socialist orientation refers to "economic mechanism used by the government to achieve the certain socialist goals"(Ding X, 2009). The renovation determines the goals to overcome shortcomings of the centrally planned regime and eliminate extreme bureaucratic centralism (Arencibia MG, 2011). Transition to a market economy has caused changes in the legal systems in Vietnam and other countries such as China, Hungary, Poland. To respond to transition, Vietnam has carried out administrative reform through the development and implementation of the Master Plans on administrative reform 2001-2010 and 2011-2020 periods. Master Program on State Administration Reform (PAR) 2011-2020 period defines the objective as follows: "administrative reform will focus on institutional reform; building and raising of the quality of the contingent of cadres, civil servants and public employees, attaching importance to reforming salary policies as a true momentum for cadres, civil servants and public employees to perform public duties with high quality and effectiveness; and raising the quality of administrative and public services". Since 2011, Vietnam has conducted institutional reform through amending the 1992 Constitution in 2013.

The 2013 Constitution creates significant changes in institutional reform by introducing clear principles of distribution of functions among the three legislative, executive, and judicial branches. Following the 2013 Constitution, many laws related to the organization and operation of state bodies were amended, for example, Law on Organization of Government (Law on organization of Government, 2015); Law on Local Government (Law on Local Government, 2015); Law on Organization of the Court (2014); Law on Promulgation of Legal Normative Document (2015). These laws aim at developing a strong, effective, efficient, clean, and transparent government. Changing from a centrally planned economy to an open market under socialist orientation was a turning point in Vietnam.

Administrative reforms require the changes of administrative laws to ensure that all components of the administrative system to organize and operate to serve the people. The 2013 Constitution, Article 8 (2) confirms that: "All state agencies, cadres, civil servants and public employees shall show respect for the People, conscientiously serve the People, maintain close contact with the People, listen to their opinions and submit to their supervision; resolutely combat corruption, waste, and all manifestations of bureaucracy, arrogance, and authoritarianism."

In addition, Vietnam has made great efforts in reforming its legal system in general, and administrative law, since it became a member of WTO, ASEAN Community, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) recently. For example, Vietnam established the administrative tribunal in 1996 and amended Law on Complaint (2011) and Law on Administrative Lawsuit Proceeding (2015) for better protection of the rights and legitimate interests of individuals and organizations. This was done in recognition of WTO's requirement that a member state has to reform its administrative law system to ensure transparency, independent mechanism for reviewing administrative actions (Tom G and Albert Hy, 2008). Vietnam has managed to increase its competitive Index from 16.85 in 2007 to 61.54 in 2019 through institutional reforms, eliminating obstacles in administrative procedures. Consequently, administrative laws must be changed to respond to transitional and global development.

THE CHANGES OF ADMINISTRATIVE LAW TOWARDS AN OPEN MARKET ECONOMY

Organization and operation of the administrative system

Regarding organizational reform of administrative apparatus, together with the amendments of Constitutions in 1992 and 2013, the Law on Organization of Central Government (2001 and

2015) and Law on Local Government (2003 and 2015, 2020) were amended several times accordingly. The administrative system has been reformed since the 1990s with the aim at reducing the number of administrative apparatuses from central to local government, for example, 25% of administrative units at the central level (non-business units that provide public services, for example, public university, hospital, or state ownership enterprise) and 3.980 units at the local level; reducing 8/713 districts; and 557/11.160 communes, and 22/27 ministries and ministerial-level organs. Reducing the number of administrative units is to ensure the organization of the state administrative apparatus is streamlined, effective, and efficient (Nuan TN, 2011). In addition, the organization of ministries also considered reform to develop multi-function field management, for example, the Ministry of Industry and Trade emerged from the Ministry of Industry and Ministry of Commerce in 2007.

The number of public officers and employees was also reduced. There has been a reduction of over 27,500 public officers (equivalent to a decrease of 10.01% compared to 2015); reduced nearly 243,000 public employees/staff (equivalent to an 11.98% reduction compared to 2015) this number exceeded the 10% reduction target set by the Politburo's Resolution No. 39-NQ/TW by 2021. At the local level, 40,000 public officers of the district level and nearly 148,000 commune-level officials and civil servants and part-time workers in villages, hamlets, and residential quarters and 7000 people who have labor contracts.

Decentralization has been promoted to ensure that local government can be more active in performing its functions. Central government delegates its powers and functions to local government. The Law on Local Government (2015, amended in 2019), Article 13 (1) Decentralization of powers to local governments: "Based on working requirements, possibility and conditions, and specific states of each locality, central and locally-governed state organs shall be entitled to decentralize one or several duties and powers within their competence to inferior-level local governments or state organs continually and regularly unless otherwise prescribed by laws." In addition, this Law also determines the functions of each level, for example, Article 17 provides duties, powers of the provincial local government; Article 24 provides duties, powers of the local government of the rural district. It is worth noting that, it is the first time the law on the local government makes the distinction of powers and duties between rural and urban local government.

Administrative organs at central level: At the central level, administrative organs include Government, Ministries, and Ministerial agencies. "The Government is the highest state administrative body of the Socialist Republic of Vietnam, shall exercise executive power, and is

the executive body of the National Assembly" (Article 94, Constitution 2013). The tasks, powers, and functions of Government are prescribed in detail under the Law on Government (2015, amended in 2020). Government includes the Prime Minister, Deputy Prime Ministers, Ministers, and Heads of ministerial-level agencies. The Prime Minister is the head of the Government shall report on the work of the Government, the National Assembly, the Standing Committee of the National Assembly, and the President. (Article 95, Constitution 2013). The Prime Minister "shall be chosen by the deputies of the National Assembly" upon the request of the President (Article 4, Law on organization of government 2015). Citizens do not vote directly for Prime Minister like the other countries. This mechanism ensures the dependence of the government on the National Assembly. State President has the power to propose National Assembly to elect, relieve from duty or remove from office the Vice President or Prime Minister; and, based on resolutions of the National Assembly, to appoint, relieve from duty or dismiss Deputy Prime Ministers, Ministers, or other members of the Government (Article 85, Constitution 2015). The position of the Prime Minister is more stable than the direct election by citizens as well as under single-party policy. Historically, none of the Prime Minister was removed from his position during his/her election term.

Regarding field management organs at the central level, Vietnam has 22 Ministries and Ministerial Agencies (State Bank, Government Inspectorate, Ethnic Minority Committee, and Government Office). Ministers and Heads of Ministry-level agencies are cabinet members and bear responsibility for the state management of assigned industries and sectors; organize and monitor the implementation of laws relating to industries and sectors across the country (Law on Organization of Government, 2015). Notably, the Government promulgates the Decree defining the functions, tasks, powers, and organizational structures of ministries and ministerial-level agencies, for example, Decree No.123/2016. Consequently, the organization, tasks, functions of the Ministries are subject to change from time to time due to the need for public administration. For example, to control administrative procedures, Prime Minister issued Decision No. 74/2010/QĐ-TTg to establish the Administrative Procedures Control Agency (APCA) under Government Office in 2010. However, Decision No.1668/QĐ-TTg of the Prime Minister transferred APCA to the Ministry of Justice on 19, November 2012. Notably, this organ was transferred back to Government Office in December 2016 under Decree No.150/2016/ND-CP dated 11, November 2016 on defining the functions, tasks, powers, and organizational structure of the Government Office.

Administrative organs at local levels: At the local level, the People's Committee is an

administrative organ and under the supervision of the People's Council at the same level. Currently, Vietnam has 63 provinces and cities under the central government: 717 districts, and around 11,111 communes. Tasks, functions, and powers of the People's Committee are prescribed by the Law on Local Government (2015). "The People's Committee at a local administration level, which shall be elected by the People's Council of the same level, is the executive body of the respective People's Council and is the local state administrative body and is responsible to the People's Council and state administrative agencies at higher levels." (Article 114, Constitution 2013) This regulation creates a horizontal and vertical relationship of the People's Committee as one principle for organization and operation.

Specialized agencies at local levels:

Specialized agencies are established by the People's Committee at the same level to support the People's Committee in implementing the field management. For example, Department of Finance, Department of Internal Affairs, Department of Plan, and Investment. The tasks, functions, and powers of these organs are prescribed by the Decrees as well as specific Decisions of the People's Committee at the same level. "Specialized organs of the People's Committee are organized at the provincial and district level, and are advisory divisions and assist the People's Committee in performing its state management functions in specific industries or sectors at localities, and perform duties or exercise powers decentralized or delegated by the superior-level state organs." At the provincial level, Specialized Departments include 19 essential specialized departments (compulsory established) and some optional departments established based on local conditions, for example, the Department of Foreign Affairs; the Ethnic Minority Committee; the Department of Planning and Architecture.

Regarding organizations and operations of the administrative system, Vietnam has promoted decentralization between central and local levels to ensure that local government can play an active role in public administration. Significantly, it was the first time in Vietnam, there is a distinction between urban and rural local government concerning jurisdiction and organization. For example, Ho Chi Minh City has established the new Thủ Đức City (two levels of local government) intending to promote "autonomy in decision making and policy incentives to grow its innovation capacity and make it more competitive."

Public service delivery

Under the centrally planned regime, SOEs and administrative units had played important role in the delivery of public services. The state budget was the key financial resource for running all

business of administrative units. Since 1975, the number of provinces, districts, and communes has increased due to the fragmental division of administrative boundaries at all levels. The increase in the number of administrative units at all levels caused many obstacles and had negative impacts on the effectiveness of the administrative system. Expenditures for running a bulked system with the numerous numbers of public officials are the main challenges of the administrative system, especially some districts and commune cannot generate appropriated revenue covering their expenditures and depend on the central or superior organ's subsidies.¹ Since introducing an open market economy, the private sector can take part in the delivery of public services through a bidding mechanism.

In addition, equalization has been promoted as the key solution for reducing state investment in SOEs, in which state will hold only 51% of capital instead of 100% under a centrally planned economy. In addition, public service units such as public hospitals and public universities, public schools must change rapidly toward autonomous functions. Autonomy is considered a key standard to eliminate subsidies of the state budget. Public service units need to generate revenue to ensure that can cover all the costs and reach the target of 100% self-finance.

Law on State budget was enacted in 1996 and amended in 1998, 2002, and in 2015 to promote decentralization in financial management and distribution of state budget mechanism. The application-approval mechanism as a feature of the centrally planned economy was changed significantly. Local governments were authorized to collect taxes. In other words, there is a distinction between central and local government revenue. To deliver the public services, Vietnam also establishes several administrative agencies such as state-owned enterprises (electric cooperate, water supply company.) and public education institutions public, and public hospitals. These administrative units are not considered as an executive organ because these agencies do not carry out state management. Providing public services is the key function of these agencies, especially under the transitional period, these agencies do not have autonomous functions as all activities are under the control and supervision of the competent state organs. For example, Hanoi Law University is a public law school managed and controlled by the Ministry of Justice.

Law on Public investment was enacted in 2014 (amended in 2019), Article 5.2 defines that: "Investment in giving support to activities of state regulatory authorities, public service units, political organizations, and socio-political organizations." Public service units such as public universities need to reform to become independent units with autonomous authorities in

investment and annual expenditures.

Significantly, equalization/privatization is also promoted. Private sectors can also engage in the delivery of public services through developing new regulations on public-private partnership mechanisms (PPP). New Law on PPP was enacted in 2020 which establishes an umbrella legal ground for all PPP projects with the aims at promoting private investment in the infrastructure of Vietnam.

Currently, cutting or reducing the state budget of administrative units is one of the reforming solutions. New policies and laws related to the delivery of public services were enacted. The concept of public services is defined by Decree No. 39/2019 on the assignment of tasks, ordering, or bidding for the provision of public products and services using the state budget from annual expenditures. In addition, Government also enacted Decree No.60/2021 dated 21 June 2021 on the financial autonomous mechanism of administrative units. Public universities or public hospitals need to generate revenue to meet financial autonomous standards. For example, the Law on Higher Education states that: "Higher education institutions are independent in the primary activities such as organization, personnel, finance, property, training, science and technology, international cooperation, assuring the higher education quality. Higher education institutions shall enjoy greater autonomy depending on the capability, the rankings and the education quality assessment results" (Article 31.1). Hence, laws and policies related to administrative units have changed significantly to reduce the burden of the state budget as well as create competition among public sectors.

In addition, equal access to public service remains a challenging issue in Vietnam. The disadvantaged groups including women and children living in mountainous areas, persons with disabilities, sex workers, the person living with HIV cannot have equal access to essential services (healthcare, education) as other people living in urban areas. Although the government has enacted some policies to support the disadvantaged groups, they still face many difficulties in access to essential services, for example, people cannot access public services because of lacking a birth certificate, permanent resident registration, or identification card (etc) or cannot provide adequate support to access services (the person living with disabilities). Significantly, the COVID-19 has caused serious impacts to people living in big cities (Ha Noi, Ho Chi Minh City) because they are not eligible to access social allowance, healthcare services, for instance, the migrant workers or street vendors are living without permanent registration while they are at high risk of virus infection and unemployment.

Public participation

Public participation is considered a standard of a democratic society. Changing from central-planned economy to open market economy. Public participation is guaranteed by Constitution and Law on Promulgation of Legal Normative Documents (Law on Laws). Constitution 2013, Article 28 defines that: "Citizens have the right to participate in the management of the State and management of society, and to discuss and propose to state agencies issues about their base units, localities, and the whole country." Law on Referendum No. 96/2015/QH13 enacted in 2015 to state that: "Referendum means an occasion held by the state for all the people in the country to vote on important issues according to this Law" (Article 3.1). This law also determines the referendum principles; duties and authority of agencies and organizations in the referendum; sequence and procedures on decisions on the organization of referendum; result of the referendum and its effect (Article 1). Hence, it is a legal ground for citizens to express their ideas on important matters of the country.

In addition, the right to participation in legislation is also guaranteed. Since the first Law on Laws was enacted in 1998 and after several times of amendments, the current Law on Laws defines that: "During the formulation of legislative documents, the drafting agencies and relevant organizations must enable other organizations and individuals to provide opinions about the formulation of legislative documents and draft legislative documents; seek opinions from entities regulated by legislative documents" (Article 6.3 Law on Laws 2020). In addition, in Ordinance on the exercise of democracy in the commune, wards, and towns (2007), Article 10 defines the contents that must be directly discussed and decided by the people: "People directly discuss and decide on undertakings and levels of contributions to the construction of infrastructures, public facilities within the scope of communes, villages, population groups, to which people fully or partially contribute funds and other matters within-population communities following the provisions of law."

The public hearing is also determined as the way for individuals to take part in the decision-making process. However, Law on Handling Administrative Violation (2012, amended 2020) Article 61 defines that an individual shall have a right to explain directly or by sending a letter when he/she has imposed a sanction such as depriving the rights of using licenses, professional practice certificates indefinite time or suspension of operation indefinite time or apply the maximum fines of the fine frame for those acts from VND 15,000,000 or more than for individuals. As a result, individuals cannot take part in decision-making in any case. Unlike other countries, participation in decision-making of executive organs remains a challenge

because Vietnam does not promulgate the Administrative Procedure Act like other countries such as Japan or the US.

Administrative dispute settlement mechanism

Administrative disputes are under the jurisdiction of both administrative agencies and courts. The jurisdiction of the court and administrative agencies has been expanded. The first Ordinance on Administrative Complaint and Denunciation in 1991 defined the right to complain to state competent organs about decisions or actions under its jurisdiction when it violated their rights and legitimate interests.

In 1998, Law on Complaint and Denunciation was enacted defining that: "Citizens, agencies, and organizations are entitled to complain about administrative decisions and/or administrative acts of State administrative bodies and/or competent persons therein when having grounds to believe that such decisions and acts have contravened laws and infringed upon their legitimate rights and interests." Significantly, the complaint was a compulsory procedure that citizens or organizations had to follow before initiating the case to the court. Administrative Court was established in 1996 which has enabled citizens/organizations to initiate the administrative cases to the Court. The jurisdictions of the Administrative Court have changed significantly since the first Ordinance on Administrative Court Procedures was promulgated in 1996. According to this Ordinance, citizens or organizations can only bring the case to the court after requesting competent administrative organs or persons to review administrative decisions/acts (administrative complaint). Jurisdiction of the District Court under the 1996 Ordinance was also limited because the Court only dealt with the following cases: (1) administrative decisions/acts to impose fines against administrative violations or to apply measures for the compulsory dismantlement of the illegally-built dwelling houses, projects or firmly-structured objects; (2) decisions to apply administrative measures in the form of re-education at communes, wards or townships, putting into re-education schools, educational establishments, medical establishments or administrative custody; (3) decisions on dismissal, except those concerning the People's Army and decisions on dismissal in accordance with the provisions of the Labor Code; (4) decisions or actions concerning the grant and withdrawal of permits and licenses in the fields of capital construction, production, business and land management; (5) decisions on forcible requisition, forcible purchase and confiscation of assets; (6) decisions on tax collection and tax arrears collection; (7) decision/acts on the collection of charges and fees; (8) and other kinds of administrative decisions and administrative actions as prescribed by law. According to this

Ordinance, there were only 7 types of administrative decisions or acts were under the jurisdiction of the Court. The 1996 Ordinance was amended in 1998 and 2006. Notably, compulsory complaining before initiating the case to the Court was considered as the primary condition for the Court to accept the cases. During the 1996-2011 periods, the judicial procedures for dealing with administrative cases revealed limitations and issues such as the limited jurisdiction of the Court in accepting the cases. Court did not hold the power to enforce its judgments or decision because it cannot impose enforcement measures in case the administrative organ did not obey the judgments (Khanh NT, 2014).

Significantly, the right to complain does not have any legal effect on the right to initiate a case to the court. It was a significant change in comparison with the Ordinance on Administrative Court Procedures in 1996 (amended in 2006) because this Ordinance required citizens to complain before initiating to the Court. In addition, if the complaint was settled and judgment had legal effect, then the citizen could not bring the case to the court. In the current Law on Complaint, Article 7, the complainant can initiate a case to the court under the LACP (2015). In addition, the complainant can only request for the first - time complaint settlement regarding the decision issued by the Minister or the Head of the ministerial level organ. If a complainant disagrees with the first-time complaint settlement, he/she can only bring the case to the court.

Before 1996, competent bodies for dealing with complaints included three levels as follows: (1) first-time complained settlement was the organ/person made decisions/acts; (2) second time complained settlement was the state inspectorate at direct superior level; (3) final-time settlement was the head of administrative organ at the same level of the state inspectorate (Khanh NT, 2014). During the 1996-2011 period, the competent person for dealing with complaints did not include the state inspectorate. The state inspectorate had played a role as supporting organs for competent organs in dealing with administrative complaints. State inspectorate can only deal with the complaint under the authorization of a competent organ (Khanh NT, 2014).

To respond to the requirement of WTO, Law on Complaint 1998, amended in 2004 and 2005 ensured the right to complain of citizens through determining competent organ/person in charge of dealing with complaints excluding Prime Minister. Prime Minister holds power to direct and handle proposals of the General State Inspector. Chairperson of People's Committee at the provincial level shall not deal with administrative decisions/acts made by Commune level.

Currently, competence for dealing with complaints

is determined based on the administrative boundaries following the jurisdiction of the administrative organs. In other words, competence for dealing with complaints also follows the principle of organization and operation of the administrative system in Vietnam including field management and administrative boundary management (vertical and horizontal principle). Therefore, administrative complaints must be settled by the administrative organ at local levels (commune, district, and province) that issued a decision or conducted administrative acts (Giao, 2009).

Until LACP 2010, individuals or organizations can bring a case to the court directly without complaints. Abolishment of compulsory complaining before initiating a case to the court ensures the right of citizens. According to the Ordinance on Administrative Lawsuits 1996 and amended in 2006 only allowed citizens to bring the case to the court after complaining to administrative agencies (Article 2). Significantly, to allow citizens to choose administrative litigation settlement, Law on Administrative Lawsuits 2010 revised the requirement to conduct compulsory complaints before initiating administrative lawsuits. Hence, individuals or organizations have the right to choose the channel to dealing with administrative disputes that they considered much more convenient, effective, efficient for them. However, people often prefer to access administrative review channels rather than administrative courts. In reality, the court may face difficulties in handling cases because judges can only make judgments basing on the documents submitted by administrative organs. People often think that it is a good chance for administrative authorities to review their decisions or acts and to change their decisions/acts. In addition, court procedures will take more time, and costs for people are also a reason for people's request for administrative review.

In brief, the right to complain and initiate a case to court is gradually expanded through defining the concept of administrative decisions and acts as well as procedures for reviewing administrative decisions and acts. Current Law on complaint (2011) and LACP (2015) are legal grounds for individuals or organizations to request competent organs to review administrative decisions or administrative acts which are considered as illegal and violate their rights and legitimate interests. The next session will be analyzed in detail about the mechanism for dealing with administrative litigation.

REMAINING ISSUES

Vietnam has strong commitments to achieve the MDGs as a member country of the MDGs and the Agenda 2030. However, there are still some key issues in Vietnam's administrative law that are considered as challenges in the process of building a rule of law state and ensuring good governance standards as follows:

Effective, accountable and transparent institutions

Institutional reform is a prerequisite for good governance. Although Vietnam has amended its Constitution in 2013 and its laws related to organization and operation of government, effective, accountable, and transparent standards cannot be achieved due to some remaining issues of administrative law as follows:

Administrative procedures are inconsistent and overlapped:

Administrative procedures are formulated by various competent agencies and included in different legal documents such as status laws and substantive regulations. Administrative procedures include many types, such as (1) procedures on imposing administrative sanctions; (2) procedures on employing public officials; procedures on issuing permission for building construction; procedures on issuing land use right certificate; procedures on issuing a certificate on business registration; procedures on issuing a certificate on investment registration, etc. The Government and Ministries and Ministerial-level agencies have issued a significant number of substantive documents (i.e., Decrees and Circulars) on providing detailed procedures for implementation. Consequently, regulations on administrative procedures are inconsistent and overlapped, which causes many problems for individuals and organizations. Administrative procedures are considered as barriers that prevent enterprises and individuals from executing their rights and obligations. Hence, abolishing and reducing unnecessary and complicated administrative procedures was an urgent task of the government in 2017. For example, the Special Task Force of the Ministry of Industry in 2017 and 2018 was required to scrutinize all administrative procedures and business conditions for simplification or abolishment². Moreover, Vietnam does not have a law on licensing like some other countries. Therefore, each specialized status law as well as the guidelines for implementation (i.e., Decrees and Circulars) shall provide detailed conditions for issuing or depriving the right of using the license in specific fields of public administration. As a result, the conditions for licensing are different among the areas. Due to the lack of consistent administrative procedures in Vietnam, administrative agencies have more discretion in formulating administrative procedures for their field of management; consequently, there is a "jungle of administrative procedures" in Vietnam. Just as an example, during 5 months in 2019 alone, 3,425 out of 6,191 administrative procedures related to business licenses were cut off.

E-government and one-stop-shop models have been carried out in Vietnam as the requirement of administrative reform. Vietnam introduced an e-

government and one-stop-shop model at the provincial level as an example of institutional reform and procedural reform. E-government program still has some issues and challenges such as lack of leaders' roles in providing directions and guidelines for performing tasks; lack of an effective guarantee mechanism for the implementation of the tasks of building e-government; lack of a consistent legal framework on building e-government; lack of financial and investment mechanisms suitable to specific information technology projects; lack of specific regulations on identification and authentication of individuals and organizations in electronic transactions; and lack of legislative regulations on electronic documents and archives.

Unclear delegation of power between the central and local governments: Both the central government and local governments operate and organize under the democratic-centralism principle. The central government holds power to control local governments and it can easily interfere in the work of local governments. Law on Organization of Government defines: "Properly delegate and decentralize governing powers between the Government and local governments and assure the consistent management power of the Government and promote initiative, creativity and responsible autonomy of local governments" (Law on Organization of Government, 2015). There is an unclear delegation of power from central to local. In other words, it is very difficult to determine what is proper delegation and decentralize of governing power. In addition, the remaining "Government-centered" and "command-control" relationship between the central and local governments cannot determine the accountability of administrative organs. In addition, shifting responsibilities among state organs remains a serious issue. For example, the central government had to handle 20-25% of work shifted from ministries or local authorities because the lower levels tried to avoid the controversial and complicated issues. Head of agencies is reluctant to deal with difficult cases and "passing the ball" still happens in collaboration among state organs.

Collective decision-making regime: the current operation mechanism is also difficult for determining the accountability of the head of administrative organs. The government and the People's Committee at all levels apply the collective decision-making regime. "The Government shall work under the collective working regime and the majority rule" (Law on Organization of Government, 2015); "The Government's decisions must obtain more than half of cabinet members voting in favor. In case the vote is equal, the Prime Minister shall have the deciding vote". Similarly, the People's Committee at local levels is also working under the collective decision-making regime. Although the laws make a distinction between governing

power and jurisdiction between an administrative organ and the head of the organ, for example, responsibilities of the Prime Minister are different from responsibilities of the Government, the collective decision-making regime is still considered as an obstacle in building accountable government.

Weak performance assessment: Law on public servants and cadres (2008) defines the assessment of work performance as: "Civil servants who fail to accomplish their tasks for 2 consecutive years will be disallowed to continue their work by competent agencies, organizations or units" However performance assessment remains very weak because of the lack of effectiveness indicators of assessment (Law on Public servants and cadres, 2008). Assessment has been carried out as the final evaluation procedure and the government does not take into consideration this assessment.

Transparency and corruption control issues

Corruption is a critical issue in developing countries because of the lack of transparency and independent ombudsman mechanism. It is difficult to "gain access to public services for people who lack personal influence or money" (Dennis A et al., 2007) Vietnam enacted Law on Anti-Corruption in 2005 and amended it in 2007, 2012, and 2018. It shows Vietnam's effort in fighting against corruption. According to a 2016 survey, citizen's evaluation of anti-corruption campaigns have had a measurable effect in the public sector, however, the level of concern about corruption remains high (UNDP, 2018). According to Transparency Index 2018, "Vietnam ranked 117th amongst 180 countries and territories, dropping by 10 places compared to 2017. It scored 33 points out of 100 in the 2018 CPI, down two points compared to 2017". This number reveals that fighting against corruption is one of the significant challenges in the process of building rule of law and good governance. Taking advantage of the position is considered a crucial matter of corruption. Findings from PAPI 2018 indicate that being connected with someone who has connections with government officials will be easier for citizens to have a job in the public sector (UNDP, 2018). The Vietnamese government has made great efforts in fighting against corruption in public employment, delivery of public services, administrative disposition upon application (land use right certificate; construction permit), and adverse disposition (farmland seizures, imposing administrative sanctions), as prescribed through a survey conducted by UNDP in Vietnam in the Figure below (Figure 1): Law on Anti-corruption 2018 provides preventive measures, for example, Article 34 requires all public officials to declare assets and income (not only public officials in position) and the type of assets and income are also specified in detail. Specifically, the law defines that: "In the cases where there is a change of at least VND

300,000,000 that is not declared, the asset surveillance authority shall request the provision of additional information; origins of any additional assets and income must be explained” (Law on Anti-corruption, 2018). Currently, Vietnam has made great efforts in handling serious corrupted cases committed by high-ranking public officials. It is a significant example of corruption fighting in Vietnam. However, the root causes of corruption have not yet been dealt with, such as the

inadequate salary, which is considered as a reason for committing corruption acts; lack of an effective mechanism to control abusing state powers; the ineffective mechanism for monitoring assets, for example, Law on Anti-Corruption only require public officials who hold leading position are responsible for asset declare, it not requires the relatives of a public officer (their children) to declare asset). As a result, it creates a loop hold in corruption control.

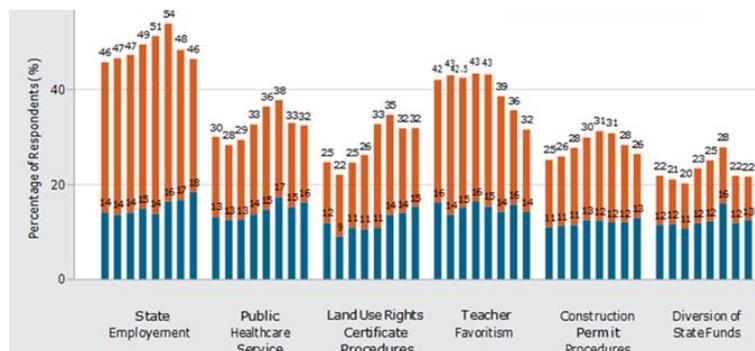


Figure 1. Trends in Corruption as Perceived by Citizens, 2011-2018. Note: ■ Somewhat agree; ■ Agree.

The participation of the resident in decision-making is one key factor of good governance. It requires both the central and local governments to create an effective mechanism for ensuring the participation of citizens. Law on Promulgation of Legal Normative Document (2015) defines that all draft legal documents must be open for public comments (Law on Promulgation, 2015). The issues of measuring how citizens participate in local decision-making and how local governments facilitate citizens to participate in the decision-making process were examined by the PAPI 2018.

According to the PAPI survey, the scores of the public participation were still very low, as follows: “Scores for Participation at Local Levels remained at the average level in 2018, as in previous years. There is not a large range in provincial performance scores, with the difference between the highest (6.16 points) and lowest (4.41 points) dimensional scores only 1.75 points (on the 1 to 10-point scale). This implies that all provinces performed at the average level in engaging citizens in local government affairs (UNDP, 2018).”

However, Vietnam still lacks effective mechanisms for ensuring the quality of public participation in decision-making. Although the Law on Promulgation of Legal Normative Document requires competent organs to publish drafted documents for public comments, it does not determine the obligations to explain in written form the reasons for not accepting their comments. In other words, are decision-makers

open to and committed to considering inputs in the decision-making process? If they do not take appropriate measures for the public to raise opinions, what legal liability should be applied?

Remarkably, the policy decision is not an object of judicial review. According to the Law on Administrative Case Proceedings, only specific unlawful decisions/acts are under the jurisdiction of the Court. In addition, competent organs or persons do not bear any responsibilities in explaining the "reasonability" of a decision.

Unlawful and infringement of interests are only legal grounds for review decisions issued by competent persons. In addition to that, the public hearing is not a compulsory procedure for making adverse dispositions. Consequently, individuals or organizations cannot exercise the right to participate in the decision-making process effectively and efficiently.

Delivery of public services

Global integration requires the participation of the private sector in the provision of public services. The government needs to ensure that citizens have access to quality education and healthcare, and infrastructure facilities such as public transport or water system. Privatization can generate revenue and reduce administration responsibilities and the burden of the government in governing state ownership enterprises (SOEs). From 1992, like other transition economies, the Vietnamese government launched a privatization process to improve the performance of SOEs. In other words, the Vietnamese government must shift the role of SOEs in providing public services to the private sector.

Reducing the number of SOEs is one of the most important targets of Vietnam in this global era. The number of SOEs has dropped dramatically from 1309 to 950 in the 2011-2015 period and is expected to reduce to 190 by the end of 2020.

Decision No.1232, dated 17 August 2017, issued by the Prime Minister, provides the list of state-invested enterprises undergoing divestment in the 2017-2020 period. "The process of privatization proceeded slowly and gradually, starting with the easier and smaller SOEs and then continuing with the more difficult and larger ones" (Tran NM, 2015). Until now, only 88 SOEs have been divested. Consequently, only 27.5% of the target for the 2016 - 2020 period was completed. Regarding the legal framework on privatization, the Government has issued some Decrees related to the privatization of SOEs, such as Decree No.167/2017, Decree No.126/2017, and Decree No.32/2018 for engaging the private sector's participation in providing public services. In addition, the Government also issued Decree No.63/2018 on public-private partnership, dated 04 May 2018. However, speeding up and controlling privatization remain big challenges for Vietnam.

Recently, the Government issued Decree No.32/2019 on assigning, ordering, or bidding for the provision of public services and products using the state budget for annual expenditures. This Decree engages the private sector in providing public services through assignment, request, or bidding. The conditions for assignment, request, or bidding are prescribed in detail. However, controlling the quality of public services delivery is a challenge for the Vietnamese government. For example, healthcare and education services have been privatized (i.e., socialized) but citizens are seriously concerned about the quality of these services. Moreover, when the quality of public services delivered by the private sector does not meet requirements or standards, it is not clear how public services users can seek legal addresses or remedies. Developing a good system for providing public services with the participation of the private sector is a crucial issue in Vietnam.

Administrative dispute mechanism

Although the mechanism for handling administrative disputes has been revised several times, however citizens often face many challenges in a claim for the protection of citizen's rights and legitimate interests.

Firstly, an administrative decision is an object to complain or under the jurisdiction of the court is defined as a quite narrow concept. The definition of administrative decision under the Law on Administrative Complaint (2011): "Administrative decision means a document which is issued by a state administrative agency or a competent person in such agency to decide on a specific issue in state administration management activities and is applied once to one or several specific subjects" (Article 2.8). LACP (2015) defines the concept of administrative decision with very narrow scope as follows: "Administrative decision means a document issued by a state

administrative agency, another agency or organization assigned to perform the state administrative management or by a competent person in this agency or organization, on a specific matter in administrative management activities, and applicable once to one or some specific subjects." According to these definitions, an administrative decision under the jurisdiction of the court is a decision that applies to one or several specific subjects, so the legal normative document or policy decision is not under the jurisdiction of the court.

Administrative guidance or notice can be defined as an administrative decision or not is still a controversial discussion among Vietnamese scholars and judges. For example, there was a case related to the form of an administrative decision issued under the form "written response letter" (công văn) for solving administrative complaint was not considered as an administrative decision by the district court but the appeal court had an objection to the judgment of the district court as the appealed court consider the "written response letter" was an administrative decision. Significantly, an administrative decision affects public interests, for example, the decision for building a factory caused pollution to air, water resources but people cannot bring this case to the court. In other words, an administrative decision that includes policies or legal norms applying to the public is not an object of administrative review in Vietnam.

DISCUSSION

Secondly, the legal ground for administrative dispute defines as an illegal decision or act. The administrative decisions or administrative acts are applied on a specific matter in administrative management activities, and applicable once to one or some specific subjects. Plaintiff shall initiate administrative cases on the grounds of unlawful decision/act which gives rise to, changes, restricts or terminates lawful rights and interests of an agency, organization or individual or decision that gives rise to an obligation or affects lawful rights and interests of an agency, organization or individual. Consequently, individuals or organizations can only initiate the case when they have evidence that administrative decisions/acts are unlawful and cause damages to their legitimate interests. Therefore, unreasonable decisions/acts are not under the jurisdiction of the Court. In other words, citizens cannot initiate a case related to unreasonable decisions/acts.

The panel trial has jurisdiction to annulled administrative decisions on unlawful grounds which give rise to, changes that restrict or terminates lawful rights and interests of the plaintiffs. However, the Court does not review the reasonable grounds for deciding because the LACP does not impose any obligations on decision-makers to explain or prove the reasonability of the decision. It is also considered as a challenge for

individuals or organizations to seek legal redress in case unreasonable decisions may cause damages, for example, an unreasonable policy decision is not an object under the jurisdiction of the court.

Thirdly, administrative dispute only refers to a particular decision applied to a specific case. Vietnamese citizens also cannot initiate the policy decisions or legal normative decisions if they are unconstitutional or illegal because the LACP only provides the administrative decisions which are applied in specific cases to one or several specific persons in specific conditions. For example, the Decision No.12/QĐ-UBND of the Hanoi People's Committee on providing the rules when receiving citizens such as sound or video recording cannot be implemented without permission of public officials. Citizens/organizations cannot initiate this Decision to the Court.

Fourthly, the judgment remains a challenge to enforce. If the judgment debtor is not willing to execute the judgment during the time limit as prescribed by laws, then the judgment creditor shall request the Court to decide on judgment enforcement. However, the civil judgment enforcement organ cannot apply any enforcement measures like the civil judgment enforcement cases. The civil judgment enforcement organ can only request competent organs to handle judgment debtors in case of late execution, denying of execution, or non-execution, or illegal execution.

CONCLUSION

Changing from a centrally planned economy to an open market economy requires reforming the legal system. Especially in the globalization period, administrative law has been changing in every country to respond to rule of law and good governance standards. Administrative law is not merely domestic law that relates directly to the rights and interests of individuals and organizations.

Administrative law also ensures a competitive, transparent, and fair environment for economic development. Both the public and the private sectors are equal in providing public services. Reducing the burden of the government and shifting the role of SOEs in the delivery of public services to the private sector are crucial needs for any country in a transactional period from a centrally planned economy to an open market economy. Rule of law and good governance has become global standards that require a country to conduct legal reforms to achieve the MDGs. The Vietnamese government needs to promote reforming administrative law as follows: Firstly, the development of a comprehensive law on administrative procedures is crucial for ensuring accountable and transparent standards. Administrative procedure is the process of

exercising the state power of a competent person or a state organ in dealing with the application or adverse disposition. The administrative procedure must be transparent and advanced technology must be applied for simplifying and reducing the burden of paperwork for individuals and organizations. E-government and one-stop-shop model should be promoted effectively for enabling individuals and organizations to access public services more easily. Vietnam should consider enacting the Law Administrative Procedure like Japan or the U.S.

Secondly, strengthening corruption control is also important for good governance. Vietnam should follow requirements of the UN Convention on Anti-Corruption such as "promoting adequate remuneration and equitable pay scales" for public officials. In addition, Vietnam needs to develop an effective mechanism for controlling the declaration of assets of public officials as well as imposing an obligation to give a reasonable explanation of the increasing assets and income.

Thirdly, the accountable government can be enhanced through promoting transparency in decentralization and delegation of power. Law on Local Government should include a provision on the cases that the central government can interfere with the work of local governments. The tasks, power, and functions of each state's organs must be clarified by laws for preventing state organs from blaming or shifting responsibility to each other.

Fourthly, promoting privatization by developing a comprehensive legal framework on public-private partnership is a crucial need for Vietnam in a transitional period. The private sector should be effectively engaged in the delivery of public services. The Government needs to improve the quality of public services delivery by developing an effective quality control system.

Finally, promoting public participation in the decision-making process is also important for Vietnam to minimize the influences of interest groups on decision-makers in the process of formulating policies. In addition, reasonable standards should be added as a ground for judicial review. In other words, individuals and organizations can request a competent person/organ or the court to review a decision or an act that is unlawful or unreasonable.

In brief, it is essential to continue reforming administrative law in Vietnam towards rule of law and good governance standards. It will enable Vietnam to achieve the MDGs mentioned by Agenda 2030, especially Goal number 16th by reforming administrative law towards building up accountable, transparent institutions, controlling corruption, and promoting the quality of public services delivery. Citizens and organizations can exercise their rights without any barriers or

obstacles. Administrative organs will serve the people, for the people, and contribute to the protection of human rights.

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