

On Rule-of-law Society in Vietnam

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Abstract: Rule-of-law society is a new issue, which should be studied in the theoretical terms. This paper, therefore, focuses on some theoretical aspects, including its concept, characteristics, core values, and relations; the methods, premises, and conditions for building and developing rule of law in Vietnam; the actual status of rule-of-law society in Vietnam; and recommendation to include points of view on building a rule-of-law society in the official documents of the upcoming 13th National Congress of the Communist Party of Vietnam.

Keywords: Thinking, political point of view, rule-of-law society.

Subject classification: Jurisprudence

1. Introduction

The major purpose of this paper is to argue the necessity of thinking about and establishing a point of view on building a rule-of-law society in Vietnam from now until 2030, with the vision progressing towards 2045, as well as supplementing the official documents of the 13th National Congress of the Communist Party of Vietnam with aforementioned thinking and point of view.

The above-mentioned issue has been raised in Vietnam at present in the context of vigorous and comprehensive changes occurring in the sphere of political and legal thinking in the region and rest of the world.

Regional and international context

Globalisation, knowledge and the digital economy, the fourth industrial revolution, rapid development of science and technology, and regionalisation have been taking place in a profound manner, causing a range of impacts on the development of the political and legal ideologies globally, regionally, and nationally. There are more and more varied and complicated issues emerging in the regions and the world. We are facing increasingly urgent issues relating to the destiny of humankind. Dealing with fundamental global issues on the basis of political and legal ideologies as well as international law - in combination with the methods of peace and consensus - is viewed as the legal and civilised method that is appreciated and utilised by the international community.

National context

The process of renovation of the country has resulted in significant achievements and is entering a new phase. A number of issues have emerged, however, that should be solved by a new political and legal point of view. There are new objective and subjective factors that impact political and legal thinking, and are shaping ideas and points of view in Vietnam. They include important changes in all facets of society that have been positively promoting the renovation of the existing political and legal thinking and point of view.

The renovation of the political and legal point of view embraces comprehensive and profound changes as well as complicated struggles between the existing political and legal point of view and the new one, aimed at creating changes in quality in all areas relating to the legal viewpoint and activities. It consists of different but necessary phases with successive development stages. Apart from being impacted by social factors, the renovation of the political and legal point of view has its own rule of development. The achievements and shortcomings of the renovation of the political and legal point of view in Vietnam are the very manifestations of the development law. Logically, it is necessary and urgent to continue the renovation of the political and legal point of view for the purpose of better serving the renovation of the country and national development.

2. Rule-of-law society in Vietnam: Some theoretical issues

From a theoretical perspective, some fundamental theoretical issues of rule-of-

law societies should be explained because it is necessary to clarify the general theoretical model as it is applied to Vietnam. The theory consists of: (1) the issues relating to the thinking, ideology, and point of view on a rule-of-law society; (2) the characteristics, core values, and major relations of a rule-of-law society; (3) the methods, premises, and conditions for building and developing rule of law in Vietnam; and (4) other relevant issues. In the next section, we will present preliminary comments on the above-mentioned theoretical issues, aimed at demonstrating the necessity of building and developing a rule-of-law society in Vietnam.

- *Firstly, it is necessary to have an appropriate point of view on building a rule-of-law society in Vietnam.*

We have been pursuing the political and legal point of view on building a strong nation with a wealthy population, democracy, justice and a civilised society [7]. In the present context, it is essential to have an appropriate point of view on the rule of law in the society in Vietnam. This means that in addition to the point of view on building a strong nation with a wealthy population, democracy, justice and a civilised society, we have to also build the rule-of-law society. As demonstrated by the history of development in the world and the renovation process in Vietnam recently, legal characteristics, aspects, and properties are always attached to democracy, justice and civilisation. They are properties of a developed society and what Vietnam is pursuing at present. Thus, the rule of law is an aspirational goal of Vietnam as a nation.

- *What is a rule-of-law society in Vietnam?*

In our opinion, a rule-of-law society is a society, in which the sovereignty and power of the state belong to the people; the law is appreciated, obeyed and respected by all people; human rights and citizens' rights are the loftiest social values and are recognised, respected, and guaranteed effectively in practice; all institutions, organisations, and activities of the Party and the State as well as all institutions of the market economy, socio-political institutions, social organisations, and activities of people have to abide by the Constitution and laws; the legal system is comprehensive and improved on the basis of social values in Vietnam and incorporates other values of humanity's civilisations; a culture of law is developed; the socialist rule of law is built of the people, by the people, and for the people under the leadership of the Party; the country is governed by laws; and ties of friendship and cooperation are set up with nations around the world, based on laws. The components in the above-mentioned theoretical concept are seen as the characteristics of the rule-of-law society in Vietnam.

- Core values of a rule-of-law society in Vietnam

The core values of a rule-of-law society in Vietnam are shown via the unique political and legal system of values, thoughts, and points of view operating throughout society by the implementation of constitution and laws. A rule-of-law society is one of the ideological values among the political and legal values in Vietnam. It was created and developed with the addition of new content and components across the entire process of social development. Being a spiritual property of

the nation, those political and legal values were built on a foundation of Marxism-Leninism and Ho Chi Minh's thought as well as the guidelines, points of view, major policies, and diversified practical activities of the Party, especially during the period of renovation, together with the adoption of advanced legal values from the rest of the world.

Next, the rule-of-law society in Vietnam is not only a political and legal value, thought, and point of view, but also a legal, legitimate, and civilised method of development, based on which organisations and activities of the entire society in Vietnam have been designed.

Ho Chi Minh's thought on the rule of law is shown in the following sentence: "Seventhly, the Constitution should be promulgated and all activities have to abide by the rule of law" [4]. It was the very foundation for a rule-of-law society in Vietnam.

A rule-of-law society is a social order established, reinforced, and developed on the basis of laws and whereby all major relations in society are adjusted by those laws.

- Major relations in a rule-of-law society in Vietnam

All major relations in a rule-of-law society can be understood in terms of the general content of the rule-of-law society. To understand those relations, it is necessary to understand fully and thoroughly, on the one hand, the internal linkages of each relation and, on the other hand, the inter-linkages among those relations.

In Vietnam's rule-of-law society, there are a range of major relations that should be properly dealt with, including: (1) The relation between the people's sovereignty,

the political power, the authority of the state, and the law; (2) The relation between political power, the State authority, and human rights; (3) The relation between the rule of law and market economy; (4) The relation between the rule of law and non-state institutions; and, (5) The relations between the market economy and non-state institutions.

- Method for building and developing a rule-of-law society

The method for building and developing a rule-of-law society, in a certain aspect, is understood to be a way to deal with the above-mentioned relations. We would like to further discuss the method as follows:

The question is which method should be used to deal with these relations: the rule-of-law or a combination of the political method and the rule of law? If the combination is used, which of the political groundwork and the legal groundwork should play the primary role?

From the perspective of the rule of law, those relations are fundamental and vital; and, a basic method for building and developing a rule-of-law society in Vietnam is to deal with those relations successfully. The relations must be solved by the rule-of-law method; i.e. they must be in line with rule of law. It is necessary to put political, state and social power in line with rule of law in order to ensure the righteousness, legitimacy, constitutionality and the legality of political and state power, and human and citizens' rights. The organisation and activities of non-state bodies must be fully institutionalised by laws aimed at ensuring their legality. From that view, it is necessary to promulgate a law on the leadership of the Communist Party of

Vietnam, asserting the points stipulated in the Constitution on the Communist Party of Vietnam, concretising those points on the Party's leadership of the state and society, delineating more clearly its function of leadership and authority and the State's function and authority of management, thereby establishing and implementing the mechanism of cooperation and mutual oversight.

- Premises and conditions for building and developing a rule-of-law society in Vietnam

The process of building and developing a rule-of-law society is a long and historical one, consisting of regular and uninterrupted activities undertaken by the society as a whole. It is a result seen as a development status of the society.

Where Vietnam is aspiring to build and develop a rule-of-law society, it is, therefore, necessary to have certain premises and conditions. What are these premises and conditions? What are they related or attached to? It is important to correctly acknowledge the theoretical aspects of the premises and conditions so as to build a theoretical model on the process of developing a rule-of-law society and designing practical guidelines.

In our opinion, premises and conditions cover broad issues relating to the following spheres: (1) the political and legal ideology and system; (2) the theoretical foundation on which the rule-of-law society is based; (3) the culture of law and the political and legal awareness in society; (4) the legal system and the current status of the rule of law; and, (5) the development of social democracy, justice, and civilisation as a whole. The question is: how are the above-mentioned premises and conditions for the

purpose of setting a foundation for the formation and development of a rule-of-law society in Vietnam created?

Based on the above analysis, we realise that rule of law is not only a goal but also a value, a property, a principle, a method, a motive, a result, and a request of the social development process in Vietnam.

3. Actual status of rule-of-law society in Vietnam

In regards to political and legal thinking, ideology, and point of view as well as the practice of legal implementation, the fundamental conditions for a rule-of-law society have been initially created. It is objectively inevitable that the incidence of the creation of those factors has increased in various areas and at different levels in society in Vietnam.

From the perspective of political and legal thinking, ideology, and point of view, these are Ho Chi Minh's thought on law and rule of law, and the Party's and the State's recognition of the rule of law as described in the National Development Programme in the Transitional Period to Socialism (amended in 2011) and the 2013 Constitution, as well as other official documents of the Party and the State [7], [3], [8].

In practice, factors of a rule-of-law society can be enumerated as follows:

- Sovereignty and the entire power of the state belong to the people;

- During and along with the period of renovation of the country, laws have become more and more dominant and respected; people have been increasingly using and relying on the laws;

- Humans, human rights, and citizen's rights, which are seen as the greatest of social values, have been recognised, respected, and are protected more and more effectively; the state's institutions as well as social organisations have been paying more attention to the protection of human rights;

- All organisations and activities related to the Party and the state, as well as socio-political organisations, institutions of the market economy, and activities of people are being run properly according to the Constitution and the laws;

- The legal system has been further improved, based on the traditional legal values in Vietnam and those of humanity's civilisations as well;

- The legal consciousness among both ordinary people and officials has been raised. Since the 2013 Constitution was promulgated, the people have become more aware of their human rights. The elements of a culture of law have been developed step-by-step;

- The socialist rule-of-law government of the people, by the people, and for the people has been established under the leadership of the Communist Party. More specifically, the state authority has been specifically allocated with an increasingly effective mechanism of control;

- The law-based national governance has been performed step-by-step; the administrative reform has been conducted in a strong manner, resulting in certain achievements, and laying a foundation for human rights protection, socio-economic development, and improvement of culture and other spheres;

- The State has attached more importance to partnership and cooperation

with other countries, based on the international law.

The above-mentioned factors are the premise and conditions for building and developing a rule-of-law society in Vietnam as an objective inevitability.

From a broad view, consequently, it is possible to conclude that the Party and the State's point of view on rule of law, the essential factors, and the implementation of the rule-of-law society have been created and gradually improved in practice.

4. Formation of the premises and conditions for building and developing a rule-of-law society in Vietnam

In our opinion, the following premises and conditions are needed to build and develop a rule-of-law society in Vietnam. It is necessary to have the political and legal thinking on rule-of-law society; the theoretical foundation of a rule-of-law society must be developed; the culture of law should be built and developed to enhance political and legal awareness among the people; the legal system should be completely improved; the state of the rule of law should be strengthened; democracy, justice and civilisation should be increased in society.

The premises and conditions are closely attached to the political and legal thinking and point of view on the rule-of-law society. These are, therefore, the very premises and conditions relating to the thinking and point of view on building and developing the rule-of-law society. The political and legal viewpoint consists of the political ideology of the ruling class and

thoughts regarding rule-of-law in society. The political and legal point of view are not only seen as a foundation for the rule-of-law society but also shows the basic political thinking of the ruling class on the legality. From a certain aspect, at the same time, it is a product of the thoughts and opinions on the social legality. Of all the political and legal thoughts, the thinking on the rule-of-law society maintains an important position [10]. The existence and development of political and legal thinking is surely an important condition for building and developing a rule-of-law society. In the process of social development, a number of political and legal ideas were created and developed on the basis of Marxism-Leninism and Ho Chi Minh's thought. Those ideas were amended and improved upon by the Communist Party of Vietnam during the revolutionary period and especially the period of renovation of the country. This is clearly shown in the National Development Programme in the Transitional Period to Socialism (amended in 2011) and the 2013 Constitution. Of the political and legal thinking in Vietnam, the thought on the rule of law plays a key role. Thus, the recognition of the political and legal point of view on the rule-of-law society in the above mentioned political programme is indeed significant, providing important guidance on building and developing a rule-of-law society in Vietnam.

It is necessary to have sound theoretical grounds for building and developing a rule-of-law society. It requires the introduction of an appropriate theory on rule-of-law society, which should be further improved. The theory on the rule-of-law society should consist of an explanation of the

basic issues related to the goals, characteristics, roles, functions, principles, content of components, and obligations of a rule-of-law society. On the one hand, the philosophy of the rule-of-law society covers all theoretical grounds regarding political power, state authority, the law, human rights and other factors. On the other hand, it is closely connected to those theoretical grounds, and has crystallised and generalised from them to become an independent theory. Social sciences, especially the legal and political sciences, have to focus on studying and interpreting comprehensively, thoroughly, and systematically those issues for the purpose of setting up the theoretical premise to build and develop the rule-of-law society in Vietnam.

An important condition viewed as an essential principle for building and developing the rule-of-law society in Vietnam is to improve the culture of law and enhance political and legal awareness across society for all classes, groups, and members. In order to meet this condition, it is necessary to foster a demand for, and increase people's legal awareness, capacity and skills so that they can actively take part in activities of the state and social management. It is important to strengthen the legal order, the strict and stable legislation, the constitutionality, and the legality. The diversification of points of view and opinions should be supported. Activities in all social areas must be viewed from a legal perspective for the sake of positive, progressive, and civilised social development. Social self-governing systems should be strengthened. Democratic principles should be implemented regularly and more broadly, and comprehensively in

all political, economic, cultural, scientific, educational areas. The political competence and legal awareness among the civil servants and public employees are also seen as an important factor, which helps them to realise and then implement correctly the requirements and principles of a rule-of-law society in practice. It is necessary to design and develop an across-the-board legal educational strategy, aimed at building an effective legal culture in the country.

The next condition, which is just as important as building and developing a rule-of-law society in Vietnam, is to improve the legal system, which also includes the State's normative legal documents, and primarily, the laws so that they are completely consistent with one another without contradictions. A completely advanced legal system is not only a premise, a condition and a factor for accelerating the movement towards a rule-of-law society, but also seen as a practical result demonstrating the actual existence of a rule-of-law society. Contradictions, overlaps and flaws in the existing legal system do not provide favourable conditions for us to build, but even actually prevent the movement towards the rule-of-law society for Vietnam.

The contradictions, overlaps and flaws in the legal system, especially "the conflicts among laws", cause a range of negative impacts and sometimes hinder cultural and socio-economic development. They have also resulted in negative impacts regarding the implementation of state policies. Disregard of the laws and negative behaviours towards other normative legal documents will lead to dangerous and even disastrous consequences for the rights, interests and fates of millions of people.

As an undisputed theorem, if all laws are designed and promulgated for the sake of all social classes and groups, and appropriately to objective rule of social development, everyone will abide by them without any violations. Law-making activities must be carried out correctly so that laws are neither too backward nor conservative, and keep pace with changes in society; they must be revised and amended within the framework of constitutionality and legality without breaking certain restrictions.

Strict obedience to the law should be viewed as a lofty faith in a rule-of-law society. Lawlessness, anarchy, and disturbances are the most severe cruelty to everyone and cannot be accepted in a rule-of-law society. The legal system must, therefore, be completely built according to the spirit and principles of a rule-of-law society.

The existence and the development level of the rule-of-law government of Vietnam are considered to be both the premise and the result for building and developing a rule-of-law society. The characteristics, status, and the development level of the rule-of-law government in Vietnam will provide significant elements for building and developing the rule-of-law society and, at the same time, recognise the actual state of the rule-of-law society. The rule of law is the basic and key content of the rule-of-law government. One of the fundamental conditions for the formation and development of a rule-of-law society is improving democracy, justice, and civilisation. Social democracy, justice and civilisation have a mutual relationship within rule of law. The characteristics of

democracy, justice and civilisation are usually accompanied by the characteristics of rule of law in a certain respect. A society where democracy, justice, and civilisation have been achieved, cannot maintain stability, develop further or build on or promote its potential, if rule of law is not kept. Under these conditions, contradictions will occur, making democracy, justice, and civilisation disintegrated. Where the rule of law is maintained, but democracy, justice and civilisation are not secured, the social environment will not be able to develop and foster rule of law. When democracy, justice, and civilisation are secured in society, rule of law can be implemented most effectively and vice versa; in fact, democracy, justice, and civilisation can be maintained and strengthened by rule of law. The aforementioned characteristics are independent from each other, but they are also closely attached to each other. In a society founded on principles of democracy, justice and civilisation, all institutions can play a role in overseeing the state's activities so those activities are kept within a framework of legitimacy, constitutionality and legality. At the same time, various measures allowed by the law can be applied to force the state and its agencies, which have violated existing legal regulations, to return to constitutionality and legality. A society of democracy, justice and civilisation is one where human rights and citizen's rights are most respected and effectively protected, providing favourable conditions for every individual to participate actively and responsibly in policy making and policy implementation. For such interactions, the rule of law is combined with democracy,

justice, and civilisation, resulting in common values and interests.

Thus, a society of democracy, justice and civilisation is considered to be not only an essential factor enabling constant social development, but also the most important condition for the existence and development of a rule-of-law society.

5. Recommendations

Based on the findings of our research, we would like to make the following recommendations:

- It is essential to supplement the documents of the 13th National Congress of the Communist Party with the political and legal point of view and thinking on a rule-of-law society in Vietnam. This means that the goal that all people in the society are pursuing is to have a strong nation with a wealthy population, democracy, justice, civilisation and the rule of law.

- Based on this logic, it is necessary to supplement the National Development Programme in the Transitional Period towards Socialism (amended in 2011) with a guideline on the development of law as one of the key directions for national development, in order to achieve the above-mentioned goal, including the rule of law. Development of law should be seen as a major orientation in the transition to socialism; it is a civilised method for dealing with major relations and achieving national development targets.

- It is important to undertake research so as to make recommendations to supplement

the National Development Programme in the Transitional Period to Socialism in terms of relations concerning the law, rule of law, rule-of-law government, and rule-of-law society, which are considered to be the major relations.

- It is necessary to strengthen the legal thinking and point of view in the overall national development strategy as well as specific development strategies such as the human, economic, social, cultural, scientific and technological ones, and those on national security, national defence, development of law, and others.

- It is essential to renovate the thinking around development of law. A strategy on that development should be developed and implemented. The legal system must be seen as an important, lawful, fair, transparent and predictable institution that is closely attached to other institutions and helps those institutions to be implemented. Laws should be considered as a resource for national development and an institutional breakthrough. The strategy must be viewed not only as a component of the strategies on national, socio-economic and national security development but also as an independent strategy accompanying, and attached closely to, other strategies. The strategy consists of the following areas: making, implementation, protection, research, education and training of laws, and integrating the laws with those of the international and regional spheres.

- It is necessary to design and carry out a research project or programme on the rule-of-law society in Vietnam at the national level, which will provide the Party and the government with the theoretical foundations for drafting guidelines and policies on

national development to meet the demands and aspirations in terms of the rights and interests of the people.

- The Communist Party of Vietnam should pay more attention to legal regulations, rule of law, and the development of laws and the rule of law, considering that to be a civilised ruling method to give practical directions to the entire political system, especially the Party's institutions, so that the system and all Party members shall abide by and uphold, and live and work within the framework of the Constitution and laws.

Note

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