

ENHANCING DIRECT DEMOCRACY: CASE STUDIES IN VIETNAM

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Abstract

Direct democracy is the original and true way to ensure the power and position of the people as the owners of the state and society. Along with representative democracy, the implementation of direct democracy is important and indispensable in modern states in the world. In Vietnam, direct democracy has been recognized in many important legal documents and has been concerned by the Vietnamese Government, especially in recent times. Promoting and expanding direct democracy in Vietnam is evaluated as very correct and consistent actions of the Communist Party and the Government of Vietnam. The implementation of democracy is an important driving force to promote the socio-economic development as well as people's sovereignty. It also stimulates the material and spiritual resources among the people to serve the socio-economic development and fulfill social tasks. In the recent context of Vietnam, there are a lot of difficulties and challenges in implementing direct democracy, which requires significant solutions to strengthen in the future. In this paper, besides providing general researches and opinions on direct democracy, the authors focus on analyzing issues of direct democracy implementation as well as proposing some solutions to improve direct democracy in Vietnam.

Keywords: *Democracy; Direct democracy, Election*

1. Introduction

Direct democracy is the original and accurate way to ensure the power and position of the people as the owners of the state and society; Along with representative democracy, the implementation of direct democracy is important and indispensable in contemporary political regimes. Through direct democracy, the people themselves could decide which laws and policies are important for the community and the country. In decades, the trend of strengthening direct democracy is increasingly stronger in all countries in the world.

Reality practices in the world show that there is no archetype for the application of direct democracy's forms in all countries in the world or for the different development stages a country. Some forms of direct democracy are suitable for one society but they are not acceptable for the others. In other cases, the forms of direct democracy which bring the good results for a society in a specific of period may cause serious consequences for that society in another period. In order to successfully apply direct democracy, besides progressive and strict legal framework, parties, organizations and the citizens need to have an understanding

of the nature of direct democracy as well as methods of enforcing direct democracy. They also have to be sensitive to the situation of their country, be dedicated to a true direct democracy and act based on the mutual benefits of the community and the nation.

Vietnam is a developing country and does not have a long history of democratic enforcement in general and direct democracy in particular. The main reason is that the constitutional foundation - the foundation for Vietnam's modern democratic mechanisms is quite new in comparison with other democratic regimes in the world (the first ever democratic regime of Viet Nam only started on September 2, 1945 through the Declaration of Independence for the Democratic Republic of Viet Nam read by President Ho Chi Minh in Ha Noi). Long-lasting fierce wars are additional factors affecting the effective organization and implementation of both direct democracy and representative democracy. In Vietnam recently, direct democracy is recorded in many important legal documents. The 2013 Constitution of the Socialist Republic of Vietnam, Law 96/2015/QH13 Law on Referendum, Law No. 85/2015/QH13 Law on Election of Deputies to the National Assembly and Deputies ... National Assembly and Deputies to People's Councils and Ordinance No. 34/2007/PL-UBTVQH11 Ordinance on exercise of democracy in communes, wards and township are some of them. They provide clearly definition, understanding as well as legal regulations about concepts, objects, general principles, procedures and validity of the results of direct democracy in Vietnam.

Through the study about direct democracy in Vietnam, we are trying to solve the following questions:

- What are the current situation as well as difficulties and obstacles when implementing direct democracy in Vietnam?
- What are solutions to overcome existing difficulties and challenges?

Though the research's findings may not provide the most comprehensive solutions to overcome the recent problems of implementing direct democracy in Vietnam; the authors suppose that they detect major problems on Vietnam's direct democracy and give directions to solve them.

2. Method

To answer the above research questions, in this article, the authors use research methodology : common methods in legal scientific research including synthesis, analysis, assessment, comment, statistics and consultation with experts. Although direct democracy is not new in Vietnam, there remain many liminations in practice. The method of consultation with experts was used to collect comments and in-depth assessments from experienced experts in direct democracy, specifically the election. The team has interviewed three experts, whose comments and opinions are reflected in the article.

3. Results

3.1. Literature review

Direct democracy is understood as the form of people directly give decisions on important, matters of the nation and directly make laws without any intermediaries. The most

popular forms of direct democracy include:

- *Referendum* is a direct vote in which all electorate is invited to vote to accept or veto a special proposal. It could be the adoption of a new Constitution, a set of laws, the dismissal of an elected official or simply a new government policy (Dao, Trinh, Vu, & Truong, 2014; Truong, 2011; Dao, 2013).

- *Voting* is a process of making people's decisions to select an individual to hold government positions. This is the usual mechanism that democracies currently use to allocate positions mostly in the legislature branch and sometimes in the executive and judicial branches as well as in the local government (Central Committee of Vietnamese Fatherland Front, 2002; Shafritz, 1988; Nguyen, 2003).

- *Recall election* is understood as the electorate voting to express their mistrust with the elected representatives and force these representatives to retire their duties when their term was still available (The 2013 Constitution of the Socialist Republic of Vietnam, Article 7.2; The 1992 Constitution of the Socialist Republic of Vietnam, Article 7).

- *Citizens' initiative* is the act that citizens propose and vote to decide a matter of their country or local community. The condition for this implementation is that proponents must collect sufficient signatures on statutory initiatives range. Citizens' initiatives could be new proposals or proposals to amend existing legal documents or to decide important matters prescribed in the Constitution (Giao, n.d.).

- *Grassroots democracy* is understood as democracy at the lowest geographic or social level where people express their ownership most directly (Directive No 30-CT/TW; Ordinance No. 34/2007/PL-UBTVQH).

In the context of Vietnam, understanding and awareness about direct democracy and related matters come from some significant works of scholars around the world as following:

First of all is the handbook named *Direct Democracy: The International IDEA Handbook* (Beramendi, et al., 2008). It was translated and published in Vietnamese by the Institute of Public Policy and Law of VNU Publishing House in 2014 (Dao, Vu, Phung, Bui, & Le, 2014). The handbook analyzes, compares and provides information and insights on the concerns related to direct democracy. Through the work, the authors articulate the perspective: Direct democracy demonstrates people's participation in government activities (Beramendi, et al., 2008). A range of democratic practices exists to help citizens become more and more involved in making political and institutional decisions. The handbook presents an overview of direct democracy implemented in all regions of the world and evaluates particular cases in 6 countries including Hungary, Switzerland, Uganda, United States (Oregon), Uruguay and Venezuela. The handbook also clarifies and examines the scope of usage four direct democracy mechanisms which are referendum, citizens' initiative, agenda initiatives and recall. Through case studies, the handbook provides a significant comparison among different direct democracy mechanisms and methods in which those mechanisms are applied each country with specific contexts. Accordingly, this research partly reflects the practice of direct democracy in some countries around the world. This is

a useful reference for researchers as well as the authors working on direct democracy implementation in Vietnam.

Besides the work of Beramendi, et al., it has to mentioned the contribution of David Held. Held's work shows in the book called *Models of Democracy* (Held, 2004) (its second and the third edition were published in 2006 and 2018, respectively). In Vietnam, it was translated and published under the name *Các mô hình quản lý nhà nước hiện đại* which can be understood as *Management models of modern states* in English (Held, Phạm, & Đình, 2013). The book consists of three parts, in which, in the first part, Held presents four classic democratic models including Athenian democracy - classical democracy, Republicanism, Liberal democracy and Direct democracy. In part two, he introduced four variants in the twentieth century and one is currently forming. In part three of the book, the author focuses on clarifying the question of "How should the democracy be understood today?". The author critically assessed the existing democratic models and thereby built up a definition of his own: democratic autonomy which is argues as " can link systematic difficulties that often occur and recur in political and social life" (Held, 2004). According to Held (2004), autonomy implies not only personal freedom and but also equal rights and responsibilities of individuals in organizing the community to ensure their eligibility to pursue their plans. This is a new contribution that sets the foundation for grassroots democracy in general and provide valuable suggestive topics for democracy researches in the context of Vietnam.

Last but not least, the book called *Le referendum: Etude Comparative* of Francis Hamon (1995) was introduced to Vietnamese researchers and readers through the name *Trung cầu dân ý: Một nghiên cứu so sánh*. The book introduced on referendum, the relationship between democracy, democracy and the referendum (Hamon, 1995). According to Hamon (1995), democracy is understood in two different forms: the direct democracy (including the direct participation of each citizen in exercising political power) and the representative democracy (political power is entrusted to the elected representatives who take responsible to the people). In his research, Hamon:

- Gives comprehensive theoretical and practical point view of referendum;
- Provides referendum models in some countries in the world. Those models include (i) scope and objectives of referendum; (ii) method of performing referendum; (iii) the relationship between referendum and political life; (iv) factors influencing the results of referendums; (v) the increase at global scale of referendums.

It can be said that this is an important reference for the authors to propose and apply referendum in Vietnam because there is no referendum which had been held since the Law on Referendum (2015) taking effect in July 2016.

3.2. Implementation of direct democracy in Vietnam

In Vietnam, sovereignty belongs to the people and this is the foundation of the democracy. The people are the sole and supreme subject of State power. They exercise their right to mastery through the activities of the State and the entire political system and forms of democracy. At present, the Party and State define the election and dismissal of delegates as one the most basic forms of direct democracy for the people to exercise their right to

sovereignty, delegating and control of State power. The electoral system became the mainstay of democracy. Right after regaining independence, Vietnam held the general election in 1946 and was considered to be truly free and democratic, becoming a brilliantly milestone in the history of democracy. In Vietnam, direct democracy implementation has received a lot of concerns and been gradually enhanced by the Government and citizens. Regardless of those actions, there are still many shortcomings.

First of all is the referendum. Initially, the Law on Referendum (2015) was created to create a legal mechanism for citizens to exercise their voting rights when the government bodies organize a referendum. However, in reality, since the Law has come into effect, none of referendum has been held. Considering the current legal documents, it can be seen that the law on referendum still has loophole and lacks of detail causing difficulties in practice, specifically as follows:

(i) The issue of citizens' initiative: at first, it must have a citizens' initiative in order to conduct a referendum. The current Law on Referendum states that: "The Standing Committee of the National Assembly, the State President, the Government or at least a third of the total number of delegates of the National Assembly has the right to request the National Assembly to consider and make decisions on referendum." (Article 14, Law on Referendum, 2015). Citizens or voters do not have the right to propose referendums. Therefore, the absence of specific regulations on voters'/citizens' rights to request referendums has limited the practice of direct democracy.

(ii) The legal validity of the referendum results is unclear: The Law on Referendum 2015 states: "The Standing committee of the National Assembly shall be responsible for making report to the National Assembly on the result of referendum in the next meeting session. Based on the result of referendum, the National Assembly shall decide necessary measures to ensure the execution of the result." (Article 49, Law on Referendum 2015). This provision can be understood that the referendum's results will be reported to the National Assembly for consideration and the National Assembly has the right to accept or not accept such results. The decision of the National Assembly is final, and the will of the people expressed through the referendum is only for reference to government agencies. In this sense, the core of direct democracy - a form of helping people to decide for themselves important issues of the country, is not guaranteed to be implemented.

The second matter is the election. Currently, the voting has not fully promoted the direct democracy in Vietnam. Some specific limitations can be seen as follows:

(i) Voters are lacking information about the candidates. Normally, the Election Boards make brief lists of information about the candidates to provide to the voters. However, the information in those lists of information is often very sketchy. Their contents include only name, hometown, workplace, education and position of the candidates, while the voters' most concerns, for example ability to work, morality, or their contribution for the society, are rarely provided. So, voters do not have many chances to nominate candidates and select delegates in the election, thus they do not play a really decisive role in electing delegates. « *In a constituency, among 5 candidates, three are elected. This means the chance*

for voters to select their representatives is 40%. Delegates are elected mainly because of the selective structure, thus the election becomes formal » (Source : in-depth interview, Prof. Dr, Hanoi Law University, 2021).

(ii) About equality of representation of voters. The Vietnamese law prescribes the principle of compulsory equality in elections. However, the equality of representation of voters in fact has not been ensured yet due to the unreasonable distribution of the number of elected representatives. In the recent National Assembly elections, there was a huge disparity in the proportions of the population of a province or a city and the number of National Assembly elected candidates. The three highest proportion belong to Ho Chi Minh City with 1 elected candidate represent for 234,838 people, Thanh Hoa with 1 elected candidate represent for 216,494, and Nghe An with 1 elected candidate represent for 218,879 people. Meanwhile, some provinces witness the significant low proportion of representation (around 5 times lower than the highest ones) such as Lai Chau with 1 elected candidate represent for 53,317 people, Bac Kan with 1 elected candidate represent for just 50,250 people (Resolution No. 53/NQ-HDBCQG).

Thirdly, the matter of grassroots democracy. Ordinance No. 34/2007/PL-UBTVQH11 Ordinance on exercise of democracy in communes, wards and township has improved the legal basis for securing direct democracy at the grassroots level. According to statistics, up to 100% of communes, wards and towns have built and implemented the grassroots democracy. However, the reality practice reflects that there are many documents at the grassroots level making their own regulations and policies without compliance with higher legal regulations, especially financial decisions (fees, charges, penalties, etc.). For example, in some communes of Gia Binh district, Bac Ninh province, the commune stipulates that villagers who have motor vehicles and agricultural vehicles must pay specific amount of money per year as road maintenance fee. Outsiders with cars passing through the village must pay a fee from 3,000 to 4,000 VND per trip as road maintenance fee. In Thua Thien Hue, Ninh Thuan, Lang Son and Nghe An provinces, there is a regulation that people have to pay for processing documents and applications at the communes and wards. The fee reaches to 20,000 VND or 30,000 VND per application (Quan, 2015).

4. Discussion and Conclusion

4.1. Solutions to enhance direct democracy in Vietnam

Firstly, to complete and effectively implement the Law on Referendum in practice. The Law on Referendum has been in effect for 3 years, but in fact no referendum has been organized. In the future, it is necessary to amend the Law on Referendum in the directions that give voters the right to propose referendum initiatives and expand the scope of local referendums in order to ensure the voting right as well as nature and effectiveness of referendum when it is held of the State.

Secondly, to finalize the voter's rights as following:

- Issuing documents detailing provisions in the Law on Election of Deputies to the National Assembly and Deputies to People's Councils: (i) Guiding the process and procedures for voting at workplace or permanent residence of the voter to ensure that voters

could exercise their right under any circumstance. (ii) Guiding voters to register for voting at temporary residence instead of permanent residence.

- Ensuring the right to select the most competent candidates through the elimination of a restriction on the number of candidates per constituency.

- Prescribing sanctions for the case that one person cast other ballots. In some countries around the world such as Australia and New Zealand, the voting is a civic duty; if the citizens do not fulfill their duty, they can be subject to administrative sanctions. In Vietnam, voting is a citizen's right but the state also needs regulations to ensure voters exercise their right without affecting the exercise of the others' rights.

Thirdly, to strengthen grassroots democracy's regulations by promulgating the Grassroots Democracy Law on the basis of consolidating the current legal documents on grassroots democracy. This Grassroots Democracy Law should strengthen the implementation of democracy at the grassroots level, such as: (i) increasing the number of matters that grassroots administrations must inform, discuss and absorb people's opinions; (ii) improving the legal effectiveness of receiving public comments; (iii) improving the people's supervision role in elected bodies in the localities.

4.2. Conclusion

Establishing a direct democracy is an indispensable development as well as an objective trend of mankind in order to ensure the principle that all state power belongs to the people. The implementation of democracy is an important driving force to promote the socio-economic development and promote the people's ownership. In the process of social development towards sustainability and the creation of a constructive government, the leaders of the Vietnam Government are increasingly focusing on assessing the limitations and difficulties in implementing direct democracy. A specific roadmap to strengthen the implementation of direct democracy is essential in Vietnam currently. The authors hope that the research's theoretical contribution along with previous studies could help improve the effectiveness of direct democratic practices in Vietnam in the near future.

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