

Law on Decentralization of Economic Management in Vietnam

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ABSTRACT:- After over three decades of implementation, the policy of decentralizing economic management from the Central Government to provincial authorities has yielded specific successes. The legal framework has played a significant role in these achievements. Nevertheless, practical experiences reveal various shortcomings in the legal system governing economic management hierarchy. Given the global trend of strengthening decentralized management, there is a pressing need to enhance the legal framework in this domain in Vietnam.

Keywords: Law, regulations, decentralization, economic management

I. INTRODUCTION

The legal framework regarding economic management hierarchy is a system of principles and regulations outlined in the constitution and laws to delineate the jurisdiction between the central government and local authorities in areas of economic management, especially in the management of investment, land, and state budgets. The economic management hierarchy in Vietnam has been constitutionally established in the current Constitution. Under the Constitution, this is expressed in laws, as in many countries worldwide. It may be specific laws on hierarchy or may be integrated into laws regulating local governance, but it should allocate sufficient content to regulate issues related to hierarchical management and specific aspects of economic management hierarchy.

II. REVIEW OF RELATED LITERATURE

In his article "Decentralization imperatives: Lessons from some Asian countries" (2004) [1], Alex Brillantes Jr. compiled a comprehensive list of decentralization laws in various Asian countries. According to the author, the decentralization legal frameworks in these countries have been analyzed. This enables the author to identify some nations that have been relatively successful in decentralization, providing valuable lessons for Vietnam to study and draw from.

D.A.Rondinelli, Nellis & Cheema (2013) argue that decentralization in Southeast Asia often results in increased reliance of local administrative units on the central government. Although localities receive delegated authority, they often lack the necessary resources to effectively carry out their functions. In many Asian countries, local governments continue to operate as instruments of the central government, with local leaders being viewed by central government officials primarily as spokespersons and advocates for national policies. The authors also discuss the importance of a gradual and contextually appropriate approach to decentralization, taking into consideration the local capacity and resource management capabilities.

Arun Agrawal & Jesse C. Ribot (1999), in their article "Accountability in decentralization: A framework with South Asian and West African cases" address the issue of accountability in decentralization through an analysis of practical experiences in South Asia and West Africa. The study suggests that representation and accountability are crucial if delegated powers are to effectively and fairly serve local needs. According to the authors, the understanding of decentralization is significantly influenced by three major decision-making powers, corresponding to three familiar types of authority: legislative, executive, and judicial.

Matthew Busch (2017) discusses the concept of the "missing middle" in Vietnam's economy. The article commends Vietnam for cautiously and systematically implementing market-oriented reforms, deepening integration into the global economic system, especially through its accession to the World Trade Organization (WTO) in 2007, and concluding a series of free trade agreements. However, the study also highlights two

persistent challenges that are considered the most difficult to address and are currently limiting Vietnam's economic development: land management issues and the dominant role of the state in the economy.

The World Bank and Vietnam's Ministry of Planning and Investment (2016), in their report "Vietnam 2035: Towards Prosperity, Innovation, Equity, and Democracy" [7], have recognized "legal issues" in Vietnam that warrant further examination. These issues encompass challenges such as the concentration and arbitrary exercise of state power, the fragmented administrative structure (while still upholding and advancing decentralization), and the concept of implementing regional plans for economic development and territory. The report argues that this process requires a regional-level management organization and specific laws delineating regional planning authority, tax structures, and responsibilities for resource allocation and policies to ensure citizen participation, transparency, and accountability. The report suggests that Vietnam needs to apply market principles to economic policies and prioritize addressing the commercialization of public assets as a key aspect of institutional modernization.

Dinh Van Linh (2021) highlights three existing challenges and obstacles in implementing regulations on the decentralized management of state budgets. The author particularly analyzes numerous violations of the State Budget Law in 2015, pointing out specific limitations. Based on these observations, the article proposes three solutions to enhance the legal framework for decentralized management of state budgets. Notably, the suggestion includes expanding the authority of the provincial People's Council to proactively enable localities to seek and collect additional revenues that align with their specific circumstances.

In their article "Improving the Legal Framework for Decentralized Management of State Budgets and Enhancing Implementation Efficiency in Vietnam" (2022) [5], Nguyen Minh Hang and Tran Thi Minh Thanh also analyze some limitations in the regulations of the law regarding the authority to issue mechanisms, standards, and budget allocation criteria. They also examine the provisions related to adjusting the revenue-sharing between the central and local budgets and regulations on adjusting the decentralization of revenue-sharing for commune-level budgets, along with increasing the authority of the provincial People's Council. The article argues that the regulations on the authority to issue revenue-sharing mechanisms have not sufficiently empowered localities to take initiative.

III. RESEARCH METHODOLOGY

▪ **Legal analysis method**

The legal analysis method is employed to clarify certain terms used in legal documents. Specifically, the author utilizes this method to examine the legal landscape, identify legal violations, and highlight legal texts facing challenges and obstacles in enforcement. This serves as the foundation for drawing conclusions and making recommendations.

▪ **Comparative Method**

This approach involves the comparison of historical and legal aspects and is employed when seeking answers to research questions related to diverse issues within the legal framework of the economic management hierarchy. This method proves to be highly versatile, particularly when comparing domestic laws, such as analyzing government resolutions on hierarchical management across different phases. Moreover, the comparative method is utilized during the examination of Vietnamese laws in comparison with legal systems in various countries worldwide.

▪ **Interdisciplinary Approach Method**

This methodology offers a comprehensive examination of issues from a multidimensional standpoint, taking into account not only administrative and economic factors but also various interconnected fields. For instance, when presenting proposals for legal frameworks in decentralized management, the author considers their implications on economic development, the sustainable growth of the environment, and the imperative to apply advancements in science and technology. The strength of this research method lies in its ability to delve into the cross-disciplinary and interdisciplinary aspects, given the interrelation of economic management hierarchy policies with numerous sectors and management domains.

IV. RESEARCH FINDINGS

4.1. Legal Status of Economic Management Hierarchy in Vietnam

▪ **Insufficient Legal Foundation for Decentralized Management Policies**

The legal foundation supporting decentralized management policies remains inadequate. Apart from Article 52 of the 2013 Constitution, there are currently only approximately six legal provisions serving as the groundwork for decentralized management. This implies that the legal framework for both decentralized management in general and economic management hierarchy, in particular, lacks a dedicated law or, at the very

least, a legal provision specifically addressing decentralized management. In comparison to legal systems in other countries, it becomes evident that Vietnam's legal framework for decentralized management is fragmented, lacking a cohesive structure and fundamental legal principles necessary for effective practical implementation.

This approach to legal construction is susceptible to overlapping and contradictions within legal provisions, lacking a compelling theoretical foundation. This vulnerability can result in arbitrary and diverse interpretations of the relationship between central and local authorities, as well as among different levels of local governance. Notably, the absence of a systematic legal structure opens avenues for confusion and corruption in the execution of management practices. Furthermore, without clear stipulations on mechanisms, implementation methods, and punitive measures, the legal framework for decentralized management may encounter difficulties in practical implementation. This can be considered the most significant 'gap' that urgently requires rectification and enhancement.

▪ **Lack of a Criteria Set for Evaluating Decentralization**

In addition to the absence of foundational provisions in a specialized law, the legal system concerning decentralized management in general, and economic management hierarchy in particular, is lacking a comprehensive set of criteria for evaluating decentralized management before implementing these policies in practice. Currently, there is no assessment tool and no standardized criteria to determine which activities are correct, which localities perform well, and which models are effective.

The absence of a specific law and standardized evaluation criteria set underscores the lack of unified theoretical perspectives and an incomplete legal framework within the decentralized management legal system. It exhibits a deficiency in uniformity, consistency, and control mechanisms. This gap may result in the abuse of authority during the implementation of decentralization, especially due to the absence of mechanisms and responsibilities for accountability in the decentralization process. This is arguably the primary issue to be addressed when examining the legal framework of decentralized management in Vietnam.

▪ **Lack of Legal Provisions Governing Decentralized Management**

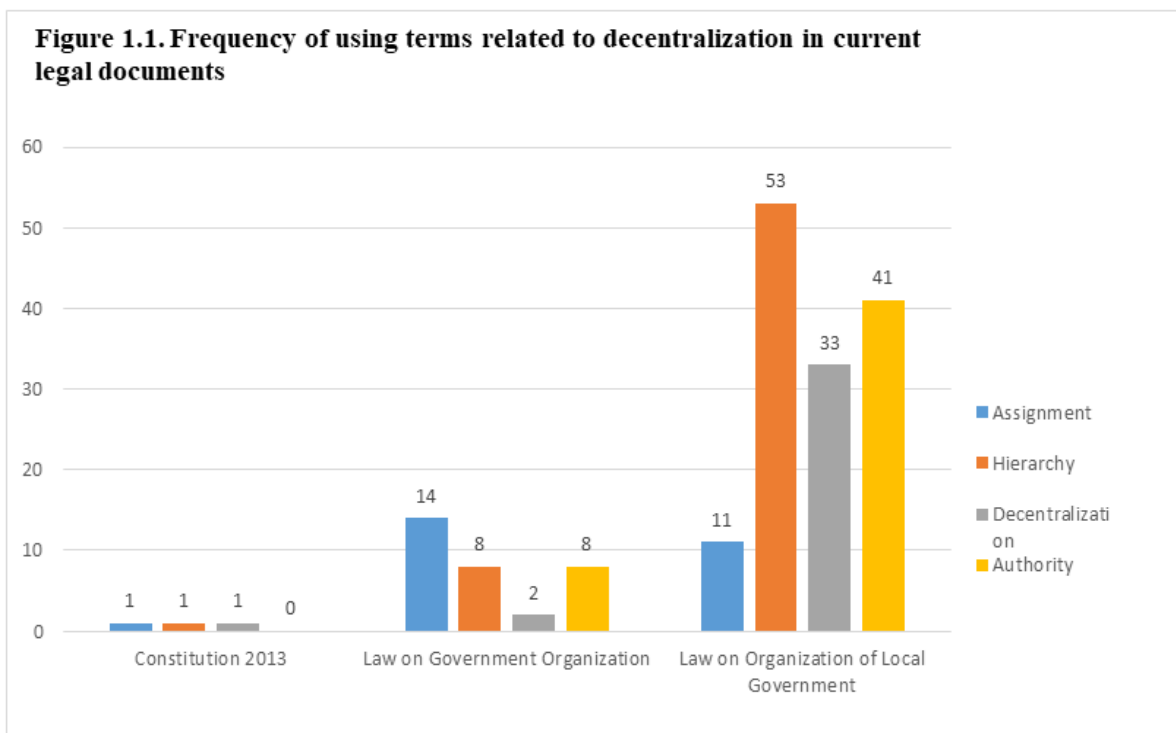
The legal framework for economic management hierarchy lacks essential legal provisions that articulate the goals, perspectives, and principles of decentralized economic management. It fails to clearly define the subjects and entities involved in decentralization, the control mechanisms, and the legal enforcement and resolution processes in practical life. Presently, these regulations are dispersed, incomplete, and lack coherence in government resolutions aimed at promoting decentralization. Discussing this issue, some authors argue that the only highlight in Vietnam's legal framework for decentralized management thus far is Article 13 of the Local Government Organization Law in 2015, amended at the end of 2019. While this law provides more specificity on certain aspects, some provisions are still insufficient in effectively conveying the decentralization efforts throughout the entire national administrative system.

▪ **Lack of Administrative Guidelines for Implementing Decentralized Management Policies in the Case of Constructing a Specialized Urban Governance Model**

The establishment of a unique urban governance model is exemplified in this instance by the urban governance model of Ho Chi Minh City. The city's urban governance structure was reorganized according to Resolution No. 131/2020/QH14 dated November 16, 2020, and the establishment of Thu Duc City within Ho Chi Minh City was formalized in Resolution No. 1111/NQ-UBTVQH14 dated December 09, 2020, issued by the Standing Committee of the National Assembly. The creation of the first centrally governed city in Vietnam raises high expectations for a distinctive urban governance system, leading the way with innovation and aiming to leverage the strengths of knowledge, technology, and finance.

▪ **Inadequate Explanation of Specialized Terminology in Legislative Drafting**

Concerning the legal documents that form the basis for decentralization, it is noteworthy that, in addition to the definitions provided by the 2013 Constitution, certain terms are frequently used in both the Law on Government Organization and its counterpart, the Law on Local Government Organization. For instance, the term 'assignment' is mentioned 14 times and 11 times, 'decentralization' is found 8 and 53 times, 'devolution' appears 2 and 33 times, and 'delegation' is present 8 and 41 times, respectively. This distribution of terminology usage is depicted in Figure 1.1 below."



4.2. Causes of Persistent Limitations

Firstly, there is the imprecise use of the terms decentralization and devolution. The confusion in deploying these terms may stem from their translation of the concept of decentralization. While other countries may refer to it as 'decentralization' when introduced in Vietnam, the terminology was transformed into 'devolution'. Consequently, what is known as devolution worldwide is applied in Vietnam under the concept of decentralization. Meanwhile, in the spectrum of power division between central and local authorities, Vietnam is currently in the stage of management decentralization, not yet reaching the level of devolution seen in many other countries. Perhaps that's why the term 'decentralization' is less commonly used, and instead, 'devolution' is employed.

Secondly, the understanding of devolving powers to localities appears to be overly cautious, and central authorities sometimes implement decentralized policies more as a formality than a substantial shift. Scholars from abroad have noted that this excessive caution in empowering local entities reflects the central government's reluctance, driven by the fear of losing political control. This hesitancy is identified as a significant barrier to effective decentralization in developing nations, as investigated by the authors. If the central government continues to exhibit excessive caution in delegating authority, and local governments remain hesitant in exercising their powers, the prospects for successful implementation of decentralization and devolution initiatives in Vietnam may encounter considerable challenges.

Thirdly, the lack of a set of criteria for assessing decentralization is attributed to the inadequate and inconsistent allocation of responsibilities between the central and local governments, as well as among local government levels. This decentralized management approach reveals a lack of coherence and confusion in delegating authority, without effectively addressing the development trends or clearly defining the responsibilities for each level of government. Such a decentralization model highlights the absence of consistency and clarity in power-sharing, particularly between the central government and provincial authorities. Consequently, the central government has not considered the establishment of a set of criteria for assessing decentralization, and local governments are understandably hesitant to support such criteria.

Fourthly, the assurance of certain criteria for evaluating the completeness of the legal system regarding economic decentralization has not been achieved. Due to the inadequate performance of policy impact assessments and the insufficient emphasis on quantitative methods, the evaluation process has not yielded high effectiveness. Moreover, the evaluation procedures are not clearly defined in the law regulating legal normative documents, failing to delineate the roles and responsibilities of entities involved in policy assessment. Currently, the prevailing practice is that the agency drafting the law is also the enforcing body, which is widespread. This situation constitutes one of the hidden causes of group interests within the legislation. Failing to detect such violations is one of the limitations of policy impact assessment. It is also a contributing factor to the overlapping and conflicting provisions in the laws governing economic decentralization.

4.3. Solutions to enhance the legal framework for economic decentralization

- **Enhancing the legal system for economic decentralization in line with international trends and the current era**

Globally, decentralization is not only an inevitable trend of the times but is also evolving in accordance with societal developments, particularly in the digital age. Studies indicate that one of the global trends in power shift is the dispersion of authority within the state. Determinants of this power shift include globalization trends and the rapid development of science and technology, especially emerging technologies shaping digital transformation, such as artificial intelligence, cloud computing, big data, and the Internet of Things. Therefore, Vietnam's legal framework for economic decentralization needs to align with these global trends, and this alignment may necessitate breakthrough changes in institutional structures and policies.

- **Addressing limitations, shortcomings, and supplementing deficiencies in the legal framework for economic decentralization**

As the legal regulations regarding economic decentralization in Vietnam still exhibit limitations and shortcomings, appropriate solutions are needed to continue refining these legal provisions concerning overall management decentralization and economic decentralization, ensuring uniformity and contributing to the construction of a strong state, meeting the requirements of the period of integration and globalization. This is a critical issue that is currently being addressed both theoretically and practically. Among these challenges, the deficiency of a set of criteria for evaluating decentralization necessitates urgent supplementation in the near future. The lack of an evaluation tool with clear criteria and transparent measurement standards makes it challenging to assess and conclude the degree of success or failure in the practice of decentralization. Therefore, the introduction of an assessment tool with well-defined criteria is essential to evaluate and draw conclusions on the success or failure of decentralization in practice, allowing for the extraction of lessons learned and necessary adjustments."

- **Improving the legal system for economic decentralization to meet the demand for institutional reforms aimed at advancing the nation's economic growth**

Acknowledging decentralization as an unavoidable trend of the contemporary era, many studies propose the need for institutional reforms in Vietnam to introduce groundbreaking policies for economic decentralization. However, the concept of 'institutional reforms' often lacks clarity in the recommendations provided by these studies. This thesis recognizes the urgency of clearly defining this term in the context of researching the legal framework for economic decentralization. Furthermore, the enhancement of the legal framework for economic decentralization requires transformative institutional reforms. When deemed necessary, bold legal revisions should be undertaken to facilitate such changes. This includes considerations for establishing 'regional-level management organizations' and enacting legal provisions specifying regional planning rights, tax structures, resource allocation responsibilities, and policies ensuring public participation, transparency, and accountability.

- **Strengthen the influence and facilitate the participation of various entities in social oversight and constructive criticism**

This category encompasses diverse actors such as the Vietnam Fatherland Front and its constituent organizations, the wider public, experts, scientists, and notably, media outlets. The local-level Vietnam Fatherland Front, in particular, takes a leading role in guiding the activities of the Community Investment Monitoring Board, emphasizing the importance of effectively fulfilling its function. Given conducive conditions, each entity can optimize its role, acting as a robust support foundation for state governance. Media entities, given their significance, should be recognized as a distinct branch of authority in the establishment of a socialist rule-of-law state, ensuring that both the state and people's powers are exercised with true effectiveness.

V. CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

Decentralized management is the level of power distribution lower than decentralization; it demonstrates the delegation of tasks, authority, management tools, and finances to various levels of government to achieve the most effective management objectives. Within this structure, each level has the right to enact appropriate management decisions, free from interference but subject to scrutiny and oversight by the higher level as stipulated by legal regulations. Economic decentralized management represents a relatively stable distribution of responsibilities, powers, management resources, and finances to various levels of government, aiming to fulfill economic management objectives. Here, each level is empowered to issue pertinent economic management decisions, free from interference but subject to scrutiny and oversight by the higher level as defined by legal regulations.

5.2. Recommendations

- It is proposed to use the term "functional segmentation" instead of "decentralized management" This word not only preserves the original meaning (administrative hierarchy) but also introduces simplicity in legal

language, simultaneously changing the logical perception in the study of hierarchy. Accordingly, terms like "state administrative hierarchy in the economic sector" or "economic administrative hierarchy" can be simply referred to as "economic segmentation." Phrases such as "task allocation, functional segmentation, power allocation," "promote functional segmentation, power allocation," or "robust functional segmentation, power allocation" in Party and State documents should gradually appear, replacing the old expressions to create a new, scientific, and orthodox effect in research and legal practice.

Proposing a change in the perspective of constructing management hierarchy policies according to the 'bottom-up' model in the overall comprehensive planning, suitable for and reforming the relevant organizational structure to attract investment and promote sustainable development. Although the 'bottom-up' management hierarchy model is more suitable for a federal state, it does not mean that a country like Vietnam cannot apply this model.

Transitioning from 'top-down' to 'bottom-up' decentralized management does not mean the complete elimination of the existing hierarchical system; rather, it represents an adjustment in thinking, perception, and legal approaches. The legal framework continues to be inherited and developed but with a bold emphasis on decentralizing management to lower levels. The transfer of authority from the central government to the provincial level does not weaken the central government; instead, it requires a sufficiently robust central government. Simultaneously, local governments continue to receive adequate resources, with a particular emphasis on citizen participation.

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