IMPROVING THE LEGAL SYSTEM IN ACCORDANCE WITH THE REQUIREMENTS FOR BUILDING A SOCIALIST RULE-OF-LAW STATE IN VIETNAM

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ABSTRACT

Objective: This study aims to contribute further discussions on solutions to enhance the quality of the legal system in the context of Vietnam advancing to stage 2 (stage 1 being the quantitative aspect) of the process of perfecting its legal system.

Theoretical Framework: This research adopts the ROCCIPI model theory to identify several solutions for improving the Vietnamese legal system within the context of the requirements for building a rule-of-law state in Vietnam, as embodied in Resolution No. 27.

Research Methods: This paper employs methods such as the analysis of written laws, document analysis, and comparative analysis.

Results and Conclusion: The research results indicate that after prolonged efforts to build a legal system almost from scratch, Vietnam now has a legal framework and procedural system that covers most social relations, gradually replacing arbitrary measures previously imposed by public entities. However, the Vietnamese legal documents system exhibits numerous inadequacies and lacks stability. One of the causes is the involvement of multiple intermediaries in the law-making process, leading to a multi-layered legal system with various procedures (often referred to as “sub-licenses”) that interfere with the effectiveness of regulations. Despite modernization efforts, Vietnam's legislative techniques have not significantly improved the quality of legal documents. Therefore, this study proposes solutions focusing on addressing these issues based on the ROCCIPI model approach, which the author believes is suitable for Vietnam's political and legislative realities.

Research Implications: This study is set against the backdrop of the Communist Party's continued emphasis on legal formalization, reflecting a consistent policy direction towards building a state that upholds the rule of law. The author agrees that building and perfecting the legal system in any country must begin with an awareness of the law's position and role in social life, from the perspective of the entity controlling and regulating society. Therefore, this research, premised on the consistent guiding capacity of the Communist Party and the State of Vietnam in the legislative process, will discuss ways to progressively perfect the legislative process with strong leadership and constructive roles from these two entities.

Originality/Value: Since the promulgation of the Law on Promulgation of Legal Documents in 2008, issues regarding efficiency, rationality, inflation, and overlap of legal documents have not been resolved. Numerous studies have identified causes, consequences, and proposed legislative solutions to optimize the legislative process and establish a legal life for the documents. The contribution of this study, beginning with a hypothesis about the strong regulatory role of political and social management entities, with an awareness of the law's role in this process, will provide solutions focusing on three aspects of the legislative process: reducing intermediary layers between rules and social life; continuing to emphasize the stability of rules with the central regulatory role of the state; and finally, the techniques of drafting documents, which can be frequently adjusted to meet the two aforementioned objectives.

Keywords: Legal System, Stability, Legal Techniques, Resolution No. 27-NQ/TW, Rule-Of-Law State.

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MEJORAR EL SISTEMA JURÍDICO DE ACUERDO CON LOS REQUISITOS PARA CONSTRUIR UN ESTADO DE DERECHO SOCIALISTA EN VIETNAM

RESUMEN

Objetivo: Este estudio tiene como objetivo contribuir a nuevas discusiones sobre soluciones para mejorar la calidad del sistema legal en el contexto de Vietnam avanzando a la etapa 2 (la etapa 1 es el aspecto cuantitativo) del proceso de perfeccionamiento de su sistema legal.

Marco teórico: Esta investigación adopta la teoría del modelo ROCCIPI para identificar varias soluciones para mejorar el sistema legal vietnamita en el contexto de los requisitos para construir un estado de derecho en Vietnam, como se encarna en la Resolución No. 27.
Métodos de investigación: Este artículo emplea métodos como el análisis de leyes escritas, análisis de documentos y análisis comparativo.

Resultados y conclusión: Los resultados de la investigación indican que después de prolongados esfuerzos para construir un sistema legal casi desde cero, Vietnam ahora tiene un marco legal y un sistema procesal que cubre la mayoría de las relaciones sociales, reemplazando gradualmente las medidas arbitrarias impuestas anteriormente por las entidades públicas. Sin embargo, el sistema de documentos legales vietnamitas exhibe numerosas insuficiencias y carece de estabilidad. Una de las causas es la participación de múltiples intermediarios en el proceso de elaboración de leyes, lo que conduce a un sistema legal de múltiples capas con varios procedimientos (a menudo denominados "sublicencias") que interfieren con la efectividad de las regulaciones. A pesar de los esfuerzos de modernización, las técnicas legislativas de Vietnam no han mejorado significativamente la calidad de los documentos legales. Por lo tanto, este estudio propone soluciones centradas en abordar estas cuestiones basadas en el enfoque del modelo ROCCIPI, que el autor cree que es adecuado para las realidades políticas y legislativas de Vietnam.

Implicaciones de la investigación: Este estudio se sitúa en el contexto del continuo énfasis del Partido Comunista en la formalización legal, lo que refleja una dirección política consistente hacia la construcción de un estado que defienda el estado de derecho. El autor está de acuerdo en que la construcción y perfeccionamiento del sistema jurídico en cualquier país debe comenzar con la toma de conciencia de la posición y el papel de la ley en la vida social, desde la perspectiva de la entidad que controla y regula la sociedad. Por lo tanto, esta investigación, basada en la capacidad de guía consistente del Partido Comunista y el Estado de Vietnam en el proceso legislativo, discutirá formas de perfeccionar progresivamente el proceso legislativo con un fuerte liderazgo y roles constructivos de estas dos entidades.

Originalidad/Valor: Desde la promulgación de la Ley de Promulgación de Documentos Jurídicos en 2008, no se han resuelto las cuestiones relativas a la eficiencia, la racionalidad, la inflación y la superposición de documentos jurídicos. Numerosos estudios han identificado causas, consecuencias y propuesto soluciones legislativas para optimizar el proceso legislativo y establecer una vida legal para los documentos. La contribución de este estudio, partiendo de una hipótesis sobre el fuerte papel regulatorio de las entidades de gestión política y social, con una conciencia del papel de la ley en este proceso, proporcionará soluciones centradas en tres aspectos del proceso legislativo: reducir las capas intermedias entre las reglas y la vida social; continuar enfatizando la estabilidad de las reglas con el papel regulatorio central del estado; y finalmente, las técnicas de redacción de documentos, que pueden ajustar con frecuencia para cumplir con los dos objetivos mencionados anteriormente.


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1 INTRODUCTION

At the 6th Plenary Session of the Central Committee of the 13th Party Congress, the Central Committee of the Communist Party issued Resolution No. 27-NQ/TW on November 9, 2022, concerning the continued building and perfection of the socialist rule-of-law state in Vietnam in the new era (hereinafter referred to as Resolution No. 27). In this context, the perfection of the legal system is identified as a key focus of Resolution No. 27 for its realization.

Improving the Legal System in Accordance With the Requirements for Building a Socialist Rule-Of-Law State in Vietnam

To achieve this objective, Resolution No. 27 specifies the task of building and perfecting the legal system to meet the requirements of establishing a rule-of-law state in Vietnam, stating: “Continue to perfect the legal system and the mechanisms for the rigorous and effective implementation of the law, ensuring the requirements for rapid and sustainable national development”.

It is evident that perfecting the law is fundamentally a process by which the state continuously seeks solutions to manage society in the most optimal manner, necessitated by the constant adaptation to emerging, evolving social relations and their interactions. For many years, the quest for a comprehensive and optimal legislative philosophy has posed significant challenges for Vietnam. However, the author contends that the creation of a legal system must be based on the current social context, serving as the space to test the effectiveness of the rules.

2 THEORETICAL FRAMEWORK

The widespread adoption of the rule-of-law state model has elevated the status and role of law in social life. Alongside the growing prominence of the rule-of-law principle in national governance, recent decades have seen many countries increasingly emphasize the law as the most crucial tool for "social control," "ensuring social consensus," and "planning and forecasting outcomes".

According to Josef Thesing, a rule-of-law state must be based on the "supremacy of law and the ethical concept of justice". However, ensuring the ethical value and supremacy of the law alone is not sufficient. Access to the law and justice also depends on other legal factors within the rule-of-law state. From this analysis, approaching the law from the perspective of a rule-of-law state reveals several requirements for the legal system.

- Stability of the Law: This is a necessary requirement because social relations cannot be frequently disrupted by changes in the law. The law needs to be stable to ensure the safety of social relations. Stability is one of the intrinsic standards of a legal system.
based on the rule of law, aiming to ensure justice and sustainable development. Some authors consider this the most important characteristic of the rule of law.

Normativity, or the prescriptive nature of the law: Law is inherently a system of norms, i.e., standards. The value of the law lies in creating standards for various entities in social life. If the law does not contain standards, its significance in regulating social relations is diminished.

Consistency and systematic nature of the law: The law must be consistent, reflected in the way legal documents within the same field, and sometimes across different fields, must ensure the realization of the legitimate rights and interests of subjects. Legal documents must mandate that state agencies create all favorable conditions for citizens to exercise their rights over what is not prohibited by law.

Systematic nature: While similar to consistency, the systematic nature of the law is more concerned with structure, arrangement, hierarchy, and the validity of legal norms. Consistency involves content and policy, whereas systematic nature is expressed through the organization of legal norms.

Non-retroactivity: Ensuring non-retroactivity is a fundamental demand of the rule-of-law state. The humanitarian value of non-retroactivity is that individuals cannot be held legally responsible for actions that were not known to be illegal at the time they were performed.

Transparency: The transparency of the law is reflected in its publication and widespread dissemination through mass media. This conception, while not incorrect, is incomplete. Transparency also encompasses precision, clarity, systematic nature, and consistency. A cumbersome, inaccessible, incomprehensible, difficult-to-apply legal system fraught with internal contradictions cannot be deemed transparent and cannot form the foundation of a rule-of-law state.

The context and objectives outlined in Resolution No. 27 present both opportunities and challenges in the task of building and perfecting the legal system. This demands that the orientation of this work must ensure the predictability of the legal system while also being

9 Barry R. Weingast, Why Developing Countries Prove So Resistant to the Rule of Law, paper prepared for World Justice Forum, Vienna, July 02/5/2008.
suitable and feasible given the political, economic, and social conditions of the country. Consequently, the focus should be directed towards several key orientations:

*Firstly,* from 2021 to 2030, continue to vigorously develop and perfect the law, enhancing the effectiveness and efficiency of legal implementation. Build a unified, synchronous, feasible, transparent, stable, and accessible legal system with low compliance costs, competitive within the regional and international context. The legal system should center on the legitimate rights and interests of the people, promoting innovation, ensuring the requirements for sustainable socio-economic development, and national defense and security.

*Secondly,* continue to improve and enhance the quality of the socialist-oriented market economy institutions; further develop and perfect various markets to effectively mobilize, allocate, and utilize resources; create an equal and transparent competitive environment; and form institutional systems with high competitive capabilities regionally and globally.

*Thirdly,* continue to perfect the institutions to strongly develop science and technology; create specific, superior, and competitive mechanisms and policies to increase technology application, and enhance research and development capabilities; build institutions to develop the national innovation system and the creative startup ecosystem, focusing on enterprises as the center of research, development, application, and technology transfer, meeting the demands of the Fourth Industrial Revolution.

*Fourthly,* besides the reforms in the procedures and organization of law enforcement towards transparency, it is necessary to ensure mechanisms for assignment, coordination, and control among law enforcement agencies; ensure state and social supervision mechanisms for law enforcement activities; build a team of civil servants who are professional, creative, and meet the country's requirements from 2021 to 2030, especially the demands of deep international integration.

*Fifthly,* in specific legal fields, the work of building and perfecting the law needs to be flexible to address emerging issues in socio-economic life while ensuring suitability with the practical conditions of our country. Specifically:

- Continue to research and review the institutional framework concerning the state apparatus; streamline the state administrative apparatus to ensure that the entities within

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the political system operate effectively and efficiently, addressing overlaps in functions, tasks, or inappropriate organizations; ensure synchronization, systematic coherence, and inheritance of achievements and experiences, suitable to the characteristics of our political system operating under the mechanism of “Party leadership, State management, and People’s ownership,” meeting the requirements of the national renewal process, international integration, and building the socialist rule-of-law state by the people, for the people, and of the people;

- Continue to institutionalize human rights and citizens' rights as outlined in the Party’s policies, resolutions, and the 2013 Constitution, in line with the country's socio-economic development conditions and considering international commitments to which Vietnam is a party. Simultaneously, create conditions for people to exercise direct democratic rights and other freedoms and democratic rights, thereby providing further motivation for reform and enhancing the effectiveness and efficiency of state agencies and institutions within the political system;

- Focus on improving and enhancing the quality of socialist-oriented market economy institutions, better addressing the relationship between the State and the market. Continue to perfect the institutions regarding public ownership by distinguishing the roles of the State as the administrative apparatus managing the entire socio-economic system and as the representative owner, facilitating substantial public participation in exercising ownership rights over public assets;

- Intensify the review and prioritize the development of legal documents and institutions protecting an independent and autonomous economy during international integration. Pay special attention to domesticating international treaties to which Vietnam is a party, particularly new-generation free trade agreements like the EU-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Proactively and actively contribute to the construction and shaping of multilateral and regional institutions (especially legal forums and the ASEAN community) based on the Party’s and State’s international integration guidelines.

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3 RESEARCH METHODOLOGY

This article employs methods of written law analysis, document analysis, comparative methods, and an approach based on certain legislative theories (such as the ROCCIPI model) to seek solutions forperfecting the Vietnamese legal system. This is done within the context of the requirements for building a socialist rule-of-law state in Vietnam as articulated in Resolution No. 27.

4 RESULTS AND DISCUSSION

4.1 EMPHASIZING REASONABLENESS, FEASIBILITY, AND DIRECT APPLICABILITY IN LEGAL DOCUMENTS

To ensure the feasibility of a normative legal document, the process and technique of drafting such a document must meet certain requirements. Aiming to regulate behavior, legal norms must clearly identify the elements of behavior: who is involved, what actions are taken, and under what conditions. These are the basic pieces of information that the responsible entities need to effectively implement the law in real-life situations.

The purpose of the law is to regulate the behavior of subjects within society. Legislators hope that these behavior patterns will be adhered to by the subjects. However, despite clear behavioral requirements, this expectation is not always met. Essentially, behavioral guidelines can be ignored by the regulated subjects if they do not have a positive and suitable impact on their behavioral tendencies.12

Therefore, to avoid designing inappropriate norms that are difficult to implement in practice, it is crucial to pay attention to the factors influencing the behavior of subjects when designing norms. Legislative theory identifies seven factors that impact human behavior, encapsulated in the ROCCIPI model: Rules, Opportunity, Capacity, Communication, Interest, Process, and Ideology:

12 For example, the prohibition of street vending in the capital city is a clear regulation regarding the elements: who, does what, under what conditions. However, the feasibility of this regulation is still debatable as the ban on street vending in the capital city seems to go against the interests of the street vendors themselves, who have very low incomes, as well as not necessarily benefiting the capital’s economy.
- **Rules:** Ambiguous or overlapping rules can cause confusion or uncertainty about compliance. Many social issues arise from unclear legal provisions within the existing legal system.

- **Opportunity:** Without the opportunity to violate, violations cannot occur. Conversely, when opportunities to cause difficulties exist, some officials might exploit them. To regulate behavior, conditions can be created to either facilitate or limit related actions.

- **Capacity:** Without the necessary capacity, tasks cannot be completed. For instance, if land administration officials lack capacity, the process of issuing land use certificates cannot be swift. Similarly, if farmers cannot analyze market trends, they face constant risks of unsold agricultural products. Enhancing capacity will lead to the desired behaviors from the legislators.

- **Communication:** Without knowledge of legal regulations, compliance is challenging. For instance, knowing that turning left leads to an open manhole would make someone turn right instead. Thus, communication is an effective and humane way to regulate behavior, minimizing offense to individuals.

- **Interest:** Targeting interests can regulate behavior. However, severe penalties alone may not solve problems, especially when law enforcement capacities are limited. In such conditions, severe penalties might only encourage concealment of violations and exacerbate issues.

- **Process:** Without a standard process, decisions might be made based on subjective desires of officials, leading to corruption and negative outcomes. Imposing a process creates a guiding framework for human behavior.

- **Ideology:** Beliefs can drive human actions. Changing ideologies is challenging, but other factors can be used to limit behaviors driven by certain beliefs.

Careful consideration and analysis help legislators choose the most appropriate measures to influence behaviors. With the right and suitable measures aligned with the motivation of the subjects, the practical implementation of the law becomes more manageable.

### 4.2 ESTABLISHING A STABLE VIETNAMESE LEGAL SYSTEM

The stability of laws, and the legal system as a whole, is a crucial requirement within the standards of a rule-of-law state.\(^\text{13}\) For the Vietnamese legal system, stability primarily

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pertains to statutory law. This is because the Vietnamese legal system fundamentally remains rooted in the legal framework of socialist countries (Soviet Law), and, to some extent, incorporates elements of the civil law system - a legacy of over 80 years of French colonial rule. Essentially, socialist law shares many similarities with civil law, both of which emphasize codified laws and regard statutory law as the principal source of law.

The practical experience of building the legal system in Vietnam reveals that several significant statutes, such as the Civil Code, the Criminal Code, the Enterprise Law, the Investment Law, the Land Law, and the Environmental Protection Law, frequently undergo changes. Between 1995 and 2015, three versions of the Civil Code were amended and passed. In contrast, the current French Civil Code has been in effect since 1804, and the German Civil Code since 1900. Furthermore, from 1999 to 2014, Vietnam enacted three different Enterprise Laws; the Higher Education Law, enacted in 2012, was amended continuously in 2013, 2014, and 2015; and the 2015 Criminal Code required amendments even before it took effect. Subordinate legislation also faces issues, with implementation guidelines issued at the beginning of the year being repealed by the end or immediately suspended upon issuance. Such rapid changes in laws pose barriers to legal accessibility for citizens and highlight the weaknesses in legal drafting and the instability of Vietnamese law.

To enhance the stability of Vietnam's legal system, the following solutions should be focused on:

(i) Clear Differentiation of Legal Documents: Different types of normative legal documents should clearly delineate their respective contents. This involves distinguishing the authorities between the National Assembly, the Government, ministers, and local governments. A more profound understanding of the legal system’s structure, which consists of multiple layers, is necessary. The Constitution and fundamental laws form the core, recognizing the most stable, foundational values and policies of the nation and...
stipulating the most significant societal institutions. Decrees, circulars, and local government documents should address temporary issues, frequently changing matters, specialized technical standards, and administrative procedures for citizens’ rights and obligations;

(ii) Enhancing Predictability of Legal Provisions: To achieve this, the lead drafting agency, research groups, advisory teams, drafting committees, or editorial boards need to invest more in researching the subjects regulated by the document. This includes identifying the scale, causes, and factors influencing the policies that the document aims to address, understanding the governing rules of policy dynamics, and anticipating policy trends. In other words, policy analysis and impact assessment capabilities need to be strengthened$^{19}$;

(iii) Strengthening Stakeholder Consultation: It is crucial to consult with those affected by the document (especially those whose behavior must change due to new regulations and officials responsible for implementing the new provisions). This includes forecasting necessary reactions and the capacity to adopt new regulations. Furthermore, improving the skills and techniques of consultation and soliciting feedback from agencies, organizations, and individuals is essential;

(iv) Emphasizing the Review of Normative Legal Documents: During the legislative process, new regulations should only be issued if existing ones are inadequate to address the policy issues at hand or can address them but with low effectiveness. Proposals to amend unreasonable regulations should be based on clear cost-benefit analysis, ensuring that the benefits of amendments significantly outweigh their costs;

(v) Learning from International Experiences: Researching international experiences in legal regulation is vital in areas where Vietnam lacks experience. This enables the selection of best practices during the law-making process.

4.3 ENHANCING LEGISLATIVE QUALITY AND IMPROVING DRAFTING TECHNIQUES

*Enhancing Legislative Quality:* The frequent changes in law highlight deficiencies in the legislative process, exemplified by the errors during the drafting of the 2015 Criminal Code,

which necessitated amendments even before it came into effect. Addressing this issue requires enhancing the expertise and the role of legal professionals rather than relying on drafters influenced by vested interests or lacking in specialized knowledge.

**Improving Drafting Techniques:** Regular systematic activities, particularly the codification of laws, are essential. New regulations should only be issued if existing ones are genuinely inadequate to address the social relations in question or can do so but with low effectiveness. Amendments should be considered only when there is clear evidence that the benefits of such amendments significantly outweigh the costs.

### 5 CONCLUSION

Vietnam has demonstrated a strong commitment to modernizing its society and economy, necessitating an institutional framework that maximizes the potential of social resources. The Vietnamese legal system has met the quantitative requirements and is progressing toward qualitative improvements in its normative system. To achieve this, Vietnam needs to realize several goals, such as establishing the central role of the state in regulating society, ensuring the substantive effectiveness of laws by reducing intermediary layers and procedures, and continuing to seek legislative techniques suited to Vietnam's current context. This study serves as a starting point, with the author intending to conduct more in-depth research on the three aspects discussed, aiming to provide crucial evidence for legislators to consider when initiating interventions in society.

### REFERENCES


Improving the Legal System in Accordance With the Requirements for Building a Socialist Rule-Of-Law State in Vietnam


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