

【Special Features : The Role of Constitutional Review Bodies in the Asian Post- Authoritarian  
Democratization Process. A Comparative Perspective】

**Adoption of the Constitutional Council  
towards the Rule of Law State and Democratization in Vietnam**

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Abstract

Since the introduction of the *Doi Moi* in 1986 for transferring from centrally-planned economy to the open market with socialist orientation, Vietnam has made a significant effort in building comprehensive legal framework to promote socio-economic development as well as moving towards rule of law state and democratic society. However, the low quality of the current legal system presents a key obstacle to Vietnam's achievement of its development targets. The Vietnamese legal system faces many problems such as statutory contradictions and inconsistency which raise serious challenges in implementing legislative reforms. Under the current system, only the National Assembly holds the power to review the constitutionality of acts issued by the competent agencies. The Supreme Court can only recommend to competent agencies to review laws and regulations in the course of administrative case settlements. The Ministry of Justice holds the authority to review regulations issued by other state authorities of ministerial and lower level. For example, there were 5639 illegal documents issued by ministerial agencies and local governments at provincial level in 2017 as reported by the Ministry of Justice. There still remains no mechanism allowing individuals or organizations to request for constitutional review when legal documents are unconstitutional or illegal and violating individual rights. During the process of drafting the Constitution 2013, legislative members and researchers in Vietnam raised concerns about adopting the Constitutional Council as a specialized model for constitutional review; however, the Constitutional Council has not been established yet under the 2013 Constitution of Vietnam. Consequently, human rights cannot be protected effectively due to the lack of an adequate and specialized institution for constitutional review. The question remains: does Vietnam need to establish the Constitutional Council as a critical instrument of rule of law and democracy? Studying foreign experience in creating specialized institutions for constitutional review is essential for Vietnam. This paper will examine current issues of constitutional review for human rights protection

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and the need for establishing the Constitutional Council in order to implement the rule of law and create a truly democratic society in Vietnam.

### Contents

- I. Introduction
- II. Current mechanism of constitutional review in Vietnam
- III. Vietnam's approach to the adoption of a Constitutional Council
- IV. Conclusion

#### **I. Introduction**

Since the establishment of the Democratic Republic of Vietnam in 1945, it has promulgated several constitutions including the 1946, 1959, 1980, 1992 and 2013 constitutions. The 1946 and 1959 constitutions were promulgated during the period of Resistance War Against America. After unification in 1975 and establishing the socialist state, Vietnam enacted the 1980 Constitution which introduced a mono-party system based on democratic centralism, centrally-planned economy and socialist legality principle. Notably, most of the concepts, including laws appeared as the Soviet transplants. Since the *Doi Moi* reforms in 1986, which is a Vietnamese prototype of the Soviet *perestroika*, the 1992 Constitution introduced free market economy with socialist orientation. The 1992 Constitution was amended in 2001 and 2013. The most significant constitutional challenges appeared in 2013. Particularly, a possibility to establish the Constitutional Council came out as the issue that most sparked an interest of domestic and international scholars.

In general, development of constitutionalism in Vietnam can be divided into three periods: constitution under the French and American war periods, including 1946 and 1954 constitutions; post-unification constitutionalism (1980 Constitution); and constitutionalism under transformation period from central-planned economy to opened market with socialist orientation (1992 Constitution). This article will explore the development of

constitutionalism in post-unification of Vietnam as a representative of the modern and fundamental legal ideologies of contemporary Vietnam.

The 1980 Constitution drew upon the constitution of the former Soviet Union since Vietnam heavily relied on the support of the Soviet Union during the American war and after its unification in 1975. During and after the American war, a number of Vietnamese scholars went to the former Soviet Union to study law; and their legal ideologies were almost certainly influenced by socialist law. Consequently, legal system of Vietnam generally followed the legal ideology of the socialist country. In other words, the legal system of Vietnam had features of socialist law transplanted from the former Soviet Union.<sup>1</sup> The 1980 Constitution adopted the Soviet political ideology through three principles including: socialist-legality, democratic-centralism, and the collective-mastery.<sup>2</sup> The central government played a dominant role in decision making while local governments functioned as subordinate organs of the central government. The central government made important decisions related to economic development through a system of state-owned enterprises (SOEs). “Vietnam used to be a closed socialist country with a command economy”.<sup>3</sup>

Due to the collapse of the former Soviet Union, the Communist Party had to find a new strategic development for Vietnam by introducing Doi Moi Policy (Renovation policy). Doi Moi was a turning point for reforming political policy and legal system of Vietnam. Vietnam needs to reform its legal system to respond to the changes in the country’s economic development. Consequently, the 1992 Constitution replaced the 1980 Constitution with a renewed focus on socialist oriented open market economy.

“The 1992 constitution represents a step forward in Vietnam's constitutional history, it is aimed at strengthening state management of society through the rule of law, building

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<sup>1</sup> Ngoc Son Bui, “Law of China and Vietnam in Comparative Law,” *Forham International Law Journal* 41, no. 1, accessed May 6, 2019, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2688&context=ilj>.

<sup>2</sup> Hualing Fu et al., *Socialist Law in Socialist East Asia* (Cambridge University Press, 2018), 16.

<sup>3</sup> Gail Fay, *Economies Around the World* (Raintree, 2012), 30.

socialist democracy and enhancing socialist legality, so that the superstructure can well enhance its role in paving the way and accelerating socio-economic development.”<sup>4</sup>

Notably, during the time of amendment of the 1980 Constitution, there was strong advocacy for the separation of powers model which upheld the principle of separation of powers and checks and balances principles for organization and operation of state bodies and was popular in other countries; however, the Communist Party and central government resolved to follow the democratic-centralism.

Vietnam has entered into transactional period from central planned economy to the open market economy under socialist-oriented market economy since 1986. By doing so, Vietnam has developed a legal system reflective of various aspects of its society.<sup>5</sup> For example, regarding economic aspects, collective ownership has played a dominant role in economic development. However, an open market economy requires the recognition of business freedom and private ownership. Together with state owned enterprises, the private sector and foreign investment are guaranteed by the 1992 Constitution. For example, the 1992 Constitution, Article 25 confirms the full protection of foreign investment through guaranteeing the right to lawful ownership of funds, property and other interests of foreign organizations and individuals.

However, institutional regulations only contained some minor changes under the 1992 Constitution. The main features of the socialist legal model have remained. One was the democratic-centralism principle for organization and operation of state bodies. For example, the National Assembly (legislative organ) is the highest organ of state power while the executive and judicial branches depend on the National Assembly as the subordinate organs.<sup>6</sup> Vietnam does not have principles of separation of powers and checks and balances.

Vietnam has gained positive result in economic development since promulgation of the 1992 Constitution. However, there remained a need to amend the 1992 Constitution to better

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<sup>4</sup> David. G Marr et al., *Vietnam and the Rule of Law: Proceedings of Vietnam Update Conference, November 1992* (Canberra: Australian National University, 1993), 91, <http://catalog.hathitrust.org/api/volumes/oclc/29968358.html>.

<sup>5</sup> Bui, “Law of China and Vietnam in Comparative Law,” 159.

<sup>6</sup> Marr et al., *Vietnam and the Rule of Law*, 52.

adapt to the standards of globalization and integration. Vietnam revised the 1992 Constitution in 2001. Significantly, the amended Article 2 of the Constitution in 2001 defined that “the Socialist Republic of Vietnam State is a law-governed socialist State of the people, by the people and for the people”. Hence, rule-by-law state principle requires to develop comprehensive legal system to respond to the needs of managing the country by laws. Within four years from 1986 to 1990, the National Assembly passed 24 laws and 33 Decrees issued by the State Council.<sup>7</sup> Notably, there is different interpretation of the term law-governed socialist State (*Nhà nước pháp quyền xã hội chủ nghĩa*) such as the rule of law or rule by law state. However, in the Vietnam’s context, rule of laws is explained as political party using laws as instruments of political control; therefore Vietnam lacks inherent qualities of rule of law state.<sup>8</sup> Vietnam also amended the 1992 Constitution in 2013; those amendments focused on the distribution of functions among the legislative, executive and judicial branches under Article 2 (3) as follows: “The state power is unified and delegated to state agencies which coordinate with and control one another in the exercise of the legislative, executive and judicial powers.” According to this article, Vietnam maintains the concentration of power principle in which executive and judicial branches are independent organs and under the control of the National Assembly. Significantly, new concepts were introduced in the 2013 Constitution such as control [of] one another in exercise of the legislative, executive and judicial powers and human rights are considered as a step to reach the rule of law standards. However, the legal system of Vietnam still contains several issues such as inconsistency, or fragmentation due to many state agencies holding law-making powers. Decrees or circulars issued by executive organs have played a dominant role in the legal system. In other words, substantive laws cannot be enforced without guidelines issued by the executive organs. However, Vietnam lacks an independent mechanism for constitutional review.

Notably, judicial review and constitutional review remain controversial issues in Vietnam which must be studied continuously by Vietnamese scholars and law-makers.

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<sup>7</sup> Marr et al., 7.

<sup>8</sup> Bui, “Law of China and Vietnam in Comparative Law.”

Hence, the question remains as to whether Vietnam needs to establish the Constitutional Council as one element of rule of law state.

## II. Current mechanism of constitutional review in Vietnam

To some extent, there is a need to distinguish the differences between judicial review and constitutional review in the context of Vietnam. In general, judicial review differs from country to country depending on a state's political system. The judicial review refers to the control of constitutionality of legislation promulgated by the Parliament. There are two popular models of constitutional review applied around the world: the model applied by the US and the model applied by European countries.<sup>9</sup> In America, constitutional judicial review refers to the power of the court to reviewing both public and private conduct in consistence with the constitution.<sup>10</sup> All courts hold constitutional judicial review powers while the Supreme Court makes final decision whether any provision is inconsistent with the federal constitution. In comparison, the European model of constitutional judicial review is a specialized Constitutional Court. The Constitutional Court is an independent institution which holds power to review constitutionality of legal norms.<sup>11</sup> In France, constitutional review is under jurisdiction of the Constitutional Council. The Constitutional Council reviews the institutional laws before promulgation, or at the request of a competent person, such as the President of Republic.<sup>12</sup> Constitutional review can also be conducted by different state organs. For each model of judicial review, jurisdiction of the reviewing agency differs as follows:

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<sup>9</sup> Albert H. Y. Chen, Hongyi Chen, and Andrew Harding, *Constitutional Courts in Asia: A Comparative Perspective* (Cambridge University Press, 2018), 2.

<sup>10</sup> Theunis Roux, *The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis* (Cambridge University Press, 2018), 15.

<sup>11</sup> Chen, Chen, and Harding, *Constitutional Courts in Asia*, 3.

<sup>12</sup> Constitution of France, Article 61, [https://www.constituteproject.org/constitution/France\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/France_2008.pdf?lang=en) accessed on May 5, 2019.

“Whereas the Austrian model only provided for limited jurisdiction of certain disputes, the German model introduced the device of the constitutional complaint, in which any individual could complain about the constitutionality of a statute or government action, even without a specific case or controversy.”<sup>13</sup>

Unlike US and France, Vietnam has not yet established an independent model such as the Constitutional Court/Council or the principle of constitutional judicial review. The democratic-centralism principle ensures the concentration of state power. The National Assembly is the highest organ of state; therefore, there is no institution that has control over the National Assembly. Under the 1992 Constitution as well as the amended Constitution of 2013, only the National Assembly and its Standing Committee hold the power to review the constitutionality and legality of the legal documents including laws, ordinances, decrees, and circulars issued by competent agencies. Notably, legality requires the conformance of legal documents issued by different agencies. Under democratic centralism principle, Vietnam’s legal system is a hierarchy requiring legal documents issued by lower agencies to correspond to legal documents issued by higher system which requires the legal documents issued by the lower competent agencies to conform with the legal documents issued by the higher state organs. For example, a Ministry’s circular must comply with a Government’s decree as ministry is under the control of Central Government.<sup>14</sup> In other words, the top down model of administrative system creates the hierarchy of legal system.

In brief, Vietnam does not have an independent mechanism for judicial review or constitutional review. The National Assembly, as the highest state organ, holds powers to enact Constitution and Laws as well as to review constitutionality of these documents. The National Assembly holds the power to review the constitutionality and legality of legal documents issued by the organs at central level including Standing Committee of the National Assembly, Government, Supreme People’s Court, Supreme People’s Procuracy,

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<sup>13</sup> Tom Ginsburg & Mila Versteeg, “Why Do Countries Adopt Constitutional Review?” *University of Chicago Law School*, 2013, 6,  
[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5621&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5621&context=journal_articles).

<sup>14</sup> Bui, “Law of China and Vietnam in Comparative Law,” 160.

National Election Council, State Audit Office, and other agencies established by the National Assembly;<sup>15</sup> The Standing Committee of National Assembly also holds power to supervise the implementation and to suspend the implementation of the legal documents issued by the competent organs at the Central and Provincial level in case of contradict to the Constitution and Laws enacted by National Assembly.<sup>16</sup>

When a law or legal document is determined to be unconstitutional, only the National Assembly can annul such a law or legal document based on the proposal of the Standing Committee of the National Assembly. In addition, the Standing Committee has authority to suspend or annul the legal documents issued by the executive branch. Significantly, the court only reviews constitutionality and legality of legal documents issued by executive organs when dealing with administrative disputes. For example, during process of handling an administrative case, if a court finds that the legal ground for making administrative decision is illegal or unconstitutional, then the court only can recommend to the competent agency to examine, amend or suspend those legal documents.<sup>17</sup> For example, Article 6 of the Law on Administrative Court Proceeding provides that: during the time of settlement of an administrative case, the court may recommend competent agencies and individuals to examine, amend, supplement or annul legal documents when detecting that such documents are contrary to the Constitution, laws or legal documents of superior state agencies.<sup>18</sup>

The Supreme People's Court does not exercise constitutional judicial review power as seen in the America model. In 1996, Vietnam established the administrative tribunal under the People's Court system, which reviews the legality of the administrative decisions or actions which are unlawful and violate the rights/legitimate interests of citizens.<sup>19</sup> In this context, judicial review is quite narrow concept in comparison with other countries such as the US and Japan. The court only reviews the legality of decisions or actions of the executive

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<sup>15</sup> National Assembly, Constitution of Vietnam, dated 28, November 2013, Article 70 (2).

<sup>16</sup> National Assembly, Constitution of Vietnam, dated 28 November 2013, Article 74 (3&4).

<sup>17</sup> National Assembly, Law on Administrative Lawsuit, Article 6.

<sup>18</sup> National Assembly, Law on Administrative Lawsuit, No.95/2015/QH13, Article 6.

<sup>19</sup> Nguyen Van Quang, "Grounds for Judicial Review of Administrative Action: An Analysis of Vietnam Administrative Law," Discussion Paper, Cale Discussion Paper (Nagoya University Center for Asian Legal Exchange, 2010), 9.

organs. Hence, individual citizens have no access to an institution where they can request constitutional. The judicial branch only holds power to recommend amendment, or annulment of legal documents in the course of settlement of the administrative cases. For example, Chief justices of district-level courts can only recommend amendment, supplementation or annulment of legal documents of state agencies at the district level or lower level or report to chief justices of provincial-level courts for proposing the Chief Justice of the Supreme People's Court to recommend amendment, supplementation or annulment of legal documents of central state agencies.<sup>20</sup>

Notably, the Law on Administrative Lawsuits 2015 created a new jurisdiction of the People's Court at all levels in reviewing legal documents; however, the People's Court is only authorized to recommend amendments or annulments of illegal or unconstitutional legal documents to competent agencies. Hence, the jurisdiction of the court in constitutional review remains limited because it does not hold power to judge the legal document's constitutionality and legality. For example, when Da Nang People's Council issued Resolution No.23/2011, which limited the rights of citizens in resident registration, the people living in Da Nang province could not declare the decision unconstitutional as it was not under jurisdiction of the Provincial People's Court of Da Nang City. Nevertheless, this resolution was ultimately determined to be unconstitutional by Ministry of Justice.<sup>21</sup>

Vietnam's Ministry of Justice is authorized to review legal documents including law, decree, circular and decisions issued by the competent agencies as prescribed by the Law on Promulgation of legal documents (Law on laws, 2015). In reviewing process, Ministry of Justice in cooperation with relevant Ministries such as Ministry of Finance, Ministry of Home Affairs to check the necessity of legal document, its consistency with Constitution, Laws and related documents before submitting to competent organs for enactment.<sup>22</sup>

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<sup>20</sup> National Assembly, Law on Administrative Procedure (on settlement of administrative lawsuit), No.93/2013/QH13, dated 25 November 2015, Article 112.

<sup>21</sup> NLD.COM.VN, "Đà Nẵng hạn chế nhập cư là trái luật," <https://nld.com.vn>, March 1, 2012, <https://nld.com.vn/20120229112858818p0c1002/da-nang-han-che-nhap-cu-la-trai-luat.htm>. accessed 8 May 2019. (Strict citizen's registration of Danang is illegal).

<sup>22</sup> National Assembly, Law on Promulgation of Legal Document, No.80/2015/QH13, dated 22, June 2015, Article 39.

Although Vietnam has not yet adopted the independent model of constitutional review, it has carried out constitutional review through its own distinct mechanism.<sup>23</sup> The constitutional review is conducted during the drafting of legal documents and also after promulgation by three organs including: Ministry of Justice (executive branch of the Central Government); the Supreme People's Court (judicial branch); and the Standing Committee of the National Assembly (legislative branch). For example, in 2017, the legal documents reviewed by the Ministry of Justice included 5639 illegal documents resulting from violation of jurisdictions, procedures, or general confliction with other laws;<sup>24</sup> Still, this distinctive mechanism is considered ineffective and inefficient.

It is undeniable that judicial review and constitutional review play important role in promoting democratic values and controlling state powers. Although Vietnam aims to build a rule of law state and a democratic society, it still lacks an independent mechanism for implementing constitutional review. Rule of law is closely related to human rights and democracy, and the quality of rule of law depends on the economic and political conditions of a country. Democratization is a process which requires a country to adopt rule of law standards. However, the standards of rule of law are consistent with divergent of economic systems.<sup>25</sup> Vietnam is struggling to develop a comprehensive, consistent legal system. As a result, the adoption of Constitutional Council for constitutional review has remained as a controversial issue in process of amending Constitution since 1992.

### **III. Vietnam's approach to the adoption of a Constitutional Council**

Notably, it is essential to have a specialized institution for reviewing constitutionality and legality of the legal documents. However, Vietnam has not yet focused on constitutional review at the time of amendment of the 1980 Constitution. Adopting a Constitutional

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<sup>23</sup> “Cần Hay Không Hội Đồng Hiến Pháp?” accessed April 21, 2019, [http://duthaonline.quochoi.vn/DuThao/Lists/TT\\_TINLAPPHAP/View\\_Detail.aspx?ItemID=1009](http://duthaonline.quochoi.vn/DuThao/Lists/TT_TINLAPPHAP/View_Detail.aspx?ItemID=1009).

<sup>24</sup> VCCorp.vn, “Hơn 5.600 văn bản trái pháp luật được ban hành trong 2017,” VnEconomy, August 9, 2018, <http://vneconomy.vn/news-20180809065123316.htm>.

<sup>25</sup> Randall P. Peerenboom, *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.* (Psychology Press, 2004).xviii.

Council first appeared as a debate in the process of amending the 1992 constitution in 2001, and again in 2013. The type of constitutional review model that is most suitable for Vietnam remains at the center of the debate among politicians, legislators, and legal scholars. In his discussion on possible establishment a Constitutional Court in Vietnam, Vu Van Cuong argued that a law passed by the National Assembly must comply with Constitution and other Laws, because there is no official institution with jurisdiction over the legislation's legality. However, there is a possibility of a law which is unconstitutional.<sup>26</sup> He further argued that Vietnam cannot establish a Constitutional Court, as it is simultaneously bound by two principles that are not always interrelated: (1) the Constitution as the supreme body of law and (2) the National Assembly as the highest organ of state. Therefore, adoption of constitutional council is a possible solution for Vietnam.<sup>27</sup>

Constitutional review is a topic of both legal and political concern. In 2005, the Resolution No.48-NQ/TW of the Politburo on the Strategy to Build and Perfect Vietnam's legal system by 2010 with orientation to 2020 raised the issue of renewing the constitutional regime. A Constitutional Council was included in the draft amendment to the 1992 Constitution and has been actively discussed by lawmakers and legal professionals. The majority of Vietnamese scholars agree that there is no possibility of adoption of Constitutional Court or constitutional judicial review by the Supreme Court like other countries which have the separation of powers and check and balances principles. However, Vietnam has also introduced the distribution of functions including legislative, executive, and judicial functions. In principle, the National Assembly is the highest legislative organ, and the government (executive branch), and Supreme Court (judicial branch) are under the control of the National Assembly. No institution has the power to review laws enacted by the National Assembly, as it is defined as the highest state organ. Hence, there is no independent institution which can pass judgement on the National Assembly, making a Constitutional Council a suitable option for Vietnam. A Constitutional Council model should

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<sup>26</sup> “Cần Hay Không Hội Đồng Hiến Pháp?”

<sup>27</sup> “Cần Hay Không Hội Đồng Hiến Pháp?”

conform with the political conditions of Vietnam, as well as follow democratic-centralism principle. Consequently, the Constitutional Council was adopted in the draft version of the amendment 1992 Constitution in 2013.<sup>28</sup>

During the process of collecting public comments on the amended draft, it became clear that establishing a Constitutional Council was a highly contentious issue. In the draft for public comments, Article 120 defines the Constitutional Council as an agency established by the National Assembly, consisting of the President, Vice President and Members. The Constitutional Council shall have power to examine the constitutionality of legal documents and to propose to the National Assembly to review constitutionality and legality of legal documents.<sup>29</sup>

According to this article, the Constitutional Council would only hold the power to examine the constitutionality of legal documents issued by competent agencies at the central level. Therefore, Constitutional Council does not have jurisdiction to annul legislation because it holds a lower position than the National Assembly. In other words, there remains no institution with jurisdiction to annul laws promulgated by the National Assembly. Unlike other countries' models, such as France, the term of Constitutional Council members is not prescribed by the Constitution. Under the French Constitution, the members serve a term of nine years with three members to be appointed by the President of Republic, three by the President of the National Assembly, and three by the President of the Senate.<sup>30</sup> The draft includes only a general article on Constitutional Council, therefore there were comments stating that the draft should include provisions on the terms of the members and subject to request for constitutional review.<sup>31</sup>

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<sup>28</sup>Bui Ngoc Son, "Tạp Chí Công Sản - Triển Vọng Của Hội Đồng Hiến Pháp ở Việt Nam," accessed April 21, 2019, <http://www.tapchicongsan.org.vn/Home/du-thao-sua-doi-nam-1992/2013/23845/Trien-vong-cua-Hoi-dong-Hien-phap-o-Viet-Nam.aspx>.

<sup>29</sup> "Dự Thảo Hiến Pháp Sửa Đổi Năm 2013," accessed April 21, 2019, [http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?\\_piref135\\_27935\\_135\\_27927\\_27927.mode=detail&\\_piref135\\_27935\\_135\\_27927\\_27927.id=748](http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=detail&_piref135_27935_135_27927_27927.id=748).

<sup>30</sup> Constitution of France, Article 56.

<sup>31</sup> Bui Ngoc Son, "Tạp Chí Công Sản - Triển Vọng Của Hội Đồng Hiến Pháp ở Việt Nam."

Vietnam demonstrates the needs for adopting Constitutional Council as a new model for implementing constitutional review. However, the amended 2013 Constitution draft did not include any provisions on the Constitution Council. In the course of legal reform, Vietnam made effort to develop a comprehensive legal system for responding to the rule of law principle and democratization.

The current constitutional review mechanism reveals many problems. First, the Ministry of Justice lacks the capacity to review all legal documents issued by the central government and provincial level organs. Second, the People's Supreme Court only reviews legal documents within the settlement of an administrative case. Even so, the number of laws and legal documents issued by state agencies has increased, especially those decisions issued by the State President, Prime Minister, Minister and the head of the local governments. In addition, thousands of regulations are issued by the local governments and this significantly complicates the operation of Vietnam's legal system.<sup>32</sup> Consequently, Vietnam's legal system is described as a "jungle of law"<sup>33</sup> because there are many competent agencies that hold the power to enact substantive laws (decrees and circulars) without any effective mechanism for constitutional review or judicial review. In addition, there is a significant need for providing guidelines for the implementation of laws enacted by legislative organs. In other words, the laws cannot be implemented without guidelines issued by executive organs such as government and ministries. In reality, administrative regulations provide various conditions and administrative procedures which may limit the rights of citizens.<sup>34</sup> However, there is no effective mechanism for reviewing these legal documents. Consequently, legal reform has not yet met standards of rule of law state; therefore, the Central Politburo issued the Conclusion No.01-KL/TW dated 04 April 2016 on the Continuous implementation of the Legal reform strategy for 2016-2020 period. Hence,

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<sup>32</sup> Bui, "Law of China and Vietnam in Comparative Law," 162.

<sup>33</sup> "Reforming How Laws Are Made in Vietnam," accessed February 27, 2020, <https://www.cba.org/Sections/International-Initiatives/News/2014/Decembre/Reforming-how-laws-are-made-in-Vietnam>.

<sup>34</sup> Bui, "Law of China and Vietnam in Comparative Law," 165.

Vietnam still needs to develop a model for reviewing the legality and constitutionality of legal documents as one of condition of a rule of law state.

## **VI. Conclusion**

Socialist Asian countries such as China, Laos, and Vietnam face challenges in democratization. Supervising and guaranteeing effective implementation of constitution is crucial factors in building a rule of law state and a democratic society. “As more countries have democratized since the 1980s, more constitutional courts have been established around the world.”<sup>35</sup> Adoption of a constitutional review model is a key factor in ensuring the constitutionality and legality of modern state’s legislation. Constitutional Court or Constitutional Council contributes to legal reform and democratic development. Significantly, reviewing legislation’s constitutionality and legality is crucial important in Vietnam, as the legal system remains inconsistent. Particularly, the executive branch has played important role in providing guidelines for implementation legislation. In addition, the enormous number of decisions issued by the local government are the main challenges to implement constitutional review in Vietnam. The current mechanism for implementing constitutional review through Ministry of Justice, Supreme People’s Court, and the Standing Committee of the National Assembly is ineffective because there remains a need of specialized institutions for this purpose such as Constitutional Council or Constitutional Court in other countries. The study of constitutional council remains important and relevant to the progress of legal reform in many countries which have not yet adopted a constitutional review model. Hence, Vietnam still needs to learn from experiences of other countries in developing an effective mechanism for constitutional review.

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<sup>35</sup> Chen, Chen, and Harding, *Constitutional Courts in Asia*, 30.

## References

- Bui, Ngoc Son. "Law of China and Vietnam in Comparative Law." *Forham International Law Journal* 41, no. 1. Accessed May 6, 2019.  
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2688&context=ilj>.
- "Cần Hay Không Hội Đồng Hiến Pháp?" Accessed April 21, 2019.  
[http://duthaonline.quochoi.vn/DuThao/Lists/TT\\_TINLAPPHAP/View\\_Detail.aspx?ItemID=1009](http://duthaonline.quochoi.vn/DuThao/Lists/TT_TINLAPPHAP/View_Detail.aspx?ItemID=1009).
- Chen, Albert H. Y., Hongyi Chen, and Andrew Harding. *Constitutional Courts in Asia: A Comparative Perspective*. Cambridge University Press, 2018.
- "Dự Thảo Hiến Pháp Sửa Đổi Năm 2013." Accessed April 21, 2019.  
[http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?\\_piref135\\_27935\\_135\\_27927\\_27927.mode=detail&\\_piref135\\_27935\\_135\\_27927\\_27927.id=748](http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=detail&_piref135_27935_135_27927_27927.id=748).
- Fay, Gail. *Economies Around the World*. Raintree, 2012.
- Fu, Hualing, John Gillespie, Penelope Nicholson, and William Edmund Partlett. *Socialist Law in Socialist East Asia*. Cambridge University Press, 2018.
- Marr, David. G, Carlyle A Thayer, Australian National University, and Department of Political and Social Change. *Vietnam and the Rule of Law: Proceedings of Vietnam Update Conference, November 1992*. Canberra: Australian National University, 1993.  
<http://catalog.hathitrust.org/api/volumes/oclc/29968358.html>.
- Nguyen Van Quang. "Grounds for Judicial Review of Administrative Action: An Analysis of Vietnam Administrative Law." Discussion Paper. Cale Discussion Paper. Nagoya University Center for Asian Legal Exchange, 2010.
- NLD.COM.VN. "Đà Nẵng hạn chế nhập cư là trái luật." <https://nld.com.vn>, March 1, 2012.  
<https://nld.com.vn/20120229112858818p0c1002/da-nang-han-che-nhap-cu-la-trai-luat.htm>.
- Randall P. Peerenboom. *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.* Psychology Press, 2004.

- “Reforming How Laws Are Made in Vietnam.” Accessed February 27, 2020.  
<https://www.cba.org/Sections/International-Initiatives/News/2014/Decembre/Reforming-how-laws-are-made-in-Vietnam>.
- “*Tạp Chí Công Sản - Triển Vọng Của Hội Đồng Hiến Pháp ở Việt Nam*.” Accessed April 21, 2019. <http://www.tapchicongsan.org.vn/Home/du-thao-sua-doi-nam-1992/2013/23845/Trien-vong-cua-Hoi-dong-Hien-phap-o-Viet-Nam.aspx>.
- Theunis Roux. *The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis*. Cambridge University Press, 2018.
- Tom Ginsburg & Mila Versteeg. “Why Do Countries Adopt Constitutional Review?” University of Chicago Law School, 2013.  
[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5621&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5621&context=journal_articles).
- VCCorp.vn. “Hơn 5.600 văn bản trái pháp luật được ban hành trong 2017.” VnEconomy, August 9, 2018. <http://vneconomy.vn/news-20180809065123316.htm>.