



The Legal Institutions of Power Control in Building the Socialist Rule of Law State of Vietnam Today

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ARTICLE INFO	ABSTRACT
Published Online: 08 June 2022	Controlling state power is an indispensable requirement in the process of implementing the power of the state, which is the central element of the rule of law state. Over 30 years of renovation and development, Vietnam has gradually established basic and essential methods to develop a civilized and progressive country in accordance with the global requirements and universal values: the socialist-oriented market economy, the socialist rule of law state of the people, by the people, and for the people who are the masters of the country. However, besides the achievements of the process of renovation, there has revealed a number of shortcomings and limitations in various fields. Therefore, it is necessary to continue researching and innovating the tools and means of constructing and developing the society in which defining basic principles on the control of state power is the fundamental element.
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KEYWORDS: legal institutions, state power, the rule of law, perfecting institutions, power control	

1. WHAT IS THE CONTROL OF STATE POWER?

In theories of political philosophy in general and in theories of political science and legal science in particular, the studies of a state always consider the issue of state power - a "basic element" in their theories. Accordingly, the state is a legal organization of a residential community within the national territory responsible for protecting territorial sovereignty, managing population, and protecting citizens in its territory. At the same time, the state establishes and maintains social order for the country. In order to carry out these tasks, the state must have "state power" which is ensured by the coercive power of the state - the legal power - and guaranteed to implement by the system of State violence institutions.

In the process of effective social management, in order not to produce personalistic dictatorship and group dictatorship, it is essential to have a "set of tools" as a legal institutional system for controlling, preventing and eliminating them and it is the control of state power. In our country, the state power control has been much considered when the policy of building a socialist rule-of-law state was officially confirmed at the 1992 Constitution. Up to now, there have been a number of concepts of state power control, in some of which the state power control is interpreted in a similar way to the supervision and inspection at the same aspect as activities to consider and evaluate the subjects who exercise state power, ensuring them to do it strictly, accurately and completely. However, the state power control

is different in terms of the subjects of implementation, content, form, scope and the objects to be considered and evaluated. From the studies of the concept, "control of state power" is possibly understood as follows:

- *In a broad sense*, the state power control is "a system of mechanisms implemented by the state and society in order to keep the exercise of state power right and effective" (Trinh Thi Xuyen, 2008, p.36). Thus, the control of state power will include the designing, organization and operation of the state apparatus as well as the supervision, inspection and evaluation so that the state power can be exercised properly for the most effective results.

- *In a narrow sense*, the state power control is "such activities as supervision, inspection, evaluation, and the measures through which to prevent and eliminate risks and mistakes of the state, agencies and the state staffs in organizing and exercising state power" (Communist Party of Vietnam, 2015, p.4), and to ensure the state power is organized and implemented properly and purposefully for the high efficiency.

Thus, the control of state power is a perfect whole of legal institutions implemented by state agencies in a close relationship with each other, working together to prevent and eliminate violations and mistakes of the state agencies, cadres and public employees, and to ensure the state power is organized and implemented properly in accordance with the Constitution and Laws.

In Vietnam, the state model that our people build is a socialist state model. Therefore, the state power control primarily stems from the origin and nature of the socialist rule of law state. For the socialist rule-of-law state, state power is not the self-sustaining power but the power of the people, which is delegated to the state through authorization activities. Besides, the control of state power originates from the policy of building a socialist rule-of-law state that “in an order of the rule of law state, the limit and control of state power is always the objective and principle on the organization and operation of the state system” (Nguyen Minh Doan, Vu Thu Hanh, 2014, p.4) This is inevitable to execute power effectively. The state power also derives from moral and ethical issues as well as the ability of power executors in the state apparatus. If the state power is not organized into a system, following certain principles, mechanisms and processes and executed by specific people, the power will not promote its necessary role and the state’s ability of social management. State power is exercised through the state apparatus run by specific individuals who are subject to different types of emotions and desires, sometimes beyond their minds, which possibly leads to wrong actions, specifically the exercise of state power becomes greater. In addition, state power is executed through definite individuals whose competence is finite due to the finiteness of their intellect and reason, which results in errors in awareness and enforcement of state power, distorting state power in a way that is detrimental to society. For the reasons, it is important to strictly control the staffs of the state power apparatus, in order to detect and handle the individuals who no longer deserve the trust of the people.

Besides, state power control in Vietnam is indispensable and derived from the characteristics of a socialist rule-of-law State under the leadership of the Communist Party of Vietnam. The Communist Party of Vietnam is a political nucleus, a ruling party, and a comprehensive and thorough leader. In the process of implementing the guidelines and policies of the Party, state power is expressed through the power of the state apparatus in implementing the mechanism of power control among the subjects of the political system: the people's control towards

state power; control of state power within the organization and operation of the state apparatus; power control between the central and local state power; control of the state leader - the Communist Party of Vietnam - towards the State. Controlling state power is a way to turn the aspiration of “all state power belonging to the people” into reality, using that power for the benefit of the people, “continuing to build and perfect the socialist democracy, ensuring all state power belongs to the people” (Communist Party of Vietnam, 2011, p.238).

2. ROLE OF LEGAL INSTITUTIONS IN THE CONTROL OF STATE POWER

After over 73 years of building the state of the people, by the people, for the people with the sole purpose of serving the people, and since the 90s of the twentieth century, in terms of building a socialist rule-of-law state, the supreme ideology of the law has been expressed more and more clearly, particularly in the continuous innovation and development of the legal system; however, the phenomena of violating the law, infringing upon the people's mastery and abuse of power have still happened seriously, bureaucracy and corruption have become popular, seriously decreasing the people's confidence in the Party's leadership. Moreover, the corner of interest groups is in an alarming status, creating a risk of weakening within the country. These are phenomena that indicate weaknesses and limitations in controlling state power, the first of which is the weakness of the “tool-kit” - legal institutions.

In controlling state power, the legal institution is a “steel tool-kit” for the state to simultaneously implement activities of inspecting, supervising, and evaluating the state agencies’ actions of implementing power state; and well perform the executive function and social management. It is clearly seen that the legal institutions for controlling state power are the components which constitute the foundation of the legal mechanism to control state power. Considering the vertical relationship (Figure 1), there must be legal institutions to create a legal mechanism for controlling state power, institutions directly affecting the mechanism.

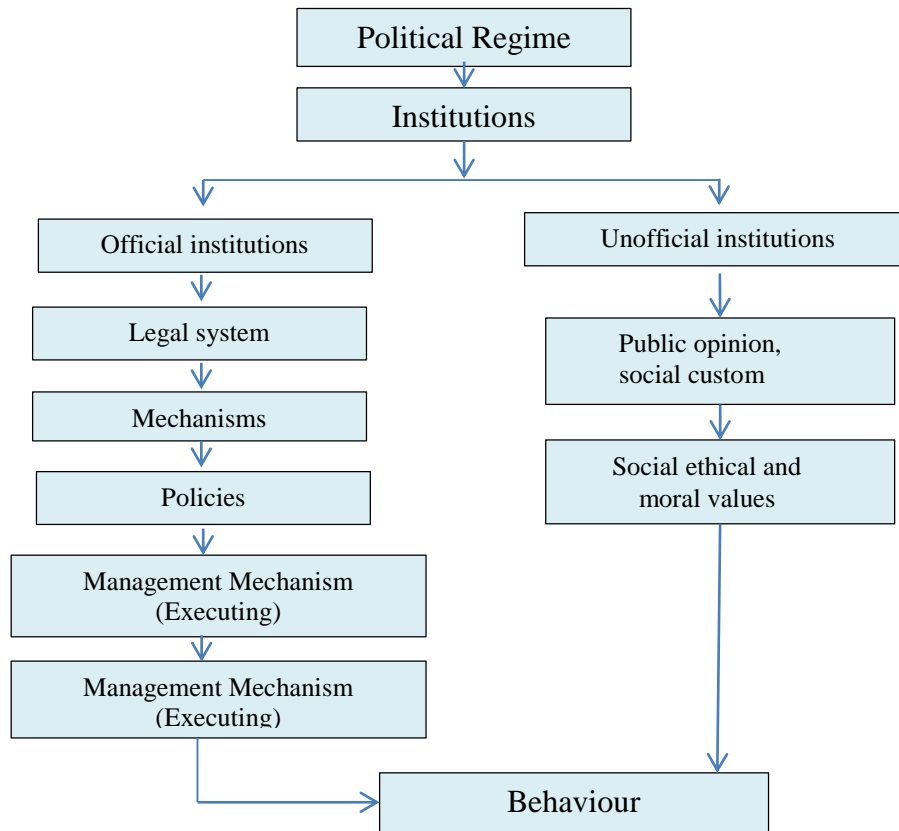


Figure 1: Relationship between the institutions resonating from the position of the institutions

Legal institutions are not born by themselves but are subjected to the decision of the powerful subjects who issue them. After being enacted, legal institutions exist independently and interact between “resonant” institutions and even with the subjects having issued them in order to legitimize, standardize, create stability, and maintain the operation of institutions in the mechanism for controlling state power. In the process of being independent and dialectically compatible with “resonant” institutions, sometimes the legal institutions are ahead, stimulating and accelerating the establishment of new institutions. Among the elements of the mechanism for controlling state power, institutions always play a key role, being a legal basis for the establishment of institutions and setting up possibilities and conditions to ensure the perfection and operation of the mechanism for controlling state power because the institutions are the “mainstream” political product of the State that is expressed through the legal system of the superstructure.

In the process of operating and controlling state power, the legal institutions become a “tool-kit” and a “steel fram” to control state power with the highest efficiency. The Constitution and the law constitute the legal regime for controlling state power and ensure the highest validity and the most widespread value of institutions. Legal institutions for controlling state power create clearness and publicity about procedures, prescription, time-limit, space and time; create the ability to apply sanctions to prevent violations in

organizing and exercising state power. In addition, the content of state power institutions also creates constraints and interactions between agencies in the state apparatus as well as in solving internal problems of the state. A lot of institutional content of controlling state power has a wide scope with various participants in different positions, roles, properties and capacities, showing clearly the relationship between the people and the state. In state governance, legal institutions for controlling state power play an important role in contributing to the state power being organized and operated stably and effectively, limiting wrong actions when power holders abuse their controlling power to others in the process of exercising state power. Once the rule of law and democratic values are institutionalized in the constitution and the law, they will become solid values to prevent and limit dictatorial power and corrupt power. Controlling power sensibly does not hinder the lawful and legitimate activities of power holders but to build and orient the state power according to the desired social goals and to make wise decisions and policies. Good use of legal institutions for controlling state power will make the state more growing, more transparent, cleaner, and truly the state of the people, by the people and for the people, make the state operate in line with the tasks and power entrusted by the people, and make the democracy and the rule of law be maintained, ensuring fairness and social order.

3. CONTROLLING STATE POWER ON THE BASIS OF THE NEW CONSTITUTION

It is affirmed once more time that controlling state power is an indispensable requirement in building a socialist rule-of-law state in Vietnam. Along with the development of theoretical thought about the rule of law, there have been many positive changes in thought about controlling state power. The new Constitution of 2013 has focused on affirming and establishing a mechanism of state power control. Right in Article 2 of the Constitution affirms: “The Socialist Republic of Vietnam is the country where the people are the masters; all state power belongs to the people and is based on the alliance of the working class, the peasantry, and the intelligentsia. 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”. Based on the Platform 2011 on the principles of the organization and operation of the state apparatus, the Constitution 2013 not only affirms the state power is unified and delegated to state agencies which coordinate with and control one another but also state power control has become a principle in the organization of state power for the first time. One of the crucial ideas highlighted and demonstrated throughout the Constitution is the issue of people's sovereignty. The issue of human rights and civil rights has been clearly concretized in the Constitution along with the responsibility of the state in the relationship with the people. With the viewpoint of the people as the subject of constitutional rights who stipulate the limit of the state power and delegate power to the state agencies through the Constitution, which creates an important premise for the formation of a comprehensive mechanism for controlling state power. Specifically, Article 69 stipulates: “The National Assembly is the highest representative body of the people and the highest state power body of the Socialist Republic of Vietnam. The National Assembly shall exercise constitutional and legislative powers, decide on important issues for the country, and conduct the supreme oversight over the activities of the State”. Accordingly, the National Assembly controls the executive power through the activities of supreme oversight over the observance of the Constitution, laws, and resolutions of the National Assembly; at the same time, the National Assembly reviews work reports of the President, Standing Committee of the National Assembly, Government, Supreme People's Court, Supreme People's Procuracy, National Election Council, State Audit Office, and agencies established by the National Assembly. The controlling power of the National Assembly is also exercised through the activities of electing, relieving from duty or removing from office the President, Prime Minister, Chairperson of the National Election Council, the State Auditor General, and heads of other agencies established by the National Assembly; approving proposals on the appointment, relief from duty or dismissal of the Deputy Prime Ministers, Ministers and other members of the

Government; and approving the lists of members of the National Defense and Security Council and the National Election Council (Article 70). Besides, the Constitution 2013 has supplemented all forms of the people using state power, not only in the form of representative democracy through the National Assembly and the People's Councils but also in the form of direct democracy under the provisions of Article 6 of the Constitution: The People shall exercise the state power in the form of direct democracy and of representative democracy through the National Assembly, the People's Council and other state agencies. The Vietnam Fatherland Front and social organizations conduct a supervisory role in the organization and operation of the state (stipulated in Article 9 of the Constitution).

Since being promulgated, the Constitution 2013 has positively impacted on society. In response to the requirements for studying and building the law, and perfecting the legal institutions for controlling state power in the Socialist Rule of Law State, the 13th National Assembly has given priority to work and discuss the construction and amendment of the law in accordance with the content of the new Constitution, especially the law on organizing the state apparatus. At the 8th session of the National Assembly, 18 draft laws were passed, including Law on Organization of the National Assembly (amended), Law on Organization of the People's Courts (amended), Law on Organization of the People's Procuracy (amended). At the next sessions, in turn, the National Assembly has passed a series of bills related to controlling state power such as: Law on Government Organization, Law on Election of Deputies to the National Assembly and Deputies to People's Council, Law on Organization of the Local Governments, Law on State Audit, Law on Vietnam Fatherland Front, Law on Referendum, Law on Associations and Foundations, Press Law, Law on Access to Information, etc. This has contributed significantly to the process of researching, supplementing and perfecting the legal foundation of controlling state power in the Socialist Rule of Law State of Vietnam under the new Constitution.

4. PERFECTING LEGAL INSTITUTIONS FOR CONTROLLING STATE POWER IN VIETNAM TODAY

After over 30 years of renovation and development, the legal institutions for controlling state power have gained many achievements: awareness of controlling state power has been enhanced and recognized as a principle in the Platform and Constitution initially concretized and implemented. However, in the process of state management, the control of state power has still existed some limitations and challenges. In the report summarizing a number of theoretical and practical issues during 30 years of national reform, our Party affirmed: “The power control in the operation of legal institutions in the political system, especially in the state apparatus has not yet been clearly defined and lacked consistency” (Communist Party of Vietnam, 2015, p.12). The legal institutions for

controlling state power have shown a lot of shortcomings in building a socialist rule-of-law state: “not fully aware of the principle of the unified state power, of the mechanism for assigning, coordinating and controlling state power, especially the power control and the role of judicial authorities in controlling legislative and executive agencies exercising the legislative and executive powers” (Communist Party of Vietnam, 2015, p.76) The constitutional power has not been explicitly given to the People, thus the subjects of constitutional rights and legislative rights have not been clearly defined. Affirming the supremacy of the Constitution but not having a strong enough mechanism to protect the Constitution; there has not been constitutional jurisdiction to consider and handle unconstitutional actions in the legislative, executive, judicial and social lives. Many principles on controlling state power have been recorded in the Constitution for a long time but slowly concretized, sometimes concretized by law but still have to wait for the guidance of decrees or circulars. “The supervisory participation of elective bodies, socio-political organizations; social - occupational organizations and the people in the market economy and in the state management activities is still limited and inadequate. In the face of such limitations, difficulties and challenges, it is necessary to constantly study, settle, build and perfect the legal system of controlling state power in the building of a socialist rule-of-law state of the people, by the people and for the people.

- First and foremost, it is important to assert the consistency of the Party's leadership in the construction and improvement of the legal regime for controlling state power in building a socialist rule-of-law state. It is necessary to clarify the relationship between the Party and the State on the principle of the Party's leadership and the State's management so as to be transparent and clear, avoiding overlapping situations. Based on that principle of responsibility assignment, the Party carries out the control of state power, promoting the role of the State. The Party and the Party members and cadres need to constantly study and improve their ruling capacity and theoretical awareness of the ruling methods in accordance with the political orientation of the Party to ensure the construction and operation of the country by laws. The Party should closely lead the process of building legal institutions for controlling state power from drafting laws to implementing laws.

- Continue to study, build and perfect the legal institutions for controlling state agencies in implementing legislative, executive and judicial powers. Accordingly, it is essential to continue developing a mechanism of assignment and coordination among state agencies in the implementation of state power. Assign, clarify the work scope and responsibilities of each agency and individual, avoiding overlapping and evading work. At the same time, create a connection in the coordination, once the executive bodies perform a work, there is also the participation of judicial and legislative bodies, and vice versa.

For the legislature, the control of the state agencies towards the National Assembly has remained limitations in the law and has not been solved. Specifically, the National Assembly, the highest state power body, itself is having to judge the constitutionality in its activities, of the National Assembly's bodies and of documents issued by the National Assembly (the National Assembly considers, decides to suspend the implementation; amend, supplement, cancel or abolish parts or all of the laws and resolutions of the National Assembly contrary to the Constitution. This is very difficult because in case the National Assembly does not abolish the laws and resolutions of the National Assembly contrary to the Constitution, no legal measures can handle it. Therefore, it is necessary to continue conducting additional researches on the procedures of the law in order to strengthen the rigor of this process, enabling the competent legislative agencies to participate. Perfect regulations on the scope of the legislative power of the National Assembly in the direction of clearly defining the cases in which there must be laws and in which there must be resolutions of the National Assembly. Complete regulations on the legislative power of the National Assembly for the Standing Committee of the National Assembly to issue ordinances and for the Government to promulgate decrees.

For the executive, it is necessary to establish additional regulations to increase the control of state power bodies towards law enforcement agencies, such as the mechanism of the government's collective responsibility to the National Assembly; supplement specific regulations to enhance the quality and efficiency of supervisory activities of the National Assembly; promote the role of State Audit and focus on monitoring the spending and using of the state budget... Strengthen the President's control, improve the regulations for judicial bodies to control executive power, especially the control of executive power through the administrative judiciary. Review and supplement regulations to enhance the effectiveness of the self-inspection mechanism in the system of state administrative agencies ...

For the judiciary, it is essential to stipulate the jurisdiction of the judicial system to interpret the law and set legal precedents of cassation decisions; build mechanisms for forcing lower courts to comply with the cassation decisions of higher courts and issue regulations on the publicity of judgments so that the National Assembly, the Standing Committee of the National Assembly, the National Council, the Committees of the National Assembly and the People's Councils at all levels conduct their supervision and trial activities accurately, practically and effectively.

- Encourage the People to participate in the state management; use new technologies to establish an independent system of the supervision and evaluation of superior administrative agencies towards the implementation of their affiliated agencies. Research and apply new independent evaluation tools, such as: Provincial Governance and Public Administration Performance Index (PAPI),

Provincial Competitiveness Index (PCI), etc. to strengthen the participation of people and businesses in assessing the quality and efficiency of the state administrative agencies’ service.

- Step up researching, building and perfecting the legal institutions for protecting the Constitution; build the legal institutions for controlling state power; enhance legal sanctions for controlling state power. Supplement the extent of applying arbitrary legal measures in the process of controlling state power so that the control of state power is really effective.

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