

## Building the Law-Governed Socialist State of Vietnam - Current Situation and Recommendations

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### Abstract

*The law-governed state as an organization and operation method of a state and social regime can be built under the conditions of the socialist regime. This research explains the building of the law-governed socialist state of Vietnam from the perspective of politics and jurisprudence. The article clarifies the perception process of the law-governed state by the Communist Party of Vietnam and identifies the particular features of the lawgoverned socialist state of Vietnam by using logical-historical method and comparative methods. Meanwhile, qualitative research method was used to clarify the achieved results as well as the limitations of building the law-governed socialist state of Vietnam. The author will then propose some recommendations for Vietnam to build and perfect the lawgoverned socialist state.*

**Keywords:** Law-governed state, socialist, Vietnam.

### INTRODUCTION

As a universal value, the law-governed state shows the level of democratic development. Accordingly, the law-governed state is considered as a method of organizing democracy or the method of organizing the state and society on a democratic basis. This means that the law-governed state is associated with the democracy and despite the fact that it is not a type of state defined based on the theory of socio-economic form, it cannot appear in a non-democratic society. This explains why even though the idea of a law-governed state was formed since ancient times, it was not until the birth of the capitalist state, with the emergence of capitalist democracy, that the law-governed state gradually transformed from an idea state into a real state. The rejection of the viewpoint that the law-governed state is a type of state has a great epistemological significance in properly recognizing the nature of the law-governed state. The law-governed state can be built in both capitalist countries and socialist-oriented countries. Consequently, there exists a law-governed capitalist state and a law-governed socialist state in theoretical perception and in practice.

This article aims to make empirical contribution to research on building a law-governed state in socialist-oriented countries while supplementing research on the law-governed state which has so far only focused on capitalist countries.

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## METHODS AND MATERIALS

Logical and historical methods were used to outline the perception process of the law-governed state by the Communist Party of Vietnam.

The success of the August Revolution in 1945 was followed by the birth of the Democratic Republic of Vietnam. The organization of the state apparatus was institutionalized in the first Constitution of Vietnam - the 1946 Constitution. The 1946 Constitution facilitated the Communist Party of Vietnam to advocate uniting its people, regardless of gender, class, or religion and ensuring democratic freedoms.

Since 1986, the Party's viewpoint on the law-governed state has been increasingly completed by the promotion of reform, opening-up and international integration towards the building of a law-governed socialist state: "The State is a tool of the socialist collective mastery regime... Under the Party's leadership, the State's function is to institutionalize by law the rights, interests and obligations of the working people and to manage the economy and society according to the law"; "to govern the state by law, not by morality" (Communist Party of Vietnam, 1986).

At the 7th National Assembly in 1991, the Party proposed continuing to reform the state apparatus, amend the Constitution, improve the organization and operation of the National Assembly, amend the organizational structure and operating methods of the Government and local authorities at all levels. The Congress Resolution did not literally and clearly state the building of the law-governed state. However, in terms of content, it fully demonstrated the guiding spirit of building the law-governed state. The 1992 Constitution marked an important advance in the awareness of the law-governed state, but the concept of the law-governed state was not mentioned in this Constitution. It was not until the Mid-term National Conference (the 7th Tenure) in 1994 that the Party officially used the term "law-governed state" for the first time and specifically and comprehensively stated its viewpoints, principles and contents of building the law-governed socialist state of Vietnam: "Continue to build and gradually improve the law-governed state of Vietnam as the state of the people, by the people, for the people, managing all aspects of social life by law, and developing the country in the socialist direction. The law-governed state of Vietnam is built by strengthening and expanding the great solidarity of the entire people and on the basis of the alliance between the working class and the peasantry and the intelligentsia led by the Communist Party of Vietnam" (Party Communist Vietnam, 1994).

On February 18th, 1998, the Politburo (the 8th Tenure) issued Directive No. 30-CT/TW on the formulation and implementation of the Regulations on grassroots democracy in response to the strengthening and improvement of the government, and implementation of democracy toward building the law-governed socialist state. This enabled the viewpoints on the law-governed socialist state of Vietnam raised by the Party to comprehensively and specifically shape the theoretical framework.

The viewpoint on the law-governed state continued to be supplemented and perfected at the 9th Party Congress by determining that: "To strengthen reform of the organization and operation of the State, promote democracy, and strengthen the law-governed state" with the following contents: "Building a law-governed socialist state under the leadership of the Party"; "Reforming the State institution and operation method"; "Enhancing democracy, maintaining discipline and rules, and strengthening the law-governed state" (Communist Party of Vietnam, 2001).

Specific tasks of building the law-governed state of Vietnam were determined by the 10th Party Congress: "Developing the State's operating mechanism, ensuring the principle that all state power belongs to the people. 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. Improving the legal system, increasing the specificity and feasibility of regulations in legal documents. Building and perfecting a mechanism to inspect and monitor the constitutionality and legitimacy in the activities and decisions of public agencies" (Communist Party of Vietnam, 2006).

The Fundamental to build the country to socialism in the transition period (supplemented and formulated in 2011) identified that the socialist society model built by Vietnam is based on eight features and “building the law-governed socialist state of the people, by the people, for the people” is a basic feature”. Regarding the institutionalization of the Party's viewpoint on building the law-governed socialist state, Article 2 of the 2013 Constitution stated that: “(i). The State of the Socialist Republic of Vietnam is a lawgoverned socialist state of the People, by the People, and for the People; (ii). The Socialist Republic of Vietnam is owned by the People, all state power belongs to the People whose foundation is the alliance between the working class and the peasantry and the intelligentsia; (iii). State power is unified with delegation of power to, and coordination among State bodies in exercising legislative, executive and judicial rights.” (Vietnam National Assembly, 2013). With the above provisions, the 2013 Constitution clearly indicated a very important feature of the law-governed state of Vietnam that is the law-governed socialist state and the basic principle - the sovereignty of the people, which is also a consistent content recorded in five Constitutions from the 1946 Constitution to the 2013 Constitution.

Resolution of the 12th Party Congress emphasized that: “Continuing to build and perfect the law-governed socialist state led by the Party is the central task of the political reform, etc.” (Communist Party of Vietnam, 2016). Resolution of the 13th Party Congress stated that: “Continuing to build and perfect the law-governed socialist state of Vietnam of the people, by the people and for the people led by the Party is the central task of the political reform. Improving the capacity, effectiveness and efficiency of the State's operations. Clearly defining the roles, positions, functions, tasks and powers of state agencies in exercising legislative, executive and judicial powers on the basis of the rule-of-law principles, ensuring that the State power is unified with clear delegation, coordination and control among agencies and enhances control of state power. Building a complete, timely, synchronous, unified, feasible, public, transparent, and stable legal system, focusing on the legal and legitimate rights and interests of people and enterprises to promote reform and innovation, ensuring requirements for rapid and sustainable development” (Communist Party of Vietnam, 2021).

The comparative method was used to show the universality and particularity of the lawgoverned state, and differences between the law-governed capitalist state and the lawgoverned socialist state.

Universal values of the law-governed state have been mentioned in many views and theories of thinkers and political-legal theorists in the history of development of human political and legal ideas, specifically such as: (i) The law-governed state is a centralized expression of democracy. Democracy is both the nature of the law-governed state and the condition and premise of the state regime. (ii) The law-governed state is organized and operates within the framework of the Constitution and laws. (iii) The law-governed state respects, upholds and ensures human rights in all fields of operation of the State and society. (iv) State power in the law-governed state is organized and implemented according to democratic principles: power delegation and control. (v) The law-governed state is associated with an appropriate constitutional and legal protection mechanism. (vi) In the law-governed state, state power is always restricted to the following relationships: State and economy; and State and society.

Apart from universal values, the law-governed state also includes particular values of each country or nation. The particularity of the law-governed state is determined by many factors. These factors are in fact very diverse, rich and complex, and determined by historical, traditional, cultural, and socio-psychological conditions of each nation, political, economic and cultural regimes, and geographical environments. They not only create the particularity and distinctiveness of each nation during the building, defense and development of the country, but also determine the extent to which the universal values of the law-governed state are assimilated and tolerated.

Recognizing the particularity of the law-governed state has a great epistemological significance. This means the law-governed state is a category that is both universal and particular. The law-governed state is both a universal value of humanity and a particular value of each nation and country. There cannot be a general law-governed state as a unified and general model for all countries and ethnic groups. Each country and nation develops an appropriate model of the law-

governed state for itself depending on its historical, political, socio-economic characteristics and development level.

It is necessary to recognize the diversity of the law-governed state model. Moreover, it is required to simultaneously master the following aspects when building the law-governed state in each country:

Firstly, each nation needs to choose an appropriate method for building and operation of its law-governed model based on its needs, requirements and economic, cultural and political development level in addition to democratic traditions. The law-governed state must have the nature of the political regime and reflect the characteristics of the country and nation.

Secondly, it is vital to master the universal values of the law-governed state while absorbing them in compatibility with the historical, cultural and political characteristics of the country. Only by mastering the universal values of the law-governed state as the universal values of the human can the rule of law of the state be ensured according to recognized standards while overcoming extreme nationalism or differences that prevent democratic values from being promoted and posing the risk of falling into a state of isolation in the current modern world.

Thirdly, the organic unity between the universality and the particularity of the lawgoverned state is the theoretical basis that needs to be mastered in the theoretical fight against all external impositions on the law-governed state model or the mechanical, dogmatic, and stereotyped application of the law-governed state model in one country to another. This means the standards of the law-governed capitalist state cannot be imposed on the building of the law-governed socialist state. On the other hand, when mastering the characteristics and particularities of each country, it is essential to put these particular conditions in relation to universal values and to transform those universal values into intrinsic values and national values.

General criteria of the law-governed state can reflect relatively clear differences between the law-governed socialist state and the law-governed capitalist state.

Firstly, the law-governed socialist state and the law-governed capitalist state must both recognize the organization, building and operation mode of the state apparatus prescribed by law. However, there are many fundamental differences in the nature and content of the laws on the organization, building and operation of their state apparatus. The most obvious difference lies in the constitutional and legal norms on organization, personnel structure and the building and operation of the power apparatus such as the National Assembly and Parliament; President, Prime Minister, Court, and Constitutional Court, etc. The law in the law-governed socialist state recognizes that all state powers belong to the people and authorities (National Assembly, Government...) are elected by the people and only the people, directly or through their deputies, have the right to declare the termination of the operation of the National Assembly or the Government or organize a new National Assembly and Government. Meanwhile, the Constitution and law of a capitalist state recognizes the individual power of the President or the Prime Minister who has the right to dissolve the Parliament (National Assembly) or dissolve the Government, etc.

Secondly, in a law-governed socialist state, both the state and its citizens must acknowledge the supremacy of the law because socialist law expresses the will and aspirations of the entire people. However, in a law-governed capitalist state, although both the state and its citizens must also acknowledge the supremacy of the law, the law of capitalism is not the law of the entire people and does not fully represent the will and aspirations of the entire people. On the contrary, it only reflects the will and aspirations of a part of the people that is the rich or the bourgeoisie. To explain it more clearly, the laws of the law-governed capitalist state only protect the interests of the bourgeoisie and marginalize the rights of the working class that is oppressed and exploited. This is the most fundamental difference between the law-governed socialist state and the lawgoverned capitalist state.

Thirdly, the law-governed capitalist state considers the theory of "separation of powers" as the basic doctrine in the exercise of state power and the legislative, executive, and judicial branches

are completely independent of each other in the exercise of the legislative, executive and judicial powers. Meanwhile, the law-governed socialist state does not acknowledge the division of power and considers that state power is unified and belongs to the people with clear delegation, coordination and control among agencies to exercise legislative, executive and judicial powers to ensure state power is unified and exercised with the highest efficiency.

Qualitative research method was used to clarify the results achieved besides limitations of building the law-governed socialist state of Vietnam, thereby proposing a number of recommendations for Vietnam to remedy the limitations for perfecting the law-governed socialist state.

## **RESULTS AND DISCUSSION**

Political, legal and practical research on building and operation shows that the lawgoverned socialist state of Vietnam is fundamentally different from the law-governed capitalist state in three basic points:

Firstly, the law-governed socialist state is a tool to reflect and exercise the people's right to mastery, ensuring and protecting the interests of the majority of the people. Through law enforcement, the state ensures the conditions for the people to be the subjects of political power, implementing dictatorship with all actions that harm the interests of the Fatherland and the people (Nguyen, 2021). The law-governed socialist state of Vietnam is under the leadership of the Party and the ultimate adjustment of the Constitution and legal system to ensure openness, transparency, feasibility, efficiency, principles of equality and protection of human rights and the supremacy of the law-governed socialist state. Particularly, the relationship between the Party, State and people is a relationship between subjects which is united in goals and interests with a general operating mechanism of “the Party's leadership, the State's management and the people's mastery”.

Secondly, in the law-governed socialist state of Vietnam, state power is unified with delegation of power to, and co-ordination among state bodies in exercising legislative, executive and judicial rights with strict inspection and supervision of the exercise of state power. Starting from the 7th Party Congress (1991), with the "Fundamental to build the country to socialism in the transition period", the viewpoint on the existence of three powers and the division and coordination between those three spheres of power of the

State has just been officially affirmed. Moreover, at the 8th Central Conference (the 7th Tenure) in 1995, the Party's concept of three rights was significantly supplemented: State power is unified with clear delegation and coordination among agencies to exercise legislative, executive and judicial powers. The Resolution of the 11th National Congress and the Fundamental to build the country to socialism in the transition period (supplemented and formulated in 2011) both include additional attention to power control issue in the mechanism of state power organization in Vietnam. Accordingly, the principle that state power is unified with delegation, coordination and control among agencies to exercise legislative, executive and judicial powers has been completed an important step. The viewpoint of the unity of state power with clear delegation, coordination and control between the three rights and powers of the state is a guiding principle in in designing the organizational model of the law-governed socialist state of Vietnam in the current context (To, 2021).

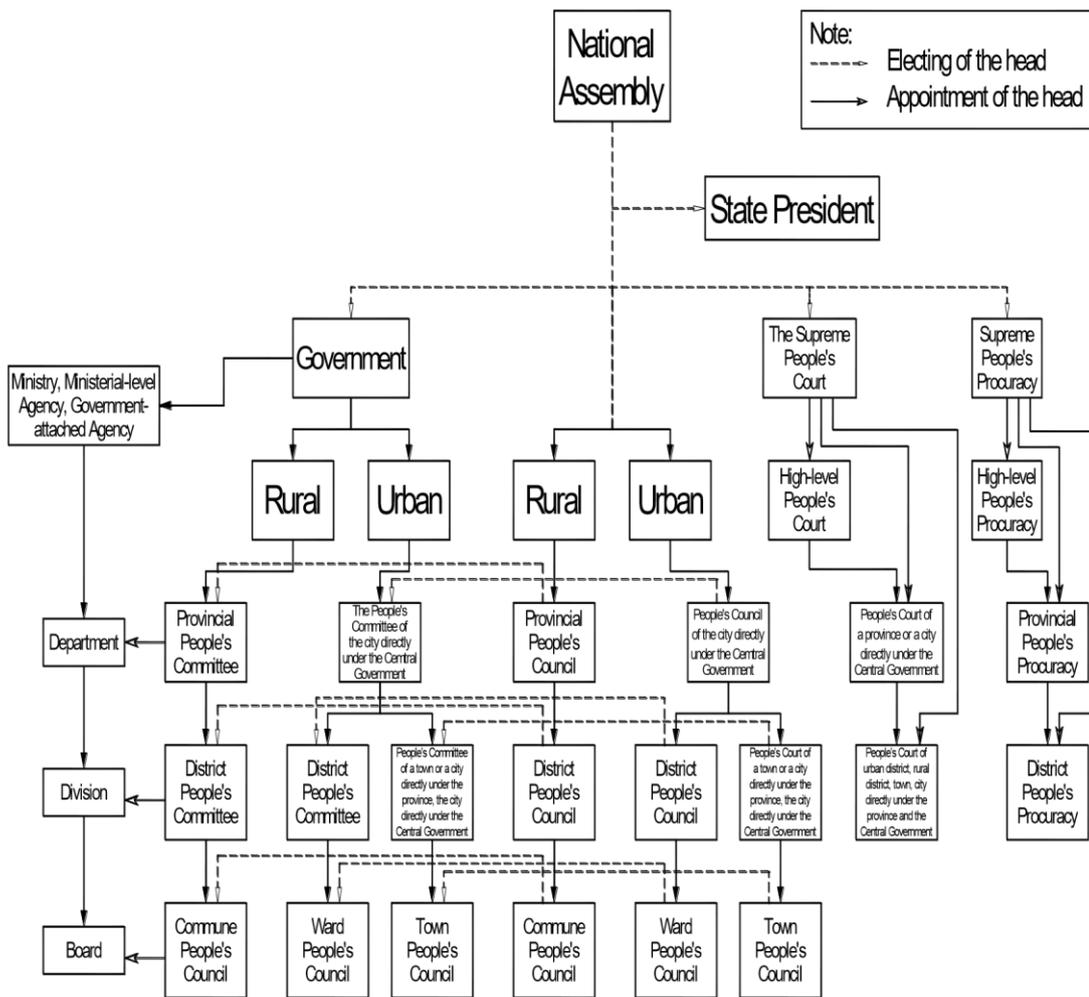


Figure 1: Vietnam state apparatus diagram

Thirdly, the law-governed socialist state of Vietnam is the State led by the Communist Party of Vietnam.

The leadership of the Communist Party is reflected in the fact that the Communist Party of Vietnam is the sole Party in power over the State and the society. For the State, the Party assumes political leadership and decides political direction of the State while ensuring that the State is really an organization to exercise the power of the people, by the people and for the people to successfully implement the socialist-oriented reform of the country. The State deploys and organizes the implementation of the Party's resolutions and policies through state management activities and creates favorable conditions for people to participate in state management and social management in economic, political, cultural, social, security, defense and foreign affairs fields, etc.

The Party assumes leadership over the National Assembly by determining major orientations, principles, viewpoints, policies and solutions, and permits the National Assembly to discuss and decide according to the law without any imposition. Therefore, activities carried out by the National Assembly are increasingly qualitative and substantive and attract increasingly widespread attention from public.

The Party's leadership over the Government is reflected in the fact that the Party only decides on issues of opinion, ideology and major undertakings to direct and orient the Government's organization of implementation in accordance with the law instead of deciding specific policies within the scope of the Government's management and acting on behalf of the Government.

The Party lays down judicial reform of the People's Court and the People's Procuracy as a policy. To implement this policy, many legal provisions on the organization and operation of the People's

Court and People's Procuracy have been amended, supplemented or formulated to form a legal basis for the reform of the organization and operations of these agencies. The Party leads the judicial branch while respecting the independence of the Court's adjudication. Judges and jurors conduct trial independently and abide by law only.

There are many important achievements in building the law-governed socialist state of Vietnam. The legal system has been completed basically to ensure the requirements of management, stability, socio-economic development, building and protection of the Fatherland. The National Assembly exercises constitutional and legislative power and decides on important issues of the country while the supreme supervision has many innovations with improved quality and efficiency. There is a strong development in lawmaking activities in both quantity and quality with a rapid increase in the number of laws and ordinances promulgated for nearly 40 years (1986-2022). The National Assembly adopted 7 codes, 133 laws and 15 ordinances from 1986-2005. It also passed 329 laws and ordinances from 2006-2022 (Pham, 2022). Many international laws and treaties that are consistent with the country's development requirements have been internalized, especially those related to human rights.

The role and the right to mastery of the people are consolidated, promoted, and guaranteed to spread the spirit that “all state power belongs to the people” in addition to direct democracy and representative democracy mechanism, especially grassroots democracy, reinforcing the people-centered motto: “people know, people discuss, people do, people verify, people supervise, and people benefit”.

The state apparatus was initially arranged in a streamlined and modern manner with effective and efficient operation. The delegation, coordination among agencies to exercise legislative, executive and judicial powers is becoming clearer with positive changes.

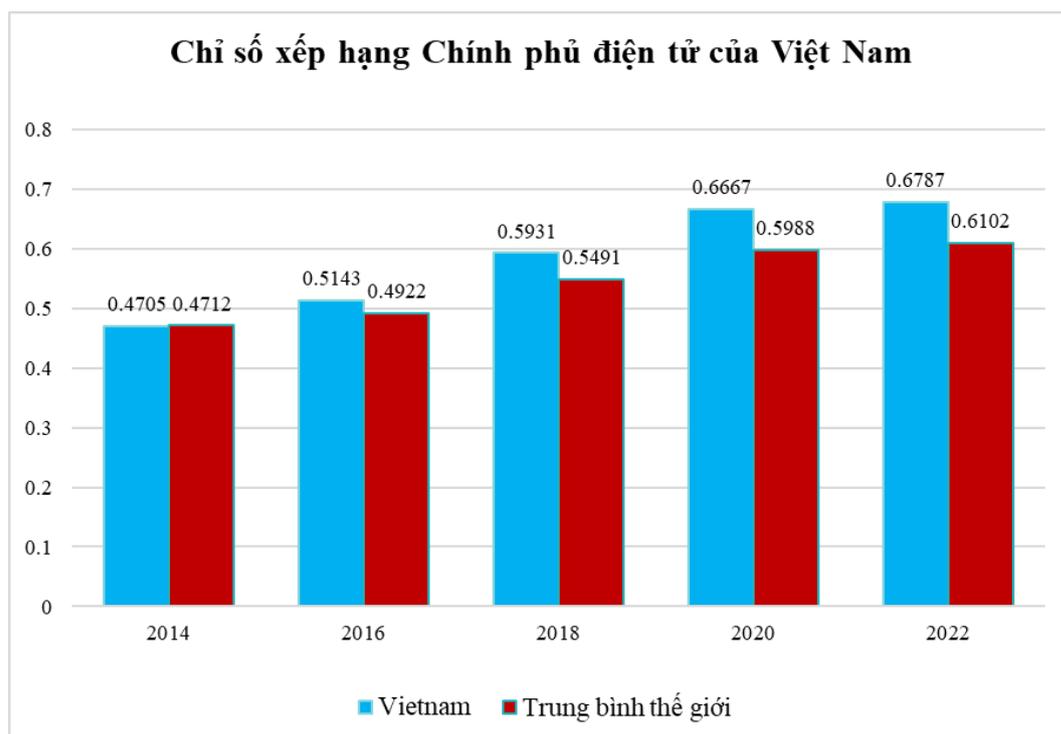


Figure 2. E-Government Development Index (UN E-Government Knowledgebase, 2022)

As reported by the United Nations (UN) in 2022, Vietnam's E-Government Development Index is 0.6787, ranked 86th out of 193 countries, higher than the world average (0.6102).

In Southeast Asia, Vietnam has successfully maintained the same position as the previous year, ranking sixth among 11 countries, after Singapore, Malaysia, Thailand, Brunei and Indonesia.

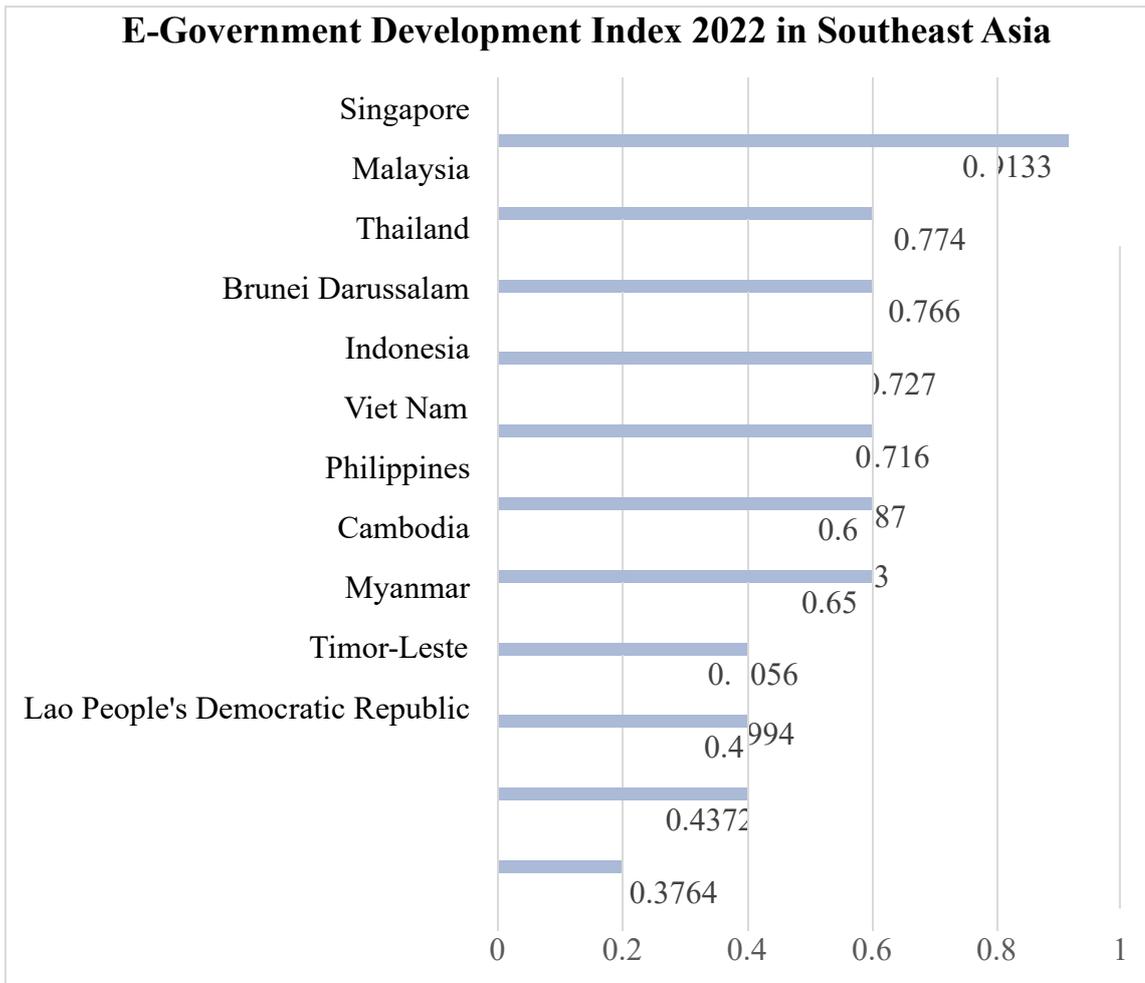


Figure 3. E-Government Development Index 2022 in Southeast Asia (Vietnam Ministry of Information and Communications)

Vietnam has built a professional team of officials and civil servants that has good moral qualities and constantly improved working quality to meet task requirements in a streamlined system. In the period 2011-2020, there are 295,536 existing officials and civil servants in ministries, branches and localities from district level and above (including 125,144 officials and civil servants in ministries and central branches). In terms of expertise and training: there are 2,347 officials and civil servants with doctoral degrees (accounting for 0.8%) 19,136 officials and civil servants with master's degrees (accounting for 6.5%); 210,592 officials and civil servants with university degrees (accounting for 71.3%); and 12,885 officials and civil servants with college degrees (accounting for 4.4%) (Government of Vietnam, 2021).

Elected representatives perform their roles and responsibilities more clearly and effectively. Law enforcement agencies operate proactively and actively, focusing on management and administration while addressing difficulties, serving and supporting development. There is a breakthrough in administrative and judicial reforms which have achieved an improved quality of operations and better protection of the interests of the State, the legitimate rights and interests of organizations and individuals. Human rights and civil rights are respected, protected and guaranteed.

Many measures have been proactively implemented in the fight against bureaucracy and corruption in the state apparatus. In the period 2016-2021 alone, the Court sector accepted 2,433,631 cases and resolved 2,375,938 cases (97.6%). It also tried 7,463 serious and

complex corruption, abuse of position, and economic cases with 14,540 defendants and application of strict and lawful penalties (the Supreme People's Court of the Socialist Republic of Vietnam, 2021).

However, there are a number of limitations in building of the law-governed socialist state resulting in the failure to meet the socio-economic development and national management requirements in the new situation. Specifically, there are still a number of regulations in the legal system that are not unified and impractical with loopholes and overlaps. The power control mechanism is incomplete with limited supervisory role of the people. There are not comprehensive reforms in organization and operation of local governments in some provinces with unclear, ineffectiveness and inefficiency delegation of functions and tasks, and decentralization. The sense of law observance is not high. State discipline is partly overlooked, violations against laws are not dealt with promptly while sanctions are not strict enough to deter. Administrative and judicial reform have not fully met development requirements of the country. Officials and civil servants are not organized in a streamlined manner. Part of them have limited quality, capacity, reputation, and professionalism resulting in the failure to meet the requirements and fulfill tasks in the new situation. The reform between economy, politics, culture and society in addition to reform in organization and operations of the state apparatus are not synchronous and consistent.

Besides great achievements, there are also many difficulties and challenges in the building of the law-governed socialist state of Vietnam. The author proposes following recommendations in order to continue to build, perfect, and promote the effectiveness and efficiency of the law-governed socialist state:

Firstly, it is required to bring the unity in awareness and actions to build and perfect the law-governed socialist state of Vietnam into central focus in the political system reform. It is essential to clearly define the roles, positions, functions, tasks and powers of state agencies in exercising legislative, executive and judicial powers on the basis of the rule-of-law principle, ensuring that the state power is unified with clear delegation, coordination and control among agencies and enhances control of state power. It is necessary to build a complete, timely, synchronous, unified, feasible, public, transparent and stable legal system, bring the legal rights and interests of people and businesses into focus to promote reform and innovation. It is compulsory to closely associate law development with law propaganda, improve the effectiveness and efficiency of law enforcement, inspection, examination and handling of law violations.

Secondly, reform in the organization and operation of the National Assembly as the highest representative body of the people, the highest state power agency of the Socialist Republic of Vietnam is a must. It is crucial to improve the quality and efficiency of operations, promote democracy, rule-of-law, and professionalism in executing legislative functions, deciding on important issues of the country and supreme supervision. It is important to continue to renew and improve the quality of the legislative process, focusing on building and perfecting development institutions, especially the socialist-oriented market economy institutions; respect, ensure and protect human rights and civil rights; perfect the mechanism to protect the Constitution, supervise and vote of confidence for those holding positions elected or approved by the National Assembly and People's Councils; ensure standards and structure while improving the quality of delegates towards a reasonable increase in the number of full-time delegates besides reducing the number of delegates working in executive and judicial agencies. Establishing synchronization and connection between the supervision mechanism of elected bodies and the social supervision and criticism mechanism of the Fatherland Front, socio-political organizations and the people is needed.

Thirdly, it is significant to build a state administration in service of the people, democracy, and rule-of-law that is professional, modern, clear, strong, public and transparent. It is fundamental to continue to reform the Government's organization and operations towards streamlining, effectiveness and efficiency; to fully promote the position, role, functions, tasks, and powers of the executive agency of the National

Assembly and the highest state administrative agency with a focus on macro management and development of institutions, strategies, planning, and plans; to strengthen the capacity to forecast,

analyze and propose policies based on scientific arguments and practice in the new situation. It is urgent to promote decentralization of power, clearly define responsibilities between the Government and ministries, departments and branches and between Central and local levels in addition to thoroughly remedying overlapping functions, tasks, and powers while ensuring centralized and unified state management. It is imperative to focus on reforming wages, regimes and policies; to build a streamlined and strong team of officials, civil servants, and public employees who are smart, have sufficient qualities, capacity, prestige, innovation, and creativity to serve the people and the development of the country.

Fourth, to build a professional, modern, fair, strict, and integrous judiciary to serve the Fatherland and the people is mandatory. Effective fulfillment of the responsibility for protecting justice, human rights, civil rights, the socialist regime, the interests of the State, the legal and legitimate rights and interests of organizations and individuals is a paramount task. It is principal to implement organizational reform, improve the operational quality, effectiveness, efficiency, and reputation of the people's courts, people's procuracy, investigation agencies, and judgment enforcement agencies in addition to agencies and organizations participating in judicial activities while promptly and legally resolving disputes and complaints as prescribed by law and effectively prevent and fight against criminal activities and law violations.

Fifth, perfecting the organization of local government suitable to rural areas, urban areas, islands, special administrative-economic units as prescribed by law besides implementing and summarizing the pilot urban government in order to build and operate smart, modern, streamlined, effective and efficient urban governance models plays a significant role. It is critical to connect and undertake reforms in the organizational apparatus and operating mechanism of the Fatherland Front and socio-political organizations at all levels in addition to reforms in decentralization of the state budget towards delimitation, ensuring the leading role of the central budget while enhancing the initiative and autonomy of local budgets.

## CONCLUSION

There have been many achievements in the building and improvement of the lawgoverned socialist state of Vietnam with important contributions to the country's development by both absorbing and applying universal human values and ensuring consistence with the country's features. Vietnam's legal system has been basically completed and asymptotic to international law. There is always a great emphasis on the role of law and law enforcement in addition to more and more positive and obvious changes in the mechanism for delegating, coordinating, and controlling power. The state apparatus is initially streamlined and operated in a more effective and efficient manner. Apart from breakthrough in administrative reform and judicial reform in a number of fields, human rights and citizen rights are concretized in law and enforced in practice while the Party's leadership role in building and perfecting the law-governed state continues to be affirmed. However, there are still many limitations and shortcomings besides such achieved results. Therefore, continuing to build and perfect the lawgoverned socialist state of Vietnam remains the sharp focus in the political system reform in Vietnam's reform process in the new period with general and specific goals up to 2030. (Resolution No. 27-NQ/TW, 2022). As a result, it is vital to continue researching and clarifying theoretical and practical issues of the law-governed socialist state, especially the relationship between common and universal values and specific characteristics, the relationship between Party leadership, State management, and People's ownership. It is also necessary to confirm that State power is unified with clear delegation, coordination and control among agencies. Furthermore, judicial power, judicial independence, judicial authority and mechanism to protect the Constitution, the concept of people's sovereignty and human rights, etc., should be analyzed.

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