

**MINISTRY OF EDUCATION AND  
TRAINING**

**MINISTRY OF JUSTICE**

**HANOI LAW UNIVERSITY**

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**HOÀNG THỊ THÚY HẰNG**

**COMPLETING LEGAL FOUNDATION OF  
COMMUNIST PARTY'S LEADERSHIP ON  
CURRENT STATE OF VIETNAM**

**DOCTORAL DISSERTATION OF LAW  
SUMMARY**

**HANOI, 2015**

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**Major:       Theory and history of the state and law**  
**Code:        62 38 01 01**

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SUMMARY**

***Supervisor:*   Nguyen Van Dong, Assoc. Prof. Dr.**

**HANOI, 2015**

## INTRODUCTION

### 1. The importance of the topic

Since Communist Party of Vietnam (CPV) was established in March 1930, it has played an important role as political leadership in Vietnam society although it had been activated either in public or clandestine forms and used many different names. Especially, when the State of Vietnam (SV) was born in August 1945, the CPV became the ruling party to carry out the historic mission of leading the State. That position was affirmed by the Communist Party's great achievements in Vietnam's revolutionary history, which decided the stability and development of Vietnam society in the period of Vietnam's renovation and construction. CPV's contributions to the country and its people are always respected by Vietnamese.

Currently, the CPV's leadership on SV and Vietnam society is legally guaranteed by the provisions of the 2013 Constitution (Article 4) and in other legal documents. The law creates the legal framework to be implemented by members, organizations of CPV, officials, civil servants and agencies, organizations of SV which ensures the effective implementation of the CPV's leadership on SV, especially in the context of building the law-governed socialist state in Vietnam.

Although legal foundation (LF) of the CPV's leadership on SV has been established, the LF completion still needs to be done. It is because of some specific reasons such as current LF content is only focused on the Constitution Justice, as the orientation rules and principles have not been concretized by the specific judicial norm; the number of judicial norm on the CPV's leadership on SV is limited, is not adequate to the range and importance of the relationship between the CPV and SV. Moreover, there are also some situations that CPV acts as a Pooh-Bah on SV, in contrast, SV depends on the leadership of the CPV, loses initiative, and does not fulfill duties entrusted by CPV and Vietnamese due to the shortage of judicial norm concretized by Constitution. In fact, the leadership is mainly specified by the regulations of CPV, and this is one of the main reasons for the hostile forces to against CPV and Vietnam revolution. Therefore, the LF completion is to perfect the legal system, implement the Constitution of 2013, build CPV's defense mechanism, protect firmly the CPV's leadership on SV by law, in accordance with the requirements and conditions for building the law governed socialist state in Vietnam while contributing to improve the effective leadership of CPV and SV operation.

Though LF improvement of the CPV's leadership on SV is an urgent issue, research activities about this in our country are mainly focused on CPV's construction and adjustment;

enhance the effective of the CPV's leadership on SV and society ... There is almost no research directed on this issue comprehensively and systematically. That is the reason why I choose "*Completing legal foundation of the Communist Party of Vietnam's leadership on current State of Vietnam*" as the topic of my doctoral dissertation.

## **2. Aim and mission of the study**

To clarify the theoretical basis and assess LF of the CPV's leadership on current SV, the study aims to show the basic elements of the LF and give possible solutions to finalize LF in accordance with Constitution in 2013 in the CPV's leadership on current SV.

To achieve this purpose, the dissertation has the following tasks:

- *First of all*, building the theoretical basis for improving LF of the CPV's leadership on SV: continue to clarify arguments of inevitability, contents and methods of the CPV's leadership on SV; establish the LF intenal concept of the CPV's leadership on SV, complete LF; perfect LF of the CPV's leadership on SV on the subject, content, form and method of completion.

- *Secondly*, assessing the status of the CPV's leadership on current SV while researching the general establishment of LF for political positions of political parties, ruling political parties in numerous countries in the world.

- *Thirdly*, identifying the factors affecting the LF completion, views, recommendations and solutions for perfecting the CPV's leadership on SV and showing necessary conditions to ensure implementing this LF in the near future.

## **3. Subject and scope of the study**

*Subjects* are theoretical and practical issues of completing LF of the CPV's leadership on current SV.

*Scope*: The dissertation mainly research on the basic content of LF and the LF completion of the CPV's leadership on SV.

## **4. Methodology and research methods**

- *Methodology*: The dissertation is done on the basis of the methodology of historical materialism, dialectical materialism, Marxism-Leninism and Ho Chi Minh's Thought and the CPV's views on the State and law.

- *Specific research methods*: *Historical research method* (Chapter 2, 3); *Synthetic method* (Chapter 1, 2, 3, 4); *Analytical method* (Chapter 1, 2, 3, 4)

- *Approach of the dissertation*:

*Approach by the view of theory and the State's history and law*: the law-state, the ruling party, the people's power

*Systematic approach:* analyze, evaluate the existing legal basic with the CPV's leadership on SV in a complex that relating and directly affecting each other, forming a unified body.

*Interdisciplinary approach:* the content of this dissertation was put under the coordination of many social sciences such as: jurisprudence, political science, and the CPV's history.

## **5. New findings of the Dissertation**

*Firstly*, the Dissertation has taken the initial step in building the theoretical foundation of the CPV's leadership on SV, especially in establishing the concept of LF and completing LF.

*Secondly*, the Dissertation has evaluated the current status of the LF of the CPV's leadership on SV, and pointed out the achievements and limitations of the LF of the CPV's leadership on SV.

*Thirdly*, the Dissertation has proposed some solutions to complete the LF of the CPV's leadership on SV that are in line with the spirit of the 2013 Constitution. The most basic solution is to built Law of CPV.

It can be said that due to the complex of the topic and lack of materials, the dissertation may contain some vague problems, or even controversial ones; however, they may inspire further studies on those problems.

## **6. Theoretical and practical meanings of the Dissertation**

The results of this Dissertation will contribute to widen the knowledge about LF and complete the LF of the CPV's leadership on SV in the context of single-party rule now in Vietnam.

This Dissertation's results will also provide valuable references for practitioners while implementing the CPV's leadership on SV, as well as building and completing the law and the SV's implementation of the legislator of CPV in the context of building the law-governed socialist state in Vietnam and the process of innovating, rapid and sustainable development and globalization in Vietnam.

## **7. Organization of the Dissertation**

Apart from the Introduction, Conclusion and List of references, the Dissertation consists of 4 chapters:

Chapter 1: Overview of the researching process on the Dissertation's topic

Chapter 2: Theoretical foundation of completing the legal basis of Communist Party of Vietnam's leadership for current State of Vietnam.

Chapter 3: Status of legal basis of Communist Party of Vietnam's leadership for current State of Vietnam.

Chapter 4: The views and solutions to complete the legal foundation of Communist Party of Vietnam's leadership for current State of Vietnam.

## **Chapter 1**

### **OVERVIEW OF THE RESEARCHING PROCESS ON THE DISSERTATION'S TOPIC**

It can be said that in the literature review, both domestically and internationally, there was no study that systematically, profoundly and directly researched on the issue of completing the legal basis of the Party's leadership for the State as they only referred to some relevant issues such as: political party and ruling party; enhance CPV's leadership ability as the ruling party; political system innovation, CPV's leadership method on SV innovation,... However, to have an overview of the subject that the Dissertation will analyze, we can consider and assess the domestic and international research projects that related to these issues:

*1.1. Studies on the need for the ruling political party, the leading party for the state currently in different countries.*

*1.2. Studies on the necessity, functions, content and methods of leading of Communist Party of Vietnam for the State of Vietnam.*

*1.3. Studies on the must for the completion, views, and solutions to complete legal basis of Communist Party of Vietnam's leadership for State of Vietnam.*

*1.4. Overview about the agreed issues and the under discussing ones.*

#### **1.4.1. Agreed issues**

*Firstly*, in the literature, the authors have confirmed the need for the ruling political party in the modern states to perform the role of orientating and leading the state to achieve social sustainable development.

*Secondly*, the previous studies claimed that: ruling party and state are both necessary institutions to perform the authority from the people's power, but the ruling party and the state have very different roles, functions, and methods of performing.

*Thirdly*, the domestic studies all acknowledged the necessity of the leading role of the CPV for the SV.

*Fourthly*, the previous studies all agreed that: one of the solutions for enhance the effectiveness of the CPV's and SV's activities is the need to distinguish the functions and roles of CPV and SV.

#### **1.4.2. Under discussing issues**

*Firstly*, previous studies only approached the issue and the relationship between the Party and the State through political science and the Party construction, but do not approach through the jurisprudence. Therefore, the issues such as the legal basis or legal basis completion for the leader relationship that under the Party's and the State's leadership have not been deeply and thoroughly considered. This is a research issues that remain unsolved.

*Secondly*, in the previous studies' results, although the need for separation and concretize the leadership of the Party with the management and administration of the State was acknowledged, the studies have not united in whether the transparency is reflected in the law's provisions or the Party's regulations.

*Thirdly*, in the domestic studies on CPV, the completion of the Constitution's provisions and the law on the leadership of the Party over the State was mentioned and it was considered to be one of the solutions to protect the CPV and the SV. However, these views were only introduced and left open and unsolved. Therefore, this issue will open up new research in theoretical science.

*Fourthly*, the previous study, the view to complementing the provisions of the law on the leadership of the CPV for the SV was mentioned, but the debate on identifying the completion content among the authors also unfinished. Some authors said that finalizing the current Constitution's provisions in only one chapter; but the others argued that it needed to be built into a statute on the CPV.

## **Chapter 2**

### **THEORETICAL BASIS OF COMPLETING THE LEGAL FOUNDATION OF COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON CURRENT STATE OF VIETNAM**

#### **2.1. THE NECESSITY, CONTENT, METHODS OF LEADING OF COMMUNIST PARTY OF VIETNAM FOR THE STATE OF VIETNAM.**

##### **2.1.1. Communist Party of Vietnam is a ruling party**

The existence of one or more parties in sociopolitical life is a common phenomenon in many countries today. The role of political parties to the state and the society is quite clear. It can be seen in these following ways:

- Political party orientates the ideological for the state and the society on the basics of each country such as: the issue of State's power, people's power, management and development of economic, political, and social relations, etc.
- Political party involves in the implementation process of the State's power by sending members into the state body.
- The opposite political party participates in monitoring the ruling party's activities in leading the State to perform the State's power constitutionally and legitimately.
- Political party protects the interests of the class it represents.

The establishment of a ruling party in the political life of a country can be realized through many ways: the worship of the people, elections, or even violent suppression activities.

In Vietnam, Marxism – Leninism is considered as the ideological foundation of CPV to map out specific goals and revolutionary solutions for each historical period. Based on Marxism – Leninism with the proper and appropriate political philosophy aligning with Vietnam's historical conditions, along with the prominent leadership role of Nguyen Ai Quoc, CPV had attracted a large number of the working class and all working people to involve in the revolution initiated and led by CPV. The biggest achievement of the revolution is the birth of SV. Under the CPV's leadership, since its establishment, SV has consistently been realizing the goals and ideals outlined by CPV on building socialism. And with the birth of SV, the achievements of CPV to the nation and the people were recorded and gradually, the position and role of CPV as the ruling party were established to lead the state and society in line with the SV's law.

### **2.1.2. The necessity of Communist Party of Vietnam's leadership on the State of Vietnam**

In Vietnam, in the late nineteenth century and early twentieth century, the French colonialists implemented the colonial exploitation policies in a large scale, causing the majority of working people, primarily farmers to be pushed into an impasse and the emergence of several industries such as mineral and mining, transportation and light industry. Thereby, some new social classes and forces were formed, including the working class, the bourgeoisie, the intelligentsia, and the lower middle class. The patriotic resistance movements against French colonialists continuously erupted, but eventually were



unsuccessful because of the lack of proper revolutionary guidelines; poor organization and lack of revolutionary leadership forces. After approaching and studying Marxism - Leninism, the Great October Socialist Revolution (1917) in Russia and the specific situation of the country, leader Nguyen Ai Quoc had made a theoretical preparation for the establishment of CPV; and on 03/02/1930, the CPV was official founded. Immediately after, in 10/1930, at the Central Conference for the first time, CPV proposed the Political dissertation to determine methods, forces and strategies of Vietnam's revolution.

The birth of the CPV's Political Platform ended the impasse of the revolutionary theory as well as revolutionary path of the nation at that time. Based on the proper and scientific political philosophy of Marxism - Leninism on class struggle and national liberation in the colonial countries, the revolutionary motivation and the proletarian forces and colonial peoples, CPV applied them into Vietnam's social practices, attracted and gathered numerous patriotic people unanimously following CPV to wage the national revolution.

In that historical context, the appearance of CPV is a historical inevitability. The persuasiveness and belief in the CPV's leadership on SV originated from the leadership capacity and the results of the national revolutions initiated and led by the CPV. This leadership is voluntarily and consistently approved by of the People of Vietnam. CPV cannot either order or enforce SV and the society to implement of its guidelines and policies, but it is the correctness and suitability of these guidelines and policies creating the people's voluntary consent of the CPV and SV's leadership.

### **2.1.3. Content and Methods of Communist Party of Vietnam's leadership on the current State of Vietnam**

Communist Party of Vietnam performs the leadership role on the State of Vietnam through the content and specific leadership methods.

**The content** of the CPV's leadership on SV is reflected in the scope of work of the state, which needs impacting and leading by CPV to guarantee that the implementation is in line with the will of the Party. The content of the CPV's leadership is historical and suitable for each specific period of the country. In particular:

- CPV takes on the leadership role in organizing the apparatus of SV.
- CPV leads SV in implementing national management functions in terms of legislative, executive and judicial.

**The leading methods** of CPV on SV are the manners of expression and the ways to carry out the CPV's leadership activities on the SV. Currently, CPV performs its leadership role on SV through the following methods:

- CPV proposes policies and guidelines for the organization and operation of SV.
- CPV leads SV through personnel work.
- CPV leads SV through the Party's system of organizations held outside to and inside the State agencies.

- CPV leads SV through supervising and inspecting the State agencies in terms of executing of the political credo, policies, guidelines and resolutions of the Party.

## **2.2. LEGAL FOUNDATION OF THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE CURRENT STATE OF VIETNAM**

### **2.2.1. The concept of the legal foundation and the necessity to build a legal foundation of the Communist Party of Vietnam's leadership on the current State of Vietnam**

The legal foundation of the CPV's leadership on SV is the overall of legal norms setting constitutional principles of the position and role of the CPV's leadership on SV, the scope of content, leading methods and the Party's responsibilities on the organization and operation of SV. The legal foundation is to guarantee the CPV's leadership on SV to be implemented legally, effectively and responsibly; and to ensure the effectiveness of the state, the legitimate rights and interests of the people.

### **2.2.2. The content and forms of the legal foundation of the Communist Party of Vietnam's leadership on the State of Vietnam**

**In terms of content**, the LF of the CPV's leadership on SV includes:

- The legal norms in the Constitution on constitutional principles of on the position and role of the CPV's leadership on SV;
- The legal norms in other legal normative documents regulating the content, methods and regulations concerning CPV's responsibilities towards the SV's organization and operation

**In terms of forms**, the LF of the CPV's leadership on SV is performed in all the norms contained in the legal normative documents.

According to the current national legal system, LF of the CPV's leadership on SV is expressed in two forms, regulated in the Constitution and in the legal normative documents.

Besides, the CPV led the society and the people of Vietnam to wage the national democratic revolution, and since the establishment of SV, after the victory of the August Revolution (1945), CPV has taken on the leadership role on the state. Therefore, in fact, the Party has performed its leadership role on SV not since there were rules and regulations in the Constitution and the Law, but since the establishment of SV with CPV's rules and

regulations. Therefore, studying on the LF and completing LF of the CPV's leadership on SV, apart from researching the rules and regulations in the Constitution and the legal normative documents which is current LF of CPV's leadership on SV, it is essential to do more research on the rules and regulations of the Party on this issue.

### **2.3. COMPLETING LEGAL FOUNDATION OF THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE STATE OF VIETNAM**

#### **2.3.1. The concept and the necessity of completing legal foundation of the Communist Party of Vietnam's leadership on the State of Vietnam**

Completing LF of the CPV's leadership is understood as a process of modifying and supplementing the existing rules and regulations that are current LF and building new ones on CPV's leadership on SV to meet the requirements of the Party's leadership role on the state in the contexts of building a law-governed socialist state at current time and development trends in the future.

In the current period, it is necessary to completing LB of the CPV's leadership on SV due to following reasons:

- At present, regarding to adjusting the relationship between the Party and the State, apart from Article 4 of the Constitution as a principle, there is only a few specific rules and regulations on this issue. Therefore, the Party and the State need to concretize Article 4 of the 2013 Constitution into a system of laws and regulations on the CPV's leadership on SV, contributing to complete LF of the CPV's leadership on SV in the current period.

- The completion of the LF on the leading and being led relationship between the Party and the State is not only the theoretical requirement for building and perfecting the legal system but also the conditions to secure the implementation of paragraph 2, Article 4 of the Constitution (2013) on supervision regime and the Party's responsibilities before the people.

- The completion of the LF of the CPV's leadership on SV is to determine the responsibilities and duties of the Party as well as of the State to improve the operational efficiency of the two political institutions.

- Perfecting the LF including the regulations and rules on the Party's leadership on the State and society is also the intrinsic will of the Party: building a real and effective democracy.

#### **2.3.2. Objectives and principles perfecting the legal foundation of the Communist Party of Vietnam's leadership on the State of Vietnam**

The completion of the LF of the CPV's leadership on SV implies following objectives:

**Overall objectives:**

- Building a solid LF for the Party's leadership on SV to guarantee and improve the Party's leadership in both current and forthcoming contexts of the country and of the world
- Meeting the requirements of building a law-governed socialist state and the criteria of a law-governed state, a law-governed society and the realization of democracy in the Party and in the society and implementing the Constitution in 2013, especially Article 4.

**Specific objectives:**

- Using law to regulate the Party's direct leadership on SV to turn this relationship into a legal relationship, not a purely political one, thereby, the duties and functions of the Party and the State are guaranteed to implement by law;
- Ensuring of the CPV's leadership on SV, the party organization for the corresponding state body implemented within the framework of the Constitution and the law; clarifying the responsibilities of organizations and individuals involved in the leading and being led relationship. Organizations and individuals that exceed the framework will have to take responsibility before the Constitution, law and discipline of the Party.

In order to achieve these stated objectives, the process of completing the LF of the CPV's leadership on SV must comply with the following **basic principles**:

- The completion of LF of the CPV's leadership on SV must base on the perspectives of Marxism – Leninism, Ho Chi Minh and the ruling Party in the process of building socialism and defending the Socialist Republic of Vietnam.
- The completion of the LF of the CPV's leadership on SV must align with the party's views on further ensuring and enhancing the Party's leadership on the state in the contexts of constructing and promoting the effectiveness of the law-governed socialist state.
- The completion of LF of the CPV's leadership on SV must be associated with the construction of the socialist democracy to ensure that the completion of LF is the will and aspirations of the people and is supported and protected by the people.

**2.3.3. Subject, content, forms and methods of completing the legal foundation of the Communist Party of Vietnam's leadership on the State of Vietnam**

**The Subject** who implements the completion LF of the CPV's leadership on SV is the State. However, to successfully conduct this task needs the consensus and responsible

support of the whole political system and society; in particular, the Party's leadership role and the people's participation and coordination.

**The Content** of the completion LF is the completion of legal norms that directly adjust the leadership of the Party on the state to concretize the rules and regulations of the Constitution on the Party's leadership; ensuring the consistency and coherence of the system of laws and regulations to be in line with the principles of building the current legal system of the State, and guaranteeing the enforcement possibility of the regulations and policies of the Constitution in political-economic-social life of the country.

**The forms** of the completion of LF are performed at two levels. The first one is perfecting and supplementing the existing legal documents; the second one is building CPV's Law in which the Party's leadership on the state (and on the whole society) must be specified in terms of detailed content and form.

**The methods** of the completion LF of the CPV's leadership on SV include the following methods:

*Methodology:*

The completion of the LF of the CPV's leadership on SV must be done consistently with Marxism - Leninism and Ho Chi Minh's thought and the ruling party theory, performing the CPV's leadership roles on the State and society to successfully implement the goals of building and developing a socialist-oriented country.

*Specific methods:*

Centralization methods, codified methods, analysis and evaluation methods, comparison methods and interdisciplinary methods (building the Party, state institutions, etc.)

In the process of building and completing LF of the CPV's leadership on SV, there is no specific separation in the use of methods but it is essential to collaborate and combine different methods in each specific task to ensure the construction of a LF of the CPV's leadership on SV has high efficiency, carrying specific characteristics of Vietnam and aligning with international trends in corresponding politic-legal relationships.

### **Chapter 3**

#### **STATUS OF LEGAL FOUNDATION OF COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE CURRENT STATE OF VIETNAM**

##### **3.1. THE REGULATIONS OF THE CONSTITUTION ON THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE STATE OF VIETNAM**

\* Regulations in the 1946 Constitution

The 1946 Constitution (passed on 09.11.1946), did not directly regulate the Party's leadership role but the Preamble of the Constitution has recognized the historical significance of the August Revolution in 1945 – a great achievement of nation revolution initiated and led by the Party

\* Regulations in the 1959 Constitution

Preamble of the 1959 Constitution was directly recorded the position and leadership role of the Party towards Vietnam's revolution; and clearly identify that Party is the force continuing to lead the cause of building socialism in the North and the implementation of national unity. This was a clear step forward in building the groundwork to establish a LF of the CPV's leadership on SV compared with the Constitution 1946.

\* Regulations in the 1980 Constitution

The Preamble not only recognized CPV's contributions to the national history, the state and society, but also for the first time in the constitutional history, in the 1980 Constitution, the CPV's leadership for SV was defined as a separate enactment - Article 4.

\* Regulations in the 1992 Constitution

In the 1992 Constitution, the position and role of the CPV's leadership on SV and society had been mentioned four times in the Preamble and one time in Article 4.

\* Regulations in the 2013 Constitution

In the 2013 Constitution, the CPV's leadership on SV had been mentioned 03 times (02 times in the preamble and 01 time in Article 4). It can be said that since the Constitution 1980 spent a separate enactment to establish a LF for the organization and operation of the Party so far in 2013, the Constitution has been the longest and most extensive content LF such as provision on the CPV's accountability on SV.

### **3.2. RULES OF OTHER LEGAL DOCUMENTS ON THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP FOR THE ORGANIZATION AND OPERATION OF THE STATE OF VIETNAM.**

The Party leadership on the State and society is elucidated in the content of the Legal Normative Document. It is the correspondence, unity between the Party's policy and guideline and the spirit and content of the Law. However, in order to legally implement the Party leadership on the State, besides the provisions of the position and role of the Party leadership in the Constitution, there are some Legal Normative Documents which directly adjust and ensure the Party leadership in the State activity; however the number of documents is very few.

### **3.2.1 The provisions on the scope, extent, nature of the State's field of work led by the Party**

\* The leadership of organizing the stateal system

In research of these documents, there is no law or direct provision on the Party leadership towards organizing the stateal system. This is one of the missing content of LB about the Party leadership on the State today.

\* Legislative, executive and judiciary activity:

The number of legal norms (LN) which specializes on the Party leadership to the State is very few, such as: the Article 31 (law and ordinance establishing program), Article 32 (Agency and organization's proposal to establishing law and ordinance), Item 3 Article 65 (Content Verification of draft law, ordinance and resolution), Item 3 Article 84 (Decree constructing proposal), Point b, Item 3 Article 124 (Verification of People's council draft resolution provincial level), etc. of the Law on Promulgation of Legal Normative Document 2015 (came into effect since July 1<sup>st</sup> 2016). In Point 5 Article 8 Budget Law 2015; Item 1 Article 3 Security and Defence Education Law 2013, there are also provisions about ensuring the draft content of legal document will correspond with the Party policy and guidance; the budget is prioritized for the Party operations, However, we realized that these legal provisions only decide the scope of the work content of the SV led by the CPV; meanwhile the level to which the extent and nature of these work content requires the direct leadership have not been decided by the law.

### **3.2.2. The provisions on titles, status in the stateal institutions where CPV people are introduced by the CPV.**

In Item 1 Article 8, Law on election of deputies to the National Assembly and People's Councils 2015; in Division 2, Division 3, Chapter V about the consultation, introduction of people to the National Assembly and People's councils at all levels, the role of the National Front is assigned in chairing with the leaderships of socio-economic organizations to consult opinions about the number, list of representatives and the organizational unit. Meanwhile, in Item 4 Article 4 about the organization and operation principle of Vietnam National Front, it is assigned that the role of the Party is the leading member of National Front, which ensures the Party leadership on the election of People deputies to the institution representing people in the State.

In addition, there are some provisions of the role of the Party Leadership on the personnel work in institutions such as Decision No. 27/2003/QĐ/TT dated 19/02/2003 by the Prime Minister about the regulation of appointment, reappointment, rotation, resignation, dismissal of cadres and civil servant; Point 6.3 of Decision No. 82/2004/QĐ-BNV dated 17/11/2002 of the Ministry of the Interior assigns that the title for Technical department Director of People's Councils at provincial level must acquire the certificate of Advanced Politics Theory; Item 1 Article 5, Law on Civil Servant 2008 assigns the regulation on cadre and civil servant management: "Ensuring the CPV leadership and State Administration". It means every management activities of cadre, civil servant, officer, manual worker such as: team building plan, recruiting, using, training and Disciplinary Action Review in case of violation; and the observance of the Law always goes along with the Party policy and guideline.

Consequently, within the issues of ensuring the Party leadership on the State, there are only two groups which had been established by the Legal Foundation: the principle ensuring the comprehensive leadership of the Party and the leadership method by managing cadre in stateal institutions, although the content of the LF is inadequate, incomplete, and many other subjects of the LF have not been established, specifically:

- Laws on the Party accountability in establishing policy and guideline to lead the State;
- Provisions on the Party organizational structure;
- Provisions on the pioneer, role model of Party members in State agencies
- Laws on the CPV inspection and Monitoring on SV in implementing the Party policy and guideline.
- Laws on the CPV accountability in leading SV (as well as the SV accountability in receiving the CPV leadership).

In synthesizing, analyzing and evaluating the current condition of LF, we realize the huge inadequacy of LF about the CPV leadership on the SV. If the seven subjects representing the CPV leadership on the SV are required in the LF content, in fact, there are only two subjects available in our legal system assigned by the law, nevertheless these subjects and the number of Legal Normative are limited; the remaining five subjects have not been assigned yet. These issues are still implemented by the CPV and the SV, however, it must follow the CPV provisions:



- The Party documents consisting provisions on the content and form the Party leadership on the SV: Document No.261 – CV/TW dated 03/12/1988 of the Party Central Committee assigns the scope, nature of the content and the work establishing the law by the state which receive the Party’s direct opinion; or the Resolution No.48-NQ/TW dated 24/05/2005 of the Political Bureau about the strategy of constructing and completing Vietnam legal system until 2010, going forward 2020, the Party assigned the leadership of legislation on the Party organizations in the State agencies which functions the legislation such as: directing the law construction program, monitoring the quality and the progress...; or 5<sup>th</sup> National Conference Resolution, Legislature X about continuing to innovate the Party leadership method in the political system activity. This is the Party’s document which specified the subjects and methods in implementing the Party leadership on the state. In particular, the Party determines the scope of the legislative, executive and juridical issues which is the Party organization’s responsibility such as: National Assembly, State, Audit, Supreme People’s Court, and the Party committee at grassroots level must propose the policy and guideline to lead the authorized State agency.

- The documents of CPV organizational structure, the accountability in training, fostering and introducing the people from CPV to be responsible for the leadership titles, positions and the role of pioneer of Party members in the stateal system.

It is determined in Article 10, Party Charter, Legislature XI that: “The Party organizational system is equivalent to the State Administration”, and in the Regulation No.15-NQ/TW dated 30/07/2007 of the 10th Central Committee assigned the accountability of the Central Committee, Political Bureau in establishing and consolidating the Party of National Assembly, Supreme People’s Court Governing Board, Supreme People’s Procuracy Governing board, etc. in establishing the working regulations of the leadership relationship between the Political Bureau, Secretariat and Governing Board, etc.

Also in the Regulation No.15- NQ/TW dated 30/07/2007, the Party determines that the local Party Bureau establish the People’s Council Party, People’s Court Governing board, People’s Office of Supervision and Control at provincial level, and requests clear working regulations, responsibility of the Party Bureau and the Party Committee, the governing board in the People’s Councils, People’s Court and People’s Office of Supervision and Control at provincial level simultaneously.

On the basis of these provisions, today, the CPV is organized as a system of parallel specialized Party agencies with the network of stateal levels; simultaneously, within each

agency at all levels, there are organizations in charge of direct leadership. The regulation of the Party organizational structure means the accountability to receive and implement these provisions of the State agencies. Therefore, State agencies must ensure these requests and condition in order to help the organizations to operate, such as the headquarters, the facilities and equipments serving this operation, as well as the working condition, salary and incentive for the people working in these organizations.

Moreover, in terms of the work of cadres, the Politburo Committee has issued the Regulation No. 54-QD / TW dated 12/05/1999 of regulations on political learning regime in the Party. The Regulation stipulates: learning to improve the political theory is associated with the standardization of cadres and partisans at all levels and sectors, etc. These rules are the basis for the State to implement in practice the work of cadres, such as eligibility for appointment; rotation, evaluation of the cadres, etc. to ensure the management of cadres, officials and public servants, especially those introduced or chosen by the Party to hold the managerial positions or be in important positions in the state.

- The texts of the Party about inspecting and supervising the State in the implementation of the Party's policies, guidelines and the accountability of the Party for the State leadership (simultaneously, the accountability of the State in receiving the leadership of the Party).

For the inspection and supervision of the Party, the Party has made a number of specific documents. Most of them are the rules and guidance of the business process for the Party to implement in the internal organization of the Party. There are also a number of provisions containing the contents that the State bases on to receive the inspection and supervision of the Party; namely: Chapter VII of the 10th Politburo of the Communist Party of Vietnam's charter in 2011 and Guidance on the implementation of regulations on the inspection, supervision and discipline of the Party; or in Chapter VII and Chapter VIII of the 11th Politburo of the Communist Party's charter issued with Decision No. 46-QD / TW dated 01/11/2011 of the Central Committee shall have regulations on the inspection and supervision of the Party; etc.

Pursuant to this provision, the party members working in the state agencies, social and political organizations,...that violate the Party's discipline or are considered and disciplined by the Party will continue to be considered and handled by the state agencies, social and

political organizations in accordance with the regulations of the state or union. The consideration and discipline must be unified with the Party's discipline or vice versa.

Thus, the status of the provisions in the Constitution and existing laws on the leadership of the Party on the State can be assessed as follows:

- The leadership of the Party on the State and society is stipulated in the Constitution. In the entire content of the Constitutions of Vietnam, the leadership can be expressed indirectly (by the recognition of the revolutionary achievements performed under the leadership of the Party), or directly; from the provisions of the Foreword to the generalization in the Constitution.

- The number of legal documents of the State about the leadership of the Party on the State has now been very limited. Compared to the overall content of the legal basis of the leadership of the Party on the State, it can be asserted that the number of the legal provisions cannot fully reflect the leadership of the Party over the State. Simultaneously, the legal documents that are seen as the legal basis for the Communist Party of Vietnam's leadership over the State of Vietnam are scattered on various documents, but most of them have duplicate content and are actually the principles of ensuring the leadership of the Party for some of the activities of the State.

- In reality, many provisions of the Party are implemented directly by the Party organizations, Party members and also the state agencies to ensure the leadership of the Party on the State.

### **3.3. EXPERIENCES OF THE ESTABLISHMENT OF LEGAL FOUNDATION FOR THE LEADERSHIP OF THE POLITICAL PARTY OVER THE STATE IN SOME COUNTRIES IN THE WORLD**

#### **3.4.1. At the countries with multi-party political institution**

The constitutional content of most countries with multiparty political institution all have the regulations on political parties. Accordingly, the establishment of political parties is a democratic right and must follow the specific procedures and conditions. For example, Article 49 of Constitution of the Republic of Italy, in 1947; Article 4 of the Constitution of the Republic of France in 1958; Article 8 of the Constitution of the Republic of Korea, in 198,...

The specification of the conditions for the political parties to be organized and work legally means that if these political parties violate the above conditions, they will be completely disciplined with the sanction of the law, or even disbanded as stipulated in the Article 40, Article 41 of the Law on political parties of the Republic of Macedonia (Appendix 1); Article 16, Article 33 of the Act of political parties of the Federal Republic of Germany (Appendix 2).

In the laws of these countries, the institution of electing the key positions in the state apparatus such as the head of the nation, the parliament, the judiciary, as well as the provisions of the competence of these positions in the Constitution...are the expressions of the statutory relationship between political parties and the state.

### **3.4.2. The establishment of the legal foundation for the leadership of the Communist Party in China**

The Constitution of the People's Republic of China (effective from 4/12/1982 and amended 4 times in 1988, 1993, 1999 and 2004) allows the parties to work (multi-party political participation) but there is only one party to take the comprehensive leadership is the Communist Party (single leading party).

However, at the present, in the state apparatus of the People's Republic of China, the unification of some positions of the head of the state with the head of the party and a number of the state agencies with the party agencies is in progress. Therefore, it is not possible to separate: the Party is responsible for leading, setting out the guidelines and resolutions while the State is in charge of implementing. The reason is that the leadership of the Party has now become a step in the operation procedure of the State and the responsibility of the Party has been associated with the responsibility of the State.

## **Chapter 4**

### **SOLUTIONS TO COMPLETE THE LEGAL FOUNDATION OF COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON CURRENT STATE OF VIETNAM**

#### **4.1. FACTORS INFLUENCING THE PROCESS OF COMPLETING THE LEGAL FOUNDATION FOR THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE STATE OF VIETNAM**

**4.1.1. The awareness of the cadres, party members about the necessity of the completion**

**4.1.2. The political stability**

**4.1.3. The socio-economic development**

#### **4.2. ATTITUDES TOWARDS COMPLETING THE LEGAL FOUNDATION FOR THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE STATE OF VIETNAM**

**4.2.1. Completing the legal foundation for the Communist Party of Vietnam's leadership over the State of Vietnam aims at constructing the law-governed socialist state in Vietnam; promoting people's ownership coupled with the improvement of the effectiveness and performance of the Party and the State in terms of a ruling party leading the State and society**

**4.2.2. Completing the legal foundation for the Communist Party of Vietnam's leadership aims at creating the mechanism to protect the Party, the State and the socialist regime effectively in present conditions.**

**4.2.3. Completing the legal foundation for the leadership of the Party on the State must be in accordance with the legal provisions of the preparation and completion of the law to create more completed legal foundation than the current one to meet the requirements of the construction of the rule of law and international integration.**

#### **4.3. SOLUTIONS FOR COMPLETING THE LEGAL FOUNDATION FOR THE COMMUNIST PARTY OF VIETNAM'S LEADERSHIP ON THE STATE OF VIETNAM**

**4.3.1. Innovation in the legal-political thinking on the Communist Party of Vietnam's leadership on the State of Vietnam in terms of constructing the law-governed socialist state in Vietnam**

- It is necessary to be clearly aware that the law-governed socialist state of Vietnam is the state of the people, by the people and for the people; is the state constructed on the

foundation of a civil society, in which, all individuals, organizations, even the political organizations must respect and implement the law fully, strictly and uniformly. Therefore, the legalization in the leadership of the Party on the State is illuminating these political – legal relations, facilitating the Party and the State to comply with their functions and duties as authorized by the people to improve the efficiency of the leadership of the Party and the performance of the State.

- The legalization in the leadership of the Party will help the cadres, party members, party organization and the state to fulfill their functions and duties; clarify the responsibilities of each party when participating in this leadership – steering relationship; simultaneously, creating the favorable conditions for the Party, State and People to inspect and monitor the individuals' and organizations' process of performing the duties as assigned and authorized.

To have the best implementation of these solutions, several tasks listed below need to be done:

*First*, it is necessary to have propaganda and education orientations to change the mindset among people from the highest leaders of the Party's to the local level about the completion of legal basis of Communist Party on Vietnamese state.

*Second*, a consensus in society about this matter should be developed.

The Party should educate and popularize the views, orientations and directions on further improvement of the Party's regulations, including the ones about the Party's leadership over the state in the context of building Vietnam law-governed socialist state. This aims to create the unity in the awareness of officers, party's members and the non-partisans who are working in the Party or state apparatuses, especially legal experts and practical legal experts working in the law building authorities.

#### **4.3.2. Completion of legal regulations of Vietnam Communist Party, including regulations of Vietnam Communist Party's leadership on Vietnamese State**

The completion of the regulations of the law to concretize the Article 4 of Constitution of 2013 needs to be implemented at two levels:

*First*, as mentioned earlier, current legal norms sparsely written in legal documents should be finished to assure that the regulations of law ensuring the Party's leadership are included in work of all areas of the state. The norms should specify and clarify the

responsibility of the Party and State in every function and activity on what and how the leadership is and how to recognize the leadership of the Party of the State.

However, this solution is considered as a short-term one. The advantages of it are quick improvement and less complex requirements and implementation conditions. Nevertheless, it also has a disadvantage which is the improvement must be proceeded on the basis of the reviewing, amending and supplementing existing law documents. Simultaneously, the separately completion in numerous specified documents in different fields would lead to the duplication of some regulations because despite various management areas, the forms of the Party's leadership on the State remain unchanged.

*Second*, under the leadership of the Party, the state promulgated a law on the party which is considered as the most radical solution. However, this plan is relatively complex because of the requirements and implementation conditions (should assure the best advantages from the factors affecting the completion process) and the process of making law. Hence, this might be considered as long-term solution.

*Scope of law*: regulate the role of the Party in the social and political system of the country and directly administer the leadership of Vietnam Communist Party on Vietnamese State.

*Subject of law*: the relations between the Party and political institutions of the political system such as the state, the fatherland front and the society with the main focus of the relation of the Party and the state to implement the Party's leadership over the State.

*Structure of law*: The law is divided into chapters, articles and clauses. Due to the special importance of the relationship between the Party and the state, it is necessary to have a separate chapter for its regulations.

This chapter includes regulations on:

- General principles of the Party's leadership on the state;
- Organizing structure system of the Party;
- Scope of the content and forms of the Party's leadership to the state;
- Responsibilities of the State in receiving the leadership of the Party through several tasks:

- + Provision of technical and material facilities for activities of the Party's organizations;

- + Responsibility to cooperate with committees of the same level to build working regulations between Secretary of committees or committees and the heads or leader boards of state agencies;

- + Political standard and human resource preparation process for management positions, key leaders of state agencies;

- + Principles to transform Party's disciplines into sanctions to dispose of state agencies and vice versa.

To accomplish the solutions above, several tasks listed below need to be synchronously done:

- Practical work of the Party's leadership needs to be reviewed over a period of time as the foundation for regulation making of the Law.

- The state should put the construction of legal projects into the Law making program of Parliament and then follow the process of law developing and implementing as regulated by the Constitution and laws.

#### **4.3.3. Strong enhancement of the leadership capacity of the Communist Party of Vietnam and the ability to receive and obey the leadership of the Communist Party of Vietnam of Vietnamese State**

The reforms in the Party's organization and state apparatus should be simultaneously conducted to develop the most effective will transference mechanism to enhance the Party's leadership over the State.

To reform state system:

- The implementation of competitive examination policy with several key leader positions in state agencies needs to be promoted.

- The state should enhance the development of job descriptions system associated with particular position; thereby, office standards in state system are determined. This can assure organizing a state apparatus which has streamline, innovative official recruitment forms to ensure the fair and transparency competitiveness among candidates.



- Comprehensive reviewing activities of the location, function, duty, power limitation, organizational structure and existing staff of state agencies should be strengthened to surmount overlapping, vacant or identical functions, tasks or power limits of them; moreover, these activities can help to transfer of the work that the state administrative agencies should not do or bring little efficiency to society, social organizations, non-stateal organizations.

- Monitoring and inspection activities of task fulfillment of servants and officials should be reinforced in various ways.

To reform the Party's organization, numerous approaches should be posed:

- Local authorities should continue to expand the implementation of the synchronization of People council chairman, Party's committees' secretary and all other positions at the same level to have the best result in the real synchronization of three titles: chairman of People's council, chairman of People's committee and secretary of other committees at the same level. This can be considered as the most effective solution to assure the implementation of leadership will transference of the Party into state's.

- The Party needs to assess the performance of Party's organization established in state agencies and units to effectively implement streamlining which can be more detailed as:

At central level, because of the existence of state committee, it is not necessary for Ministry's personnel to be established; thus, the comprehensive in the leadership and monitoring of Prime Minister, who is the head of the state and Party's organization, is enhanced. Besides, at the local level, the necessity of party's leader boards of People's Council and People's Committee at provincial level needs to be reviewed because these committees rarely have orientations about specialized work to provincial People's Council and People's Committee. Their major task is the preparation of key personnel for state agencies of the same level; in fact, this task is mainly determined by the specialized agencies of Party's committees simultaneously operating with the state apparatus of the same level (such as provincial or municipal one).

## **CONCLUSION**

The construction of the law-governed socialist state of Vietnam has been setting a mission for the Party, State and people of Vietnam that they have to complete the LF about the Party's leadership on the State. It aims to effectively implement the democratic right of

people, especially in political democracy; enhance the effectiveness of Party's leadership on the State; and simultaneously create a mechanism for more powerful protection of the Party.

There is a huge number of both foreign and domestic studies of high and profound quality on issues related to political party, ruling party and relationship between the Party and the State, etc.; however, despite having been proposed, the legalization of current relationship between the Party and the State still constitutes numerous conflicts and unanswered issues.

On the basis of absorbing and inheriting the profound and highly consistent results of the studies on the previous political party and ruling party problems, this Dissertation continues to focus on theoretical and practical issues of the role and position of the Party to the State to make the conclusion about the objective necessity of the Party's leadership on the State; as well as the necessity of building and finalizing LF about Party's leadership on the State in recent period.

The dissertation also defined the LF and completion of LF of Party's leadership on the State. Additionally, on the basis of assessing the current status of LF about Party's leadership on the current State and identifying factors affecting the completion of LF mentioned above, the dissertation also proposed three legal-political perspectives and three solutions to finalize the LF about Party's leadership on the State. These three solutions are:

*Firstly*, reforming legal-political mindset of Communist Party of Vietnam's leadership on the State of Vietnam in the situation of constructing law-governed socialist state in Vietnam;

*Secondly*, completing legal regulations about Communist Party of Vietnam, including provisions about Communist Party of Vietnam's leadership on the State of Vietnam;

*Thirdly*, deeply strengthening the leadership capacity of the Communist Party of Vietnam and the capacity of receiving and obeying the Communist Party of Vietnam's leadership on the State of Vietnam.

Because of the limitations in background knowledge and scope of the Dissertation, we tried to analyze and clarify theoretical and practical issues about completing LF of Communist Party of Vietnam's leadership of current State of Vietnam. Therefrom, we proposed complete and feasible solutions with the desire to contribute our small effort to improve the awareness of LF and completing LF about Communist Party of Vietnam's

leadership on the State of Vietnam in particular, and supplement and finalize the theory of law-governed socialist state of Vietnam in general./.

**PUBLISHED WORKS OF THE SAME AUTHOR RELATED TO THE  
DISSERTATION**

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2. Hoang Thi Thuy Hang (2013), “Completing legal foundation for Communist Party of Vietnam’s leadership on current State and society of Vietnam – Theoretical and practical issues”, Legal Profession Review, (5), p. 3-6.
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