

The role of local government in the socialist rule of law state apparatus

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Abstract:

The level of transformation in the perception of decentralization and decentralization is the basis for establishing the legal status of the local government apparatus. In that spirit, from a legal perspective, there needs to be a change at the Constitutional level on the principle of vertical division of power between the central and local levels. On that basis, it is necessary to delineate the authority between the central and local levels, and reform the local government apparatus to be compatible with the requirements of exercising local people's power. The reform roadmap can be fast or slow, but the local self-governance option is the option that should be chosen in conjunction with the break with the "uniform" and "commensurate" model in the organization and operations of government levels. local authorities in different areas. In the process of local government reform, it is also necessary to exploit and express traditional cultural values to clarify the needs and characteristics of the local government model, especially at the grassroots level.

Keywords: Local government; State apparatus; rule of law; Socialist.

1. Division of administrative and territorial units and main models of local government in the world

1.1. Division of administrative and territorial units: basis for organizing local government

State power under all state regimes is determined and organized in two basic forms: polity and territorial structure. In the form of government, state power is organized and determined in dependence on the type of government: monarchy or republic; presidential republic, parliamentary republic, or mixed republic. With a general expression, under the republican government, state power is organized and determined in the relationship between three powers: legislative, executive, and judicial. Corresponding to these three rights is the power relationship between three types of agencies: the legislature, the executive agency, and the judiciary. Considering the nature of the power relationships between these three agencies, in the form of polity, state power is expressed through horizontal relationships.

Unlike the form of polity, in the structural-territorial form of the state, state power is organized according to the vertical relationship between power structures at all levels from central to local. In the form of structural-territorial organization of the state, the power relationship between levels of government depends fundamentally on the form of state organization: federal or unitary. For state organizations in a unitary form, depending on the way and level of expression and implementation of state power at each level of dependent territorial administrative units and political institutions, characteristics, and mechanisms. structure of national territorial organization, political position of local government agencies in the system of state agencies, people build and apply principles (or methods) of organizing and operating power. state power differently. Can provide a general analysis of common principles applied in different states around the world.

The principle of centralization has long been applied in countries where democratic institutions are little or not developed. Here there is a concentration of all power in central agencies, which hold the power to decide on all national and local issues. Locally organized state agencies receive orders from superiors and are forced to carry out those orders strictly and mechanically, without the right to be creative.

The principle of decentralization of power has a content similar to the principle of centralization, the difference is that the central government transfers several issues under central power to agencies, which are parts of the agency. Central government agencies located locally handle the matter. When exercising their assigned authority, these agencies are inclined to ensure central interests, but the issues they resolve have local significance.

The principle of local decentralization is essentially the delineation of local issues and the determination of decision-making powers for local government agencies. These are issues related to the daily life and activities of the local community and to local socio-economic development. In state life, local governments are public legal entities and can decide on local tasks based on law. State authorities and superiors inspect the activities of local governments through the legal system.

Regardless of the principles in which local government is organized, the division of the country into administrative-territorial units is always the basic, important, and decisive basis for determining the organizational model. and activities of local government as well as the relationship between central and local levels. In the world, except for small archipelagic countries with not very large populations (such as Norway, Tulu, or the city-state of Singapore), most countries have divisions. It was the Marxist-Leninist classics who considered the first characteristic of the State to be the division of national citizens according to territorial units... In essence, the division of administrative units not only has an administrative-management meaning, that is, to implement state governance in a unified manner, with full value and effect for all administrative units within the national territory. Therefore, the view that this is just an "administrative technique" reduces the true value and role of dividing territorial administrative units. Looking at the content of this activity in many countries, we can see the nature, form, content, and functions of the state, and concepts about the relationship between state interests and the interests of the community. , about the role and value of citizen participation in territorial administrative units. This activity is not simply a demarcation of boundaries between localities but has a greater meaning as a way to organize and exercise state power locally.

Division of administrative and territorial units depends on many factors:

First, the structural element of the residential community. The structure of the community living in the territory, in a commune, in a district, and even in a province itself has many special relationships with each other in terms of family lines; culture, lifestyle, psychology, and history... Therefore, the determination of boundaries and scale of territorial administrative unit structures must be based on the structure of the residential community. In reality, it is not possible to establish territorial administrative units based on the number of residents. (For example, it is not possible to specify how many people a commune has; or how many people a ward has). That's why there are communes, districts, and provinces with very small populations. Community structural elements are associated with geographical and cultural elements. Each geographical region - territory is associated with a cultural tradition that has its own identity within the common culture of the whole nation.

Second, the geo-cultural factor is determined by the cultural roots of origin, psychology, lifestyle, customs, and practices of communities living within a certain territory. The delimitation of boundaries and territories of a commune, a district, or even a province must take into account the characteristics of geo-cultural factors, respecting the historical and traditional cultural characteristics of ethnic communities. In the process of building and developing territorial administrative units, creating a stable psychological and social environment for the population in the area can promote the internal strength and spirit of self-management in the community.

Third, geo-economic factors are also an important factor that governs the formation of territorial administrative units and organizational models of local governments at all levels. The geo-economic characteristics of each region determine the possibilities and orientation of economic development. Promoting and effectively exploiting the potentials and strengths of each commune, district, and province; At the same time, creating forms of economic linkage between territorial administrative units and building a sustainable economic space also depends greatly on the scale of territorial administrative units. The need to manage and organize socio-economic development processes in each territorial area requires, on the one hand, a reasonable local government organization model capable of performing the tasks of the local government. local development in a current open economic mechanism. On the other hand, the delimitation of territorial administrative units must always take into account the actual abilities and capacities of local authorities at all levels in meeting the management needs and organizing economic development processes. socio-economic status in each area.

Fourth, the requirements for security, national defense, social order, and safety of the country as well as each area. The organization of territorial administrative units must combine natural conditions with the characteristics of residential areas, creating strength to respond quickly to natural disasters and enemy sabotages in each area. best contribute to preserving stability and security for the Fatherland.

Fifth, based on the political policy and socio-economic development policy of the ruling force. The political and socio-economic development guidelines of the ruling force have often taken into account the natural and living conditions of the country and each locality... and more directly, the country's development in a certain period. This will determine the content and organizational form of the state apparatus, thereby immediately deciding the number of levels and the size of units within each level of administrative unit.

Sixth, the level of relationship between this administrative unit and other administrative units when delimiting and adjusting territorial administrative units so that the relationship between districts becomes better and better, especially in the current open economic mechanism. As the exchange of goods develops, the boundary line has less and less limiting value (especially in the economic field). Reality has shown that many units develop very slowly, but when properly divided or merged, they can grow very quickly. Normally, the formation of commodity exchanges must go hand in hand with the expansion of commodity exchange routes.

1.2. Main models of local government in the world

The division of administrative and territorial units is an objective basis for building government models at local levels. However, the local government model also depends on the political nature of the state regime. In this sense, there are two issues raised related to the views and attitudes of the class currently standing at the center of power:

First: the recognition of self-governance of residential communities at certain levels and characteristics in the relationship between state power and the autonomy of the people themselves in resolving their affairs. local. In historical reality, state power through the public apparatus does not always move in the direction of consensus with the autonomy of the people in the territories. The public apparatus always tends to "Strategize" all socio-economic processes in localities, placing communities in a dependent position, with everything relying on the government's hands. country, this phenomenon has not only limited the positivity of residential communities but also caused conflicts between public authorities and the people, creating a feeling of " *low status* " of people in the mastery of power...

Second: the view on how to divide power between the central government and local government levels. Decentralization and separation of powers between levels of government is always a difficult problem. Because decentralization and decentralization must ensure the unity of power and control of power from central agencies, ensuring the autonomy of local government levels.

The local government organization model is built under the influence of many factors. Therefore, there cannot be a unified organizational model for local government in all countries. Each state, depending on the conditions and historical characteristics of geopolitics, economics, culture, traditions, and the political nature of the social regime, builds a suitable local government organization model. fit.

There are the following models:

- A local government agency is an administrative apparatus headed by a key official (provincial governor, district chief) appointed from above. This personal agency (because all powers are concentrated in the hands of the head, the different parts of that apparatus are only executive and assisting) has full authority to perform all administrative management work. it is the local state that "governs". This model existed commonly in the previous feudal period and today in some "intermediate" administrative units in some Northern European, American, and Asian countries.

- Local government is an administrative agency appointed (or elected) by superiors combined with a self-governing council elected by the population. The main role belongs to the administrative agency, while the Self-Management Council only plays an advisory role, is under the guardianship of the administrative agency can only discuss purely local issues, and is not allowed to participate on national issues except those of a political nature. This form of management is common in "intermediate" administrative units in continental European countries (especially in France before the 1982 administrative reform).

- Local management model by an administrative committee elected by the population or lower-level self-governance councils. The committee also has a leader, but its activities are mainly collective. The committee collectively decides on local management issues, with members assigned to be in charge of each area of work. This form is popular in district-level administrative units in the UK, the US, and Northern Europe.

- The local government model is a self-governing Council elected by the people, responsible to the people and the Council is the body with full authority to decide and implement local issues according to the law. The Council has its own executive body in the form of an executive committee or individual bodies such as the Mayor and Chairman. This government apparatus is often considered "non-state", outside the state apparatus. This model is popular in "self-governing" administrative units.

- The local government model is a representative body (Soviet, Council) elected by local people, representing both local people and superior state agencies. These are local state power agencies. This agency plays a key role in organizing power (management) in the territory. An executive agency is established by this agency to organize the implementation of resolutions of power agencies and state policies and laws in general. This is an executive agency and a local state administrative agency. This model is the model of local government organization in socialist countries.

2. Concept of local government

The above analysis shows that in the world there are many ways to organize local management agencies (governments) and also many different names for those agencies. Even within a country, there are many different organizational models of management agencies in different administrative units coexisting. *Although* the forms of organization of local management agencies in different countries have different names, the structure and legal status of each part are not the same, they all have the same nature as government agencies. Localities, established to carry out local management functions and exercise state power in the territory. In other words, they are established to enforce state laws in deciding locally assigned tasks.

The above statistical description also shows that, in principle, a local government agency, whether it is one part or many parts (one agency or many agencies), is a unified structure, in The real power in local management belongs to an agency called the "decisional agency". This agency is the Council or Committee or District Chief or Provincial Governor depending on the nature of each administrative unit and the principles of state apparatus organization of the state regime. The remaining agencies are executive-implementing or consulting-monitoring agencies.

Here there is no application of decentralization between local government agencies (i.e. dividing the local government into two independent agencies, mutually restraining each other in the same way as the organization of high-level state agencies). central) as some people think. In those organizational structures, the local administrative (or state administrative) apparatus only includes a system of administrative agencies (in feudal and capitalist countries, the administrative apparatus is organized in intermediate administrative units, headed by regional chiefs, provincial chiefs, district chiefs, appointed by superiors; in socialist countries, it is a system of executive and co-ordinated agencies. At the time it was a state administrative agency). Local state power agencies, local self-governance agencies, and even executive agencies of self-governance agencies (executive committee, Mayor), although performing state administrative functions, is not state administrative agency.

In reality, there are many different concepts of local government, depending on the perspective of local state power, mainly related to different approaches to the relationship between localities. and central government, between local governments and local communities, and the relationship between local governments and local governments of other territorial administrative units within the country. According to the American Dictionary of Jurisprudence: "*A local authority is the government of a certain locality, for example, in a city, district, and is a government agency under the state government .*" Meanwhile, in the UK there is the concept: "*Local authorities are public agencies established in localities and elected by local voters.*"

However, to be able to give a complete concept of local government, it is necessary to identify local government in the following aspects:

First, administrative units are state institutions established locally, meaning they originate from local people. In Vietnam today, whether directly or indirectly, local governments in Vietnam's administrative units are established by local people.

Second, local governments are established to carry out state work locally. Each local government has the scope of authority and is responsible for carrying out state affairs within the territory of the administrative unit it is in charge of. State work here is understood as work that the state wants to proactively carry out to make people's lives better. That work can be implementing a centrally implemented policy, or directly making decisions about local affairs and implementing those decisions.

Third, local governments exercise general authority over fields within the territory of the administrative unit they are in charge of. The general authority of local government covers all aspects of life from politics, economics, culture, society, education, science, technology, order, and security... This is to distinguish it from Some central administrative agencies that have specialized authority.

Thus, in the most general sense, local government is a system of agencies established for local management (it is a system of agencies established to enforce local state laws, responding to local development requirements by the interests of local people and unified national interests).

More specifically, local government is a public legal entity established, organized, and operating according to the provisions of law with the basic function of organizing the implementation of decisions of the central government and solving local problems accordingly. with the law and the wishes of residents.

To clarify the concept of local government, it is necessary to distinguish local government from the local government level and local state agencies.

Article 111 of the 2013 Constitution introduces two different concepts: "local government" and "local government level". According to Clause 1, in all administrative units of the Socialist Republic of Vietnam, that is, all local governments from provincial to commune level as mentioned above, local governments are established. direction; But it does not stipulate what agencies the organization of local governments in all administrative units includes. According to the provisions of Clause 2, not all territorial administrative units establish local government levels including People's Councils and People's Committees. Thus, it can be said that the local government level is a local government with an organizational structure complete with the People's Council and People's Committee. Not every administrative unit has a local government level established, that is, not every province, district, district, town, commune, ward... has a full Association established. People's Council and People's Committee. Clause 2 does not stipulate which administrative unit will fully establish these two agencies, but the decision to fully establish them will depend on the rural, urban, and island characteristics of that administrative unit. Thus, with two clauses of Article 111 mentioning two different terms, local government, and local government level, the 2013 Constitution has provided for innovation in the organizational structure of local government. with the spirit that "not every administrative unit establishes both the People's Council and the People's Committee mechanically".

To carry out state work locally, in addition to local governments, central state agencies can establish their system of vertical agencies at all administrative levels. called "local state agencies", to perform work within their jurisdiction in the locality in a unified manner. Such agencies are established when in a field of work, implementing and complying with the guidelines and policies of superiors does not require much creativity based on local characteristics but mainly focuses on application. guidelines, policies, and standards uniformly nationwide. These agencies also exercise state management authority within an administrative unit, however, they are not established by local people but by central agencies, so they are not part of the structure. organization of administrative units. It should also be noted that, in the Vietnamese state apparatus, the People's Court and the People's Procuracy are established at the provincial and district administrative units, but these two agencies are not part of the government's organization. localities at the same level but within the unified organizational structure system of the court sector and the procuracy sector. These two agencies perform judicial functions, applying unified laws from central to local levels, not local administrative work.

Local governments are also not completely consistent with the organizational structure of local governments. When talking about local government, we are talking about how to exercise people's power and state power, related to the power relationship between the locality and the local community and between the locality and the central government... Meanwhile, the local government organizational structure is the internal structure of the local government, designed to implement activities under the authority assigned to the local government.

In the process of establishment, local government needs to be mentioned first and then the organizational structure of local government at each level including the agencies can be determined based on suitability with the characteristics of the local government. location of the administrative unit as well as the scope of duties and powers of the respective local government.

In Vietnam, although the term "Local Government" is used relatively widely and commonly in Party documents and Vietnamese legal books, before the 2013 Constitution and the 2015 Law on Local Government, there was no such thing. No legal documents use this phrase except Law No. 110-SL/L.12 of 1958 titled "*Law on the organization of local government*" (Decree No. 63 (November 22, 1945) and Decree No. Order 77 (December 21, 1945) mentioned the phrase: "*To carry out local people's government in Vietnam, two types of agencies will be organized:...* However, this regulation is not intended to be precise." define the concept of *local government*). Even the 2013 Constitution and 2015 Law do not define local government but only mention the structure and scope of local government organizations in Vietnam.

The concept of local government in Vietnam has many differences from the concept of "local management and self-governance" in most countries in the world. Demonstrates the following characteristics:

- Local government is an integral and organic part of the unified state government, a legal form through which people exercise their right to mastery locally. From there, the *state power* of the People's Council and the *state administration* of the People's Committee are attributes of local government in our country (different from the *non-state nature* of the above local self-governance model). world)

- Not all state agencies that are organized and operate locally, solving problems that arise locally are part of the organizational structure of the local government. Not only law enforcement agencies but also agencies of central ministries and branches located locally are not part of the local government structure.

- Local governments are organized according to 3 levels of administrative units: Provinces and centrally run cities (provincial level); Districts, districts, towns, and provincial cities (district level); Commune, ward, and town (commune level). (The 2013 Constitution adds regulations on *special administrative and economic units; administrative units equivalent to districts, towns, and cities under the central government.*" The 2015 Law specifies *cities under the central government. Centrally run cities*). All administrative and territorial units are identified as complete local government levels, with People's Councils and People's Committees organized.

- Local government agencies operate according to the principle of democratic centralism, perform functions and authority according to the provisions of the Constitution and law, and resolve problems arising locally on the basis and to enforce the constitution, laws, and documents of higher state agencies, combining the interests of local people with the common interests of the whole country.

3. The "dual" role of local governments in the rule of law state apparatus

Local government is an integral part of the state apparatus of a unified nation, a local management agency, expressing the power of local people. Accordingly, local governments have a dual role.

No matter what model it is organized in, local governments have a dual role, both performing public duties of a local nature, according to the wishes of local people, and performing public duties assigned by the central government. prescribed in the Constitution and laws. The correlation between these factors depends on the local government organization model. However, even with the local self-governance model, the function of local government is never just to perform purely local public duties.

The philosophy of the dual role of local government is related to the need to simultaneously express and implement two needs: (1) The need to ensure people's power. Starting from the principle of people's sovereignty, the people are the original subject of power, power must first be directly exercised by the people. Local issues must be organized and implemented by the local community. Only when problems cannot be resolved do local people need to rely on the government they organize locally. Only when problems arise that exceed the local government's ability to solve will the grassroots government delegate power to a higher level of government and, according to that logic, delegate power to the central government? The pyramidal authorization model reflects the fact that local governments are organized first and foremost to carry out local affairs according to the wishes and interests of residents (in theory, the wishes and interests of This benefit may or may not be consistent with the interests of residents of other localities, or even the general benefit of this logic, public power first belongs to the local government, the central government only has public power when it is authorized by localities; (2) The need to ensure unified, undivided national sovereignty. A country is made up of localities. Putting aside the specific characteristics and separate interests, localities must join together in a unified national entity and must act for the common benefit of the nation. This is also a condition to ensure survival and development. of each locality, for the benefit of each local community.

In Vietnam, local government is an organic part of the unified state government, a form for people to exercise local ownership. The "dual" role of local government is clearly shown: It represents the local people, decides on local issues, is supervised by the local people, and represents the government. the superior state carries out tasks assigned by the superior state and is subject to inspection by superior state authorities. This dual role was assigned right from Decree No. 63 (November 22, 1945). However, what is quite special is that the two agencies in the local government have a clear separation in function and authority. Accordingly, this dual role changes over each period for each type of agency: According to SL 63, the People's Council is the agency that represents the people (self-governance is very clear), and the Administrative Committee both on behalf of the people and the government. Similarly, the 1946 Constitution stipulates that the People's Council decides on issues within its locality;

The Administrative Committee is responsible for implementing orders from superiors, implementing resolutions of the People's Council after being approved by superiors, and directing administrative work in the locality. Thus, a dual role is assigned to the Administrative Committee. By the 1992 Constitution (amended in 2001) and the 2013 Constitution, the dual role continued to be affirmed but in the direction that both the People's Council and the People's Committee took on dual roles. This dual role shows the complexity when determining the functions, tasks, and authority of local governments. This is related to the scope of authority delimitation between the Central and local governments as well as the division of work between the components of local government.

The dual role of local government is demonstrated through the identification and implementation of local government functions. In general, local governments always have the following three functions:

First, the representative function

This function is associated with local self-governance. When mentioning the representative function of local government, it is often defined in two aspects: 1/ Local government is a form of representative democracy, on behalf of local communities to solve problems. issues of local self-governance; 2/ Local governments represent the interests of the locality and the communities in the area before the central government and other local governments.

With the structure of a self-governing government, independent of state administrative structures that are unified from central to local levels, the implementation of the representative function of each local government in many countries around the world Proceeded quite smoothly and demonstrated both in theory and practice.

In Vietnam, the dual structure of local government (including the People's Council and People's Committee) that is both unified and independent has placed local governments in a rather complicated relationship in determining and implementing representative functions. The complexity in determining and implementing the representative function of local government is expressed in two aspects: 1/ representing the will, aspirations, and mastery of local people (representing the local); 2/ Represents unified state power at the local level, specifically representing national rights and interests on local territory, ensuring the rights and interests of each locality and each community. The residential community must be consistent with the common interests of the entire country, the central state, and other localities.

Second, executive and executive functions

As part of the government system of a unified country, local governments must comply with the Constitution and laws promulgated by the central government. At the same time, local governments, as the main subjects performing state management within a defined territory, must carry out executive activities (state management).

In Vietnam, in terms of nature and power relationships, local governments including People's Councils and People's Committees are an integral part of the unified state administrative system of the country. Therefore, the nature of compliance is clearly shown. The activities of the People's Council as a part of the local government in the system of executive agencies are also a type of executive activity. The executive activities of local governments are not separate from the executive activities of the government and in a certain sense, executive activities are considered the most concentrated expression of executive activities.

Because, through executive activities, local governments organize the implementation of requirements, demands, and regulations of guidelines, policies, and laws by the specific conditions and situations of life.

Third, community support function

In the rule of law state, the community support function is becoming increasingly popular for all levels of government, especially local government levels. The community support function operates according to a rule: the lower the government level, the greater the function, and for the grassroots government level, this function is becoming more and more mainstream.

The political basis for the emergence of this function of government, especially local government, is the requirements of a democracy, in which all power belongs to the people.

The economic basis of this function is the construction and development of a market economy. The rules of the market economy require state agencies not to interfere in economic processes in any way. administrative, moderately responsible for the development of economic relations. The state itself does not do economics but must play the role of a facilitator of economic processes.

The cognitive basis of this function is also reflected in the principled issue in the rule of law regime: *Let society do what society can do itself; The state only intervenes when society has a need (small state, big society)*. The state (which specifically represents the authorities at all levels) does not replace society and does not provide social subsidies, but only supports society, creates conditions for society, and improves the organizational and operational capacity of organizations. social community, of each individual in handling their affairs in a legal and civilized manner.

4. The trend of local government self-management within the rule of law state apparatus

Local self-governance is not a new issue in the political-legal science system and operational practices of democracies around the world. Originating from the autonomy models of many European lands and cities, it became strongly developed as a trend in the 80s of the last century. The birth of the European Charter on local self-government passed on October 15, 1985, marked an important development in theory and practice of the local self-management movement. Continuing the spirit and values of the European Charter, an international draft "International Charter for Local Self-Government" has been published by the United Nations Center for Human Rights in coordination with the United Nations. International Cooperation of Cities and Local Authorities (WACLAC) researches, drafts, and proposes a guide for all central governments and international organizations on the principles that should apply to any democratic local government.

The basic principles and values of local self-government are summarized in the European Charter on Local Self-Government and the draft International Charter on Local Self-Government has been stipulated in the constitutions of countries where local governments are organized and operate based on these basic principles. Of course, in theory and practice, there cannot be a single, universal model for all countries to apply.

Each country, depending on its historical conditions, traditions, economic development, socio-culture, political regime, characteristics of democracy, especially the level of maturity and development of local democracy, based on the popular values of local self-governance to build an appropriate model of local self-government. This thesis explains the richness and diversity of local self-government, both unified and separate in different democratic countries.

In today's world, the issue of local self-governance is associated with democracy, and the rule of law, and stems from the following requirements:

+ All state power belongs to the people. This is a fundamental requirement of the rule of law State. Accordingly, the people are not only the owners of state power with the forms of representative democracy and direct democracy, but more importantly, the organization and implementation of the people's power must be truly closest to the people. , directly with the people, creating maximum conditions for the people to directly exercise their power, or directly supervise the exercise of power right at the grassroots level. With this requirement, a principled issue that must always be thoroughly understood is that the people's work needs to be met at the level of government closest to the people. Only tasks that the local government at the grassroots level cannot perform alone and effectively are subject to the decision of the higher level of government.

+ Human rights and civil rights are fundamental values of the rule of law State that must always be recognized, respected, guaranteed, and protected. Human rights and citizen rights not only need to be recognized in the Constitution and law but must be guaranteed, respected, protected, and enforced in practice. Most human rights are guaranteed and enforced at the grassroots, and many risks of human rights abuse also come from the grassroots and localities. With this requirement, the organization of a local government must meet human rights, must support and ensure people can exercise and protect their rights, and be able to force the government to respect them. , ensure and protect your rights, control the work of the government, and determine the fate of the representatives you choose and elect to exercise authorized power.

+ Thus, the principle that state power belongs to the People, recognizing, ensuring, and protecting human rights requires the organization of truly local governments of the people, with enough capacity and conditions to solve problems. people's problems right in the area, enough means to ensure operational efficiency and a government that is responsible to the people and subject to the people's inspection, supervision, and decisions.

+ The development of local democracy is associated with historical and traditional conditions, with the level and characteristics of economic, cultural, and social development, customs, and practices of residential communities. Community democracy, protecting and developing community values requires creating conditions for communities to both affirm their position and role, as well as link and coordinate with other communities. other residents to solve local problems proactively, creatively, and flexibly. Therefore, it is necessary to have an appropriate way to organize local government to quickly and best respond to the legitimate requirements and interests of the community, and organize and promote its role and creativity. of the community, a government that is true of the community, for the community. Meeting the above requirements of democracy and the rule of law in current conditions, countries can find in the universal model: ***Local self-government.***

The concept of local self-government has been defined in the European Charter on Local Self-Government. Accordingly: Local self-government is understood as " *the rights and abilities of local governments, within the limits of the law, to regulate and manage a substantial part of the public affairs under their responsibility for the benefit of the local government*" "Residents"; Local self-governance is implemented through: " *The Council consists of members elected freely by ballot based on universal, direct and equal suffrage and may have its own executive body*". (Article 3 – European Charter) (1).

- Similarly, the first draft of the International Charter on Local Self-Government also defined:

"first. Local self-government denotes the right and ability of local government, within the limits of the law, to regulate and manage a significant portion of public activities by its responsibilities and for the benefit of the local government. local people.

2. This right is exercised by the council or parliament whose members are elected according to the principles of free, direct, equal, universal and secret ballot; Directly under it are executive departments, responsible to the council or parliament " (Article 3 of the draft Charter) (2).

The nature of local autonomy (Local autonomy) in terms of power is to handle the relationship between central government and local government in two aspects: the right to take independent initiatives to solve problems. local affairs (the power of initiation) and immunity from central government intervention in the settlement of local affairs (the power of immunity) (3). These two aspects are conditions for each other, ensuring the feasibility of local self-governance.

The actual organization and operation of local self-government in many countries show that local autonomy is often associated with the category of decentralization and therefore in many cases the concept of decentralization is used equivalently to the concept of local self-governance. The identification of these two concepts easily leads to confusion in theoretical research and the design of local self-government models, simplifying the concept of local self-management. However, it is also important to see that decentralization is the basic basis of local self-governance, a source for establishing the powers and responsibilities of local governments. Accordingly, the central government (basically the executive government) transfers to local governments the independent and complete administrative powers specified in the Constitution and laws and within the framework of the transferred powers. assigned, local governments exercise their powers independently, proactively, and with self-responsibility. Therefore, decentralization is a basic method to form local self-governance and is one of the factors that determine the nature and level of local self-governance in the sense of higher decentralization. , the greater the self-management of local governments.

In essence, local self-governance is a much more complex, rich, and broader content than the category of decentralization. The richness and breadth of the concept of local self-governance can be summarized in the following points:

First, local self-governance is a method of local governance based on the combination of state governance and community self-governance associated with implementing and promoting local democracy.

Therefore, the subject of local self-government is not only the local self-government established on the results of free, fair, direct, and universal suffrage by residents but also the individual. each citizen and community organization within the area. The organization and operation model of self-government is the interaction between the people and the self-government according to the principle of promoting the role of the people and their direct participation in solving affairs. of the community and affirms the service function of self-government in ensuring human rights, legitimate rights, and interests of the people. Active and proactive citizen participation through forms such as “ *mass initiatives* ” included in the Swedish Local Government Act (1994) or “ *ballot initiatives* ” in some US states Along with promoting the role of community organizations and social organizations in local governance, Ky has been creating extremely flexible and effective mechanisms to work with self-government to solve problems. local work, ensuring publicity, transparency, and creating social consensus.

Second, local self-governance is regulated and guaranteed by the Constitution and Law

To ensure that residential communities and self-government truly take ownership of their affairs, limiting central government intervention in self-management activities, the spirit and content of the self-governance regime. management is stipulated in the Constitution and Law. The constitutions of many countries such as the 1946 Constitution of Japan have dedicated a separate chapter (Chapter VIII) to regulations on local self-government, the Basic Law of the Federal Republic of Germany 1949, the Constitution of Sweden, the Constitution of the Russian Federation all have quite clear regulations on local self-governance. In many European countries, based on the provisions of the European Charter on local self-government, laws on local self-government have also been promulgated. The need to establish a legal guarantee at the level of the Constitution and laws for local self-government shows that the rights transferred by the central government to local self-government are very large and very important. , regarding the latest in national sovereignty, democracy, and human rights. Therefore, these rights must be strictly regulated, public, transparent, easy to implement, and easy to control, preventing the risk of abuse of local autonomy, to the detriment of national stability and unified national development. With the Constitutional foundation, the local self-governance regime is guaranteed to be stable and irreversible so that localities can proactively implement development programs for the benefit of localities and local communities... At the same time, the Constitution ensures that the implementation of self-governance contents specified in the Constitution will not be hindered or interfered with contrary to the Constitution or the law from competent agencies of the central government.

Tuesday, Despite the diversity in organizational models, activities, and levels of self-government in different countries the content of the self-governance regime is determined in 4 issues: (1) How to organize the self-government apparatus; (2) Authority and responsibility of self-government; (3) Financial autonomy; (4) Personnel autonomy.

- With such 4 basic contents, the universal highlight of local self-governance in the world can be seen as the recognition that self-governing local governments have public *legal status*. Accordingly, the self-governing government has its name, symbol, seal, apparatus, headquarters, and property ownership, and has enough capacity and conditions for autonomy, self-responsibility, and autonomy. Decide on local affairs prescribed by the Constitution and law.

The public legal status of self-government is the basis for eliminating administrative relations based on the principle of authority and submission between the central government and local governments and between levels of local government. This is one of the very basic differences between self-governing local governments and non-self-governing local governments. Each level of government has powers and responsibilities and must exercise its powers and responsibilities within the framework of the Constitution and law. Therefore, between levels of government, there is a relationship of equality and cooperation, not a relationship of leadership and being led. The equality established between central and local governments under the self-governance regime not only creates practical initiative and creativity for the self-governance in implementing its self-governance rights but also creates Conditions for cooperation in activities between self-governing units according to horizontal and peer-to-peer relationships.

Fourth, on the authority and responsibility of local self-government

- The level and scope of local self-governance are regulated depending on the characteristics of each country, so regulations on the rights and responsibilities of local self-governance in different countries are also different. However, the authority of local self-government in general can have the following groups:

a) Authority to resolve "issues of local significance"

These are issues that directly affect the lives of local people and the resolution of those issues is carried out directly, autonomously, and independently by the people or agencies of local self-government. by the Constitution and law. Issues of local significance include: approving, deciding, implementing, and inspecting the implementation of the budget of the local self-governing unit; fixing, amending, and abolishing taxes, and fees of local self-government units; providing various services to ensure the needs of residents in the local self-government unit; local education, culture, health, resort, and sports; ensure social order, civil defense, ensure security for the people and take responsibility for guardianship issues.

b) Authority to resolve issues is transferred by state agencies according to the provisions of law

These are authorities that are not local issues but are closely linked to local people and the transfer to local self-management helps the work to be done quickly and effectively, meeting the needs of the local people. residents, while reducing the bloat of the state. Authority to marry, register name changes, and other issues related to citizens' civil status; Providing support to ensure assistance and social security for orphans and helpless children, supporting social protection centers in the area, providing social security for labor heroes, Supporting families with many children...

c) Issues related to the construction and organization of work of agencies and authorities under self-government

According to the provisions of law, local self-government is assigned the authority to organize the apparatus and institutions in the government system of the self-governance unit. Through the charter, the government can regulate the authority of each agency and authority as well as the organization of work arrangements for the self-government apparatus, and the right to decide on specific policies and regimes. for local civil servants.

d) Powers related to the implementation of authorizations of the central government; trusts of other local authorities

The government is self-governing when it carries out tasks and powers in groups a, b, and c independently and with its means, conditions, and abilities. But when performing tasks and powers in group d, authorizing agencies must have the obligation to ensure conditions for self-government to carry out authorizations. Self-governing governments are responsible for complying with the conditions for implementing authorization based on ensuring harmony between local and national interests.

The authority of self-government is stipulated in the Constitution and Law. Therefore, self-governments must comply with the provisions of the Constitution and the law and must comply with the inspection mechanism; Inspect and supervise the organization and activities of local self-government from competent agencies. Each self-governance regime may have different inspection and supervision mechanisms, but they all aim at the goal: of ensuring the right to self-governance by the Constitution and the Law, creating maximum conditions to ensure the independence of self-government. management and inspection and control by the central government, complying with the principles of the rule of law.

The method of resolving disputes between self-government and the central government, between self-governments, is the method of judicial jurisdiction through the courts. In many countries, the resolution of disputes and legal conflicts between local self-governments and the central government, or between self-governments, is assigned to the Constitutional Court or a similar constitutional institution. on one's own.

Thursday . on the organizational structure of self-government

According to the European Charter on Local Self-Government, *local self-government is exercised through Councils whose members are elected freely and fairly by local voters by universal suffrage.*

Self-governing local governments can determine their administrative organizational structures:

Although the structure of self-governance agencies in different countries is different, they all have in common that they include two basic institutions: local councils and local administrative agencies. The representative body elected by the local people is called the Self-Government Council. The administrative body of the Council is headed by the Mayor or Chairman. These two agencies are not separate agencies like in non-self-governing administrative units but are attached to a unified self-governing structure. The Mayor or Chairman elected by the Council or the population is usually the head of the Council and head of the local administrative apparatus. Self-governing councils in different countries are elected for different terms. The Council term in the US is 2 - 4 years, in the UK it is 4 years, and in France it is 6 years...

The functions and powers of the Self-Management Council focus on solving local problems such as passing the budget and promulgating regulations on local social management that are not yet regulated by law; deciding on local taxes and fees...

The Self-Management Council is established to establish Committees of the Council that are responsible for helping the Council operate. The role of the committees is mainly advisory.

The Mayor or President is subordinate to the Council and responsible for it. Normally, the mayor or Chairman is both the head of the Council and the head of the administrative apparatus, both representing the population and holding administrative power on behalf of the superior administrative authorities.

Sixth, about financial and human resources autonomy

- Self-governing local governments are allowed to use some of their financial resources and decide on their use within the framework of their power.

- The financial sources of self-governing local governments must be commensurate with assigned tasks and responsibilities.

- A reasonable part of the financial revenues of local self-government will be extracted from taxes, and fees collected locally, and local self-government has the right to decide the level of collection.

- Taxes set by self-governing local governments or taxes in which self-governing local governments partly benefit need to have comprehensive, clear, and flexible calculations to help localities carry out their implementation. perform their duties.

- To protect the financial system of financially weak self-governing local governments, it is necessary to have a system of both vertical and horizontal balance (financial balance between levels of government and between different levels of government). government at the same level).

- Local self-government should be involved in the process of developing regulations for the division of allocated resources.

- Budget support for local governments needs to be in order of priority for each region and not reserved for a specific project. The provisions of support must not affect the freedom of local self-government authorities to decide on policies within their jurisdiction.

- For financial mobilization to invest in fixed assets, local self-governing governments can participate in national and international capital markets.

- Self-governing local governments have complete autonomy over personnel working in the self-governing local government apparatus. They have the right to recruit and manage local civil servants, ensuring salaries, remuneration, subsidies, and favorable working conditions for local civil servants.

Seventh, other rights of local self-government

In addition to the powers related to the autonomy and self-determination of local self-government on local issues, self-government also has other powers, depending on the level and scope of autonomy. comply with the Constitution and laws. In general, the vast majority of self-governing local governments also have the following rights:

- The right to participate in planning and decision-making at higher levels of government on all matters affecting them at a reasonable time and in a reasonable manner.

- The right to establish and develop cooperative relationships with social organizations, non-governmental organizations, community organizations as well as the private sector.

- The right to join Associations of local self-governments for the protection and promotion of common purposes as well as the provision of certain services to members, cooperating with other localities through the implementation of legal entities to carry out several tasks and common interests of the parties.

- Right to participate in International Associations and self-governing local governments. According to the laws of each country, or international treaties, cooperate with its partners in other countries.

- As partners, local governments have the right to participate in the negotiation process and implementation of international action plans related to their roles and scope of responsibilities.

Eighth, legal protection for local self-government

To ensure the powers and responsibilities of local self-government and the supervision of the state government, countries have regulations on the control mechanism of central agencies over local governments. self-governance method to ensure compliance with the Constitution and laws in the activities of the facility, ensuring national interests about community interests.

- This supervision mechanism must both ensure the control of the central government and eliminate the risk of inappropriate interference from the central government with the freedom of self-government within the framework of the Constitution and laws. the law.

- The European Charter on Local Self-Government as well as the draft International Charter on Self-Government have identified basic principles of supervision as legal guarantees for local self-government.

- All supervision of local self-government (CQDPTQ) can only be carried out according to a sequence and in certain cases prescribed by Law or Constitution.

- All supervision by the PLA must only be aimed at ensuring compliance with the Constitution and the law. Regarding the implementation of tasks entrusted to the PLA, administrative supervision by higher-level authorities may go beyond the scope of legal inspection to ensure compliance with national policy.

- Supervision by the DPRK is only carried out when necessary and to the extent the interests want to be protected.

- If the Constitution or national law allows the suspension or dissolution of local councils or, the suspension or dismissal of local administrative heads, this must be done by the prescribed procedure. in law. Their functions are continued for the shortest period possible under the law.

The universal values of local self-governance summarized and introduced above do not create a common or unique model for countries with local self-governance. Every country depends on the State regime, on the specific characteristics of its territory and population; culture, political traditions, and socio-economic development that determine its model of the PLA with different organizational forms and levels and scopes of self-governance. The diversity and richness of local self-governance models in many countries around the world show that local self-governance brings many practical benefits to a democracy in a rule-of-law state. Those models and values are worth learning, researching, and referencing for building and innovating the organization and operations of local governments in countries that have not yet applied the "Local Self-Governance" model. direction".

4. Promoting the role of local governments in the current Vietnamese socialist rule-of-law state apparatus

Researching the process of building and developing local government in Vietnam, the following comments can be made:

Firstly, the issue of local management, building, and developing local governments in Vietnam is an issue that receives great attention from the management entity - the central state. In particular, since the revolutionary government was born, the issue of innovating the organization and operations of local government to improve local management efficiency has always been considered a top focus in the process of organizational innovation. functions and activities of the state apparatus. That concern is reflected in the presence of many policies, laws, and practices directing the organization and operations of the components of local governments at all levels.

Second, although there have been certain changes (and except for the period of building a revolutionary government before the 1959 Constitution), in general, local government in Vietnam is established according to a uniform model: local government At all administrative and territorial levels, there are two levels of state power: People's Councils and People's Committees, with only certain differences in the scope of authority (basically, the scope of authority is only based on the scope of authority). depending on the spatial scope of each level). Each agency in the local government structure at all levels is also designed according to the "uniform" model, especially for the People's Council - a type of agency that, considering its nature, needs to have compatible regulations. with the specific characteristics of each different area. It is this "all at once" model that limits the ability of local governments to operate effectively, puts localities in an inactive position, and puts the burden of local management on the shoulders of the central government.

Third, the process of building and developing local government in our country in recent times has focused on innovating the organization and operation of the two parts that make up the local government apparatus. Both of these parts are part of the unified government system structure from central to local according to the principle of centralization of power at the center. Therefore, the decentralization between central and local authorities is mentioned, but it is just a decentralization of management in the system of state agencies, expressed in the delineation and transfer of some authority of the agencies. Central state administrative agency for local governments, including the People's Council. That is why, policies and measures to innovate local government in recent times, whether rearranging the organizational structure, operating methods, or adjusting the scope of authority of the People's Council or People's Committee, are not effective. Overall, it is still not groundbreaking and less effective.

Finally, I think that the issue of local government reform is a political-legal issue and needs to be considered from a political, legal, and social perspective, not simply issues related to principles of organization of state power. In the coming time, local government reform needs to demonstrate the philosophy of separation of powers between central and local levels, reflecting the requirements of the rule of law. In the rule of law State, the unity of state power originates from the principle of people's sovereignty: the people exercise power directly and indirectly through the division of tasks, coordination, and control among the parties.

state agencies in the exercise of legislative, executive, and judicial powers, between the central and local levels. Therefore, the nature of the decentralization of power between the central and local levels is the delineation of the scope of exercising people's power, where the priority values are democracy and the freedoms of citizens, creating money for the people. The issue allows people to voluntarily accept part of the functions of politicians and join other members of society in discussing and deciding on important social issues, where people not only pay attention to personal interests but also the common interests of the community. Thus, decentralization between central and local levels must ensure local interests based on distinguishing national interests from the interests of the territorial community, coupled with ensuring national interests and national sovereignty. In that direction, we can think of a decentralized model in which social management is carried out by local people (self-management model) with a strict central supervision and inspection mechanism. The central government only intervenes and carries out the types of work that localities cannot do. In that sense, self-governance should not be considered a purely internal matter of the locality and does not necessarily require the destabilization of all local state agencies. In principle, decisions of self-regulatory bodies issued within the scope of their competence are of a general mandatory nature and are protected by the state.

In short, the level of transformation in the perception of decentralization and decentralization is the basis for establishing the legal status of the local government apparatus. In that spirit, from a legal perspective, there needs to be a change at the Constitutional level on the principle of vertical division of power between the central and local levels. On that basis, it is necessary to delineate the authority between the central and local levels and reform the local government apparatus to be compatible with the requirements of exercising local people's power. The reform roadmap can be fast or slow, but the local self-governance option is the option that should be chosen in conjunction with the break with the "uniform" and "commensurate" model in the organization and operations of government levels. local authorities in different areas. In the process of local government reform, it is also necessary to exploit and express traditional cultural values to clarify the needs and characteristics of the local government model, especially at the grassroots.

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