TYPES OF EVIDENCE SOURCES IN CURRENT VIETNAMESE CIVIL PROCEDURE

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ABSTRACT

Objective: The purpose of the article research the types of evidence sources in Vietnam’s civil procedure, points out several limitations, shortcomings, and propose recommendations to complete the legal system concerned.

Theoretical framework: The research employs theories about types of evidence sources in Vietnam’s civil procedure, regulations on types of evidence sources, and mechanisms apply to types of evidence sources in Vietnam.

Method: The research employs three common methods in legal science research: (1) Legal analysis method; (2) Legal efficiency evaluation method; and (3) Comparative legal method. The above research methods help compare and contrast theories of types of evidence sources in Vietnam’s civil procedure and bring out some essential findings.

Results and conclusion: Some valuable findings have been revealed such as the formulation and development of types of evidence sources in Vietnam’s civil procedure, some theoretical issues, and limitations on regulations on types of evidence sources.

Implications of the research: The article proposes some tasks remaining undone, and further tasks will be fulfilled in the future. The article may support many develop future research in Vietnam.

Originality/value: The research on the types of evidence sources in civil procedure become more and more urgent and very important in Vietnam.

Keywords: Source Evidence, Evidence, Prove, Court, Facts.

TIPOS DE FONTES DE PROVAS NO ATUAL PROCESSO CIVIL VIETNAMITA

RESUMO

Objetivo: O objetivo do artigo é pesquisar os tipos de fontes de prova no processo civil do Vietnã, apontar várias limitações e deficiências e propor recomendações para completar o sistema jurídico em questão.

Estrutura teórica: A pesquisa emprega teorias sobre os tipos de fontes de prova no processo civil do Vietnã, regulamentos sobre os tipos de fontes de prova e mecanismos aplicáveis aos tipos de fontes de prova no Vietnã.

Método: A pesquisa emprega três métodos comuns na pesquisa em ciências jurídicas: (1) método de análise jurídica; (2) método de avaliação da eficiência jurídica; e (3) método jurídico comparativo. Os métodos de pesquisa

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acima ajudam a comparar e contrastar as teorias dos tipos de fontes de evidências no processo civil do Vietnã e trazem algumas descobertas essenciais.

Resultados e conclusões: Algumas descobertas valiosas foram reveladas, como a formulação e o desenvolvimento de tipos de fontes de provas no processo civil do Vietnã, algumas questões teóricas e limitações nas regulamentações sobre tipos de fontes de provas.

Implicações da pesquisa: O artigo propõe algumas tarefas que ainda não foram realizadas, e outras tarefas serão cumpridas no futuro. O artigo pode apoiar o desenvolvimento de muitas pesquisas futuras no Vietnã.

Originalidade/valor: A pesquisa sobre os tipos de fontes de prova no processo civil está se tornando cada vez mais urgente e muito importante no Vietnã.

Palavras-chave: Fonte de Evidência, Evidência, Prova, Tribunal, Fatos.

1 INTRODUCTION

In Vietnamese civil procedure, evidence and evidence are central issues and decisions on the outcome of civil case settlement. Directly related to the identification of evidence, the source of evidence is one of the most important contents and is always considered very carefully by the Court when conducting research and evaluation of evidence. Therefore, in Vietnam, “if the evidence is what reflects the objective truth relating to the case that the Court is dealing with, it is collected by a statutory freedom sequence that the Court uses as a basis for determining whether or not the facts are the basis of the requests or objections to the requests of the parties involved and other facilities that are meaningful for proper resolution of the case are understood as the place of origin, or where something can be provided or drawn” (Nguyen Minh Hang, 2009). “This shows the close, intimate relationship between evidence and sources of evidence. At the same time, it shows that, similar to the evidence, the source of evidence is directly related to the results of the settlement of civil cases” (Nguyen Vinh Hung, 2021). Therefore, the source of evidence is always a very important content of the institution of evidence and proof in civil procedure. However, after several years of implementing the provisions of the Civil Procedure Code in 2015 and from the trial practice, the provisions on the source of evidence still exist quite limited and inadequacies, so it has greatly affected the results of resolving civil cases. Therefore, the study of the legal provisions on the source of evidence in Civil Procedure in Vietnam has become more and more necessary and very important.

2 LITERATURE REVIEW

The source of evidence is one of the very important contents of the civil procedure in Vietnam. Therefore, this is also a topic that attracts the attention of many authors in Vietnam: Nguyen Minh Hang in 2009 with “Proving activities in Vietnamese civil procedural law”; Tuong Duy Luong in 2009 with “Civil Procedure Law and Trial Practice”; Nguyen Thi Hoai

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3 METHODOLOGY

To research the topic of various types of evidence sources in Vietnamese civil procedure, the authors have used a combination of traditional research methods of the social sciences and legal sciences in Vietnam such as: legal analysis method, legal efficiency evaluation method, and comparative legal method to achieve the objectives of the research.

In general, the above research methods are used in close and harmonious combination by the authors to achieve the research objectives of the article.

4 RESULTS AND DISCUSSION

4.1 Types of Evidence Sources in Civil Procedure

With its assigned functions, tasks and powers, the Court is a specialized agency tasked with resolving criminal cases or disputes, civil, marriage and family requirements, business, trade and labour to disputes in the administrative field. For the settlement of civil cases, “the task of the Court is to determine the objective truth of the case, restore the legitimate rights and interests of individuals, agencies and organizations” (Nguyen Vinh Hung, 2016_2). This is also one of the principles stipulated in the law with the highest legal value in Vietnam - the 2013 Constitution. In order to ensure the settlement of civil cases objectively, fairly, strictly and lawfully, the Court will first “conduct proof activities” (Nguyen Vinh Hung, 2016_1). Therefore, “the proper identification of evidence related to the content of civil cases always plays a decisive role, so that the Court has the basis to conduct proving activities” (Nguyen Vinh Hung, 2018_2) to clarify the facts and facts of the civil case. On the other hand, between evidence and the source of evidence, there is always a very close attachment or they are closely related and inseparable.

In Vietnam, there are many different views on the source of evidence. In particular, “the source of evidence is understood as the place to draw evidence” (Hanoi University of Law, 2014). It can also be conceived that “the main source of evidence is a form of containing what reflects objective truths related to the object of evidence in civil cases” (Nguyen Minh Hang, 2009). On the other hand, “the source of evidence is where the evidence is. The court can only collect sources of evidence, from which evidence is drawn. Any type of evidence must be within a certain source of evidence” (Tuong Duy Luong, 2009). Therefore, it is mandatory to “draw

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5 Clause 3, Article 102 of the 2013 Constitution.
evidence from the sources of evidence” (Nguyen Minh Hang, 2009). Thus, when the Court studies, evaluates or determines the evidence of a civil case, it is inseparable from the consideration of the source of evidence.

However, in the course of resolving the civil case, “although the involved parties may have seized or accessed the source of evidence, it does not mean that the information, documents or material drawn from these sources of evidence are immediately identified as evidence. This is because the identification of evidence from sources of evidence in civil procedure must also be conducted in accordance with the principles and must fully and strictly comply with the provisions of law” (Nguyen Vinh Hung, 2021). Therefore, for the evidence provided to the Court to ensure reliability, accuracy, clarity and objectivity, Article 94 of the Civil Procedure Code 2015 stipulates that the source of evidence in civil procedure must exist in the following forms:

4.1.1 Readable, Audible, Visible, Electronic Data

In these subjects, civil procedure law has its own requirements:

For readable documents: The requirement for this type of document is that the documents that read the contents must be originals or certified copies, legally certified by competent agencies and organizations. Accordingly, the original can be the original or the original is used as the basis for making copies. Typical of this type of document is contracts, birth certificates, death certificates, power of attorney, land use right certificates, wills ... When “the involved entity shall hand over to the court evidence in ethnic minority languages, foreign languages must be accompanied by translation into Vietnamese, notarized and legally certified” (Faculty of Law - Hanoi National University, 2014). These are mandatory requirements for the type of evidence that is readable documents. The reality of the trial in Vietnam shows that this is also the most important type of document and is either provided by the involved parties or collected by the Court.

Audible and visible documents: This type of document exists in common forms such as tapes, phonograms, videotapes, video recordings, videos, pictures ... The characteristic of this type of material is that it can be stored and stored for a very long time but depends on the material of the storage equipment. In principle, to be considered evidence, “audible and visible documents must be presented together with a written confirmation of the origin of that document or a document on the incident related to the recording or recording of such images”. As for electronic data: In essence, “electronic data is symbols, letters, digits, images, sounds or similar forms created, stored, transmitted or received by electronic means” (Phan Thanh Duong, 2018). Currently, in the digital era, exchanges and purchases can take place entirely in cyberspace and use electronic means as intermediaries to transmit information between the parties. Whether exchanges, agreements or contracts between parties exist in the form of electronic data, it is a form of readable, audible, visible... It is used to express the intentions of the parties. However, in order to be recognized as a source of evidence, electronic data will still have to ensure that all three attributes of the evidence exist: objectivity, relevance and legitimacy. On the other hand, electronic data must also prove the origin of formation or initiation to be recognized by the Court. Because, in fact, courts in Vietnam only recognize

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6 Clause 1, Article 95 of the Civil Procedure Code 2015.
7 Point a, Clause 2, Article 3 of Resolution No. 04/2012/NQ-HDTP of the Supreme People's Court dated December 3, 2012 on "Guiding the implementation of many regulations on "Proof and evidence" of The Civil Procedure Code has been amended and supplemented according to the Law on Amending and Supplementing a Number of Articles of the Civil Procedure Code.
8 Point b, Clause 2, Article 3 of Resolution No. 04/2012/NQ-HDTP, sdd.
electronic data such as emails when they are stored and managed on servers located in Vietnam or are regulated by regulatory agencies in Vietnam.

4.1.2 Evidence

According to the current regulations, “the evidence must be the original artifact related to the civil case, if it is not the original artifacts or not related to the case, it is not evidence in that civil case”. The characteristics of evidence are those formed from the physical world, so they are quite diverse, rich in both form and nature. “During the examination of the evidence, the Court will determine the differences in their shape and properties” (Dinh Ngoc Hoa, 2019). Alternatively, by studying, analyzing, studying the evidence, the trial panel can find the characteristics and properties of the object or can find the specific traces that are the basis for the settlement of civil cases. Since the evidence is also the source of evidence, the evidence may contain evidence. Therefore, there is no shortage of cases where there is confusion between evidence and evidence. However, they are completely two distinctly different entities. For example, X sued Y for compensation for the ruby that Y accidentally caused the rift. Here, the rift is the evidence and the ruby is the evidence and the source of evidence.

4.1.3 Testimony of the involved person and testimony of the witness

In principle, “the testimony of the involved being and the testimony of the witness shall be considered evidence if recorded in writing, audio recordings, recordings, videotapes, video recordings and presented in accordance with the prescribed procedures for readable, audible, or visible documents” (Faculty of Law - Hanoi National University, 2014). In case, if the involved person or the witness testifies at the trial, the testimony is naturally used as evidence. Because, at the trial, there were many witnesses and was fully recorded in the court minutes.

4.1.4 Expert conclusions

The practice of resolving civil cases shows that, in many cases, to be able to make accurate decisions, the trial panel must resort to the expert conclusions of those who have expertise in the field of expertise. Because, the essence of the expert conclusion is “a scientific conclusion of expertise expressed in the form of a written document or presented at the trial, which is made after having studied the issues that need to be applied to the questions answered by the Court of Appeal... In many cases, the expert conclusion is also decisive for the judge's judgment” (Nguyen Minh Hang, 2009). Normally, for cases of disputes over intellectual property rights, disputes over resources in cyberspace or related to DNA identification, etc., the Trial Panel must rely on expert conclusions to determine the objective truth of the civil case. Therefore, in the trials at the Court of First Instance and the Court of Appeal, the absence of the expert when duly summoned by the Court may cause the Court to postpone the hearing Court. Because the expert has the obligation to participate in the court hearing to answer questions related to the expertise and conclusions.10

4.1.5 Minutes of on-site appraisal results

In cases where the subject of the dispute is too large, the volume, shape or typical of the disputes is real estate, the parties cannot move them to the Court. In this case, if requested by

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9 Point c, Clause 2, Article 3 of Resolution No. 04/2012/NQ-HDTP, sdd.
the parties, the court may conduct on-site review and appraisal activities where such assets are present. However, "the minutes of on-site appraisal review shall only be determined as evidence if they are properly identified as evidence collection procedures prescribed by civil procedure law" (Nguyen Minh Hang, 2009).

4.1.6 Results of asset valuation and asset valuation

For cases where disputed assets are not valued by the parties or cannot be self-valued, the trial panel shall be forced to conduct asset valuation activities. For example, houses, land plots, gemstones or intangible assets such as intellectual property rights to software copyrights, industrial property rights... It is difficult to determine if the claimants are not in good faith. The property valuation or appraisal board will usually base the nominal value of the property with the actual market value of that asset class, in order to make a judgment on the final value of the asset. For example, the State's land price bracket for disputed land is 10,000,000 m2 but the market value is 30,000,000 m2. Therefore, the Valuation Council will have to consider coming up with the most reasonable price for that land. This will be the basis for the Trial Panel to consider when resolving disputes. From the practice of resolving disputes in court, for dispute cases are valuable assets such as gemstones, rubies, jewelry, antiques ... Most of them have to go through asset pricing. The results of asset valuation or asset valuation are considered as a source of evidence only when they comply with the provisions of law.11

4.1.7 A document recording legal events and acts made by a competent person

This is a new type of evidence source specified in the Civil Procedure Code 2015 but has become increasingly popular and usually used by the Courts when adjudicating and settling the civil lawsuit in Vietnam. In essence, documents recording legal events and acts made by competent persons are only readable, audible, and visible documents witnessed and performed by persons with the right to establish documents. This is in service of the evaluation and review process of the Court or can be used in civil transactions, business, and trade. Nowadays, a common example of this type of document is the “written statement making” (also known as a notary) made by the bailiff. In essence, a “written statement making” records facts and acts used as evidence in adjudication and other legal relationships. In other words, the “written statement making” is the basis for performing other lawful transactions following the law” (Nguyen Vinh Hung, 2018_1). Therefore, written statement making is just a type of document and exists in the form of a text. However, to contribute to the clarity, accuracy, and rigor, together with the text prepared by Bailiff, written statement making may also attach audio, images, or even videos in some cases. Through the written statement making, the bailiff will describe, reflect or record events and behaviors that people in the bailiff offices themselves have witnessed in an objective, public and honest manner. In Vietnam today, only the bailiff has the right to make written statement making or it is "the exclusive product of the Bailiff because no other subject has the same right to make a claim” (Nguyen Vinh Hung, 2017). It can be said that the diploma has contributed to providing the judicial agencies with a very important source of evidence. Because the procedures for establishing, registering, and managing bailiff are carried out in accordance with the provisions of law. At the same time, even though it is a private law on enforcement of civil judgments organization, the law allows the bailiff to be the representative of both the parties and the State to witness and record the judgment, events, and behaviors taking place in social life.

11 Point h, Clause 2, Article 3 of Resolution No. 04/2012/NQ-HDTP, sdd.
Besides, there are many cases where there is controversy and confusion between written statement making with the notarized deed and authenticated documents of Notaries or the competent state agencies. However, it should be affirmed that written statement making is completely different from the notarized and authenticated documents. Because, “if notarization is a Notary's act on behalf of the State to witness and recognize the authenticity of documents and civil contracts at the request of customers at the Notary Office, the legal action of written statement making is to make certificates (micro-certificates) about events and behaviors that occur everywhere but are less controlled in terms of space and time” (Phan Thanh Duong, 2018). Moreover, the nature of Bailiff and notarized, authenticated documents are also completely different and in legal terms, “written statement making does not replace notarized authenticated documents, and other administrative documents”.  

4.1.8 Notarized and authenticated documents

Currently, most civil transactions, businesses, and trade in Vietnam use notarized and authenticated documents, so the number of these documents is very large. This comes from many reasons, of which part is because the law stipulates that civil transactions, business, and trade must be made in the form of legally notarized and authenticated documents to be legally effective. Because notarized and authenticated documents have higher legal value and trust than unauthenticated documents and papers or other documents presented orally by the parties. Because before being notarized or authenticated, the competent people or representatives of the State have to check and consider very carefully the legality of papers and documents that require notarization or authentication. Therefore, legal notarized and authenticated documents do not only help customers feel more secure and confident but also reduce possible disputes. As for the State, civil, if civil transactions, business, and trade are legally notarized and authenticated, they contribute to ensuring order, discipline, and administrative management easier and more convenient. Even for judicial agencies such as Courts and Procuracy, civil transactions, business, trade that are legally notarized and authenticated contribute to minimizing disputes between parties. As a result, the judicial agencies will have less difficulty in conducting adjudication activities. Therefore, the Civil Procedure Code 2015 stipulates that notarized and authenticated documents are the sources of evidence that both meet the needs of state management and also contribute to increasing the awareness and responsibility of the subjects when performing civil transactions, business, trade should perform notarization and authentication to ensure legal validity and source of evidence for dispute settlement. According to the law, for details and events that have been recorded in legally notarized or authenticated documents, proof is not required, unless there are signs of doubt about the objectivity of the details, events or objectivity of notarized or authenticated documents.

It should be noted in Vietnam that “in some cases, there is a coincidence between the source of evidence and the means of proof. For example, in the case of an inheritance dispute, in which the deceased left a will. The expression of the will to dispose of the heir through the will can be reflected in many different forms: Written wills, oral wills, video discs, audiotapes... in this case, audiotapes, video discs, testament documents are both the evidence storage place and the means of proof” (Nguyễn Minh Hằng, 2009). However, “source of evidence and means of proof are two different concepts” (Hanoi Law University, 2014) and “only evidence can be identified as a means of proof, while the source of evidence is the place where the evidence is found, the place of origin to determine the evidence, to help entities prove the objective truth

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12 Clause 2, Article 36 of Decree No. 08/2020/ND-CP dated January 8, 2020, on the organization and operation of bailiffs.
13 Clause 9, Article 94 of the Civil Procedure Code 2015.
14 Point c, Clause 1, Article 92 of the Civil Procedure Code 2015.
of civil cases” (Nguyen Minh Hang, 2009). “Using the concept of evidence sources or means of proof to refer to people, things, and documents containing information about civil cases is considering them from different angles. From the view of the place where the evidence is drawn, they are called the source of evidence. If viewed from the perspective of being a tool to determine the details and events of a civil case, they are called means of proof” (Phan Thanh Duong, 2018).

4.2 Limitations and Inadequacies in Regulations on Types of Evidence Sources of Current Vietnamese civil Proceedings

4.2.1 Firstly, the civil procedure law in Vietnam does not stipulate that custom is one of the sources of evidence

As soon as the Civil Procedure Code in 2015 was promulgated, it caused great controversy among researchers and those directly adjudicating the issue that evidence sources are custom. Because compared with the Civil Procedure Code 2004 and the Civil Procedure Code amended and supplemented in 2011, the Civil Procedure Code 2015 has removed the provisions on "customs”. In other words, since the 2015 Civil Procedure Code, “customs” are no longer considered a source of evidence. However, according to the authors, this is not reasonable and causes more difficulties, troubles, and complications for the Court when dealing with civil cases. Because, with the characteristics and traditions of economy, culture, and society, Vietnam “has always been an agricultural country... a society that specializes in agricultural production” (Le Tai Trien et al., 1972). Therefore, the mindset of small and fragmented production and business has been inherently attached to most Vietnamese people for many generations. The factors of the village, familiarity, and respect still dominate and greatly influence the activities and behavior of many Vietnamese people. Therefore, in many cases, Vietnamese people are still used to behaving and acting according to customs and practices in each locality and region. Or has it become part of the lifestyle of the Vietnamese people. Therefore, customs in these places always play a significant role, because it directly affects the way people behave. Therefore, when the Court hears, it, of course, is very important to pay attention to these issues (Nguyen Vinh Hung, 2021).

The trial practice in Vietnam indicates that "a custom will become evidence in a particular case when the judge must ask the involved parties to clearly state the origin of that custom and prove the value of that custom by noting it in writing, showing that the whole community where the custom is practiced recognizes and follows as a common convention of the community" (Tuong Duy Luong, 2009). In Vietnam, a custom is conceived as "a habit that has become established in social life, production and daily activities. The custom is recognized and followed by the community where such custom is located as a common convention of the community." Therefore, Vietnam has a saying that "Custom rules the law" or "village regulation". In other words, the custom in many localities has become "unwritten law", is supported and followed by a large number of people there. For example, “in some coast localities, when a fishing boat discovers a school of fish and calls another boat to come and fish, the person who discovers the fish will be divided into a larger proportion. Therefore, the whole community in that locality admits to having the custom, which has made the community's general rules become the evidence of the case. The content of the behavior reflected in the custom (such as pro-rata distribution) is the way for handling” (Tuong Duy Luong, 2009). In the case of handling this distribution of fish proportions, if it is assumed that the fishing boat

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15 Article 82 of the Civil Procedure Code 2004 and Article 82 of the Civil Procedure Code amended and supplemented in 2011 both stipulate that custom is a type of evidence source.
16 Point g, Clause 2, Article 3 of Resolution No. 04/2012/NQ-HDTP.
owners do not have any contract to agree on catching or distribution between the involved parties and the current law has no precedents to adjust a similar case, how will the judicial agencies deal with that case? Then, if the custom is not contrary to the law and social ethics, the trial will be quicker, more reasonable. (Nguyen Vinh Hung, 2021). Having shared this view, the studies in the past have shown that: "In practice, many cases have been resolved through custom" (Phan Thanh Duong, 2018).

Or it is possible to consider a situation that requires the appearance of custom when adjudicating a marriage and family case. In particular, in the Northern mountainous provinces, the failure of the Civil Procedure Code of 2015 to recognize custom has caused many difficulties, troubles, and complications for the Court. For example, the Mong ethnic group has a custom of "robbing wives" in Ha Giang province, so many Mong girls, even though they are not yet 16 years old, have come to stay at their husband's house. However, the age of marriage according to the Law on Marriage and Family 2014 is not enough, so they cannot be registered. Assuming 10 years later, the husband and wife divorced and have to divide the common property, the problem is that the Court will base on the time when the two people live together and have registered their marriage according to the Law on Marriage and family 2014 or base on the fact that they lived together when the girl was 16 years old. Because the custom of stealing a wife in Ha Giang has become a very old custom and is recognized by the people as a traditional cultural feature of the locality, the trial is possibly satisfactory, reasonable and ensures the girl is less disadvantaged when the contribution to her husband is counted from the year she returned to her husband's house at the age of 16 (Nguyen Vinh Hung, 2022). As for the famous "tea tree" case (claiming a fishing spot at sea) that was famous in Vietnam: "Civil tribunals of Collegial People’s Courts has recognized the custom and used it as the basis. Ms. Loan hired Mr. Hue as a driver for a fishing boat and he made "tea tree 19 hours" from the LH coast. Mr. Hung continued to exploit the "19-hour tea tree", then Ms. Loan discovered that Mr. Hung had given Mr. Thanh "the 19-hour tea tree", so she sued for Mr. Thanh to return it. Mr. Hung said that when Mr. Thanh use, the tea tree was no longer. The essence of the lawsuit is to reclaim a fishing spot. This is an offshore area, the law has not mentioned the priority right to exploit and also has not specified who has the right to decide the fishing spot (donate, buy, sell...). Therefore, the settlement must be based on custom. According to verification by local and specialized agencies (LH Town Seafood Board), the driver has the right to choose and give other people fishing spots; Thus, if the site has been unexploited for more than three months, other people have the right to exploit it. The aforesaid custom provided three important grounds and based on that custom, cassation decisions canceled the appellate judgment and maintain the first-instance judgment that rejected Ms. Loan's request" (Tuong Duy Luong, 2009). If there were no customs, in this case, it would probably be very difficult, troublesome, and complicated to deal with, which shows that Vietnam is a country where there are many long-standing customs and traditional behaviors.

4.2.2 Second, the source of evidence in civil proceedings is not still suitable with the background of the development of the digital economy and society

Currently, under the influence of the industrial revolution 4.0, the achievements of science and technology are increasingly widely and strongly affecting the economy and life of all classes in Vietnam. Furthermore, just like the neighboring country China when "the information and telecommunications network has been comprehensively improved" (Quang, P. D. et al., 2023). Civil transactions, business, and trade also take place more smoothly, quickly, simply, and easily thanks to the fact that participants can use modern communication

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17 Point a, Clause 1, Article 8 of the Law on Marriage and Family 2014.
methods such as: chat, call through the platform of free social networks such as Zalo, Messenger, Viber ... In some cases, the involved parties can even send and exchange documents that are photographed through social networks. However, when a dispute occurs, it is very difficult for the Court to accept chats on the above software as are sources of evidence. although the Civil Procedure Code 2015 stipulates that the source of evidence may include electronic data, they must ensure to be clear and are strictly controlled in Vietnam. Or according to the provisions of the Law on Electronic Transactions 2005: “The evidential value of a data message is determined based on the reliability of how the data message is generated, stored or transmitted; how to ensure and maintain the integrity of data messages; how the originator is determined and other relevant factors”. As analyzed, most of the data storage servers of social networks are located abroad, so the inspection and supervision by the management agencies in Vietnam are almost impossible. Therefore, to ensure safety to avoid annulment, courts in Vietnam often argue that the chats of the parties do not have enough grounds to prove the conduct of transactions between them because the above chats are likely to be intentionally faked by the parties. The Court only refers to the content of the chat to have more grounds when evaluating and recognizing the content of the case. From trial practice, chats between the parties are very unlikely to be considered by the Court as a source of evidence in the legal term on settling a civil case. However, this is not reasonable and causes difficulties and limitations for the involved parties when presenting evidence sources which can be considered as increasingly common in Vietnam.

4.3 Recommendations

It is stated that, “the development of social relations in the civil life of the integrated economy is increasing diversely, which is a strong motivation leading to increase demand in establishment of civil, marriage, family, business, commercial and labor relationships of individuals, agencies and organizations (Nguyen Thi Hoai Phuong, 2011). Since then, “the mission of the Civil Procedure Code is to build a system of legal regulations that is complete, strict and especially correspondent to the requirements and needs of the socio-economic development in practice, in order to quickly and promptly settle disputes” (Nguyen Vinh Hung, 2021). On the other hand, “in the context of judicial reform in Vietnam, the issue of complete law system and expanding the freedom to business has always been paid special attention by the Party and Vietnam State” (Hung , N. V, et al., 2022). Therefore, in order to stipulate the sources of evidence in civil proceedings, which more and more fully and in accordance with the requirements of the socio-economic development in Vietnam in the period of building Market economy and international integration, the authors believe that the policy and legislative development agencies in Vietnam should consider a number of following solutions:

4.3.1 Firstly, it is necessary to stipulate that custom is an important source of evidence for civil proceedings in Vietnam

With the speciality of being a country with 54 ethnic minority groups and many different cultural identities and lifestyles in the localities, regions, the custom has been continuing to be followed by a large number of people. In Vietnam, in many cases, in order to be suitable with social life, the custom has been gradually raised improved to the law so that the people's behavior is guaranteed by the law. That is also the reason, Vietnamese law in general and civil procedure law in particular constantly add more sources to ensure a closer, more accurate and complete adjustment of social relations. Or during in the trial process in the past, there were

many cases, the Court could not resolve civil cases because there was no precedent for trial and the law had not been adjusted as well. Therefore, the Supreme People's Court hastened to build a system of precedents case law to serve as a basis for the Courts to refer to when adjudicating. As a result, when the legal system and the precedent system are gradually improving, it is necessary to continue to stipulate that custom is one of the sources of evidence, so that the Court has a basis to consider and apply it when adjudicating civil cases. Even if Vietnam has a relatively complete system of case law, it is still predictable that no matter how well the law prescribes and predicts, it will not be able to cover all the life issues in the law. Especially in a country that is as diverse and rich culture and lifestyle as Vietnam. According to the authors, if in localities and regions where there are progressive practices that are not contrary to social morality and illegal, it is still necessary to recognize and allow the use of civil procedure laws, custom in the process of adjudicating and settling civil cases. By doing so, there will be diversity and rich sources of evidences for Vietnam's civil procedure legal system to better regulate the economic, social and cultural realities. Because after all, the law must be associated with and consistent with social life, so the law must acknowledge and protect the issues that have been agreed and supported by the community and became a part of the pleople's thoughts and actions or it is called the customs. Moreover, the recognition of custom in adjudication may not only relate to and affect the adjudicating process and settle civil cases, but also have a particularly important effect and meaning when strengthening and consolidating solidarity, close and long-term union between ethnic groups living in the territory of Vietnam.

4.3.2 Secondly, adding more types of evidence sources suitable to the life of modern society in the current development stage in Vietnam

Currently, the courts in Vietnam still do not have sufficient guidelines or regulations on the use of chats on social networks to be used as evidence in the adjudication process to settle civil, business, and commercial disputes... Or despite acknowledging the fact existence of electronic data on regulations related the source of evidence, but in practice, courts often do not accept chats on social networks. However, it must be admitted, the Law on Electronic Transactions 2005 has been promulgated for a long time and until now, the development of the internet and social networks in the era of digital revolution has changed a lot. If at the time in 2005, when the new internet was in its infancy and was still quite unfamiliar to many Vietnamese people, the law in Vietnam only conceived the form of expression of electronic data communication, including “data messages are expressed in the form of electronic data exchange, electronic documents, electronic mail, telegram, telegraph, fax and other similar forms”.\(^{19}\) It can be seen that this regulation is not really suitable with the current practical situation of civil, business and commercial transactions related to electronic data. In fact, many people argue that the regulation on electronic data causes difficulties and troubles for the Court when adjudicating criminal to civil cases related to expertise, assess and exploitation of electronic data. (Electronic newspaper the People’s Court, 2021). Therefore, many point of views suggested that it is necessary to quickly amend the Law on Electronic transactions to suit the development needs of modern society (Electronic newspaper Vietnamnet, 2020). From there, according to the authors, it is necessary to amend and supplement the provisions of the Civil Procedure Code in the direction of expanding more types of evidence sources formed from information used on social networks. In fact, the authorities in Vietnam can still identify information posted on social networks of any individuals in any regions across the country. Typically, cases of handling violations of statements or false information on personal Facebook pages about the Covid-19 epidemic. Moreover, the management of social networking sites such

\(^{19}\) Article 10 of the Law on Electronic Transactions 2005.
as Zalo, Facebook, Youtube, Viber... is more and more professional, modern and stricter. Therefore, the authors consider that it is necessary to supplement the provision of evidence sources from news and information in chats on social networks so that the Court has a basis to consider when settling civil cases. Thus, the system of evidence sources in civil proceedings in Vietnam is really rich, diverse and complete, from which, serving the trial and settlement of civil cases, becoming more appropriate. with the situation and demands from the modern society.

5 CONCLUSION

Similarly to evidence, the source of evidence always plays a very important role and is directly related to the outcome of civil case settlement. In addition, in the context of information and data exchanged on social networks is increasingly popular and used quite a lot in civil, business and commercial transactions, it will be more serious. Therefore, it is necessary to stipulate that custom is an important source of evidence for civil proceedings and add other types of evidence sources to suit the modern society in the current development stage in Vietnam. Thus, the system of regulations on sources of evidence in civil proceedings has just been completed, in line with the economic, social conditions and long-standing customs and practices in Vietnam.

Although the sources of evidence in Vietnamese civil proceedings are relatively diverse and abundant, the exclusion of custom from the evidence source is not really suitable with the conditions and circumstances in Vietnam and has causing many difficulties, troubles and complications for the Court when settling civil cases.

Many areas are not covered in this research article such as the nature of the custom, the basis for forming the custom or practical application of evidence sources in Court etc. Therefore, the above discussed uncovered area of this article is known as the future scope.

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