NEW THEORETICAL PERCEPTIONS OF THE CONTROL OF STATE POWERS IN BUILDING THE RULE-OF-LAW STATE

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ABSTRACT

Objective: The purpose of the research is to examine the theories of state power control in Vietnam and the new perceptions regarding these theories.

Theoretical framework: The research employs theories about state power control, methods of state power control, and mechanisms for state power control in order to investigate the situation in Vietnam.

Method: The research employs two common methods in legal science research: (1) Secondary data analysis method; and (2) Comparative method. These help compare and contrast theories of state power control implemented in Vietnam and bring out some essential findings.

Results and conclusions: Some valuable findings have been revealed such as the formulation and development of state power control theories in Vietnam, some theoretical issues and perceptions to be addressed.

Implications of the research: The research proposes some tasks remaining undone and further tasks to be fulfilled in the future. Also, a number of inventive and more efficient methods to control state power are suggested by the research.

Originality/value: The research is originally conducted by the researchers (the authors of the article). The outcome of the research will be referred to in further theories of state power control of Vietnam.


NOVAS PERCEPÇÕES TEÓRICAS DO CONTROLO DOS PODERES DO ESTADO NA CONSTRUÇÃO DO ESTADO DE DIREITO

RESUMO

Objetivo: O objetivo da pesquisa é examinar as teorias de controle do poder do Estado no Vietnã e as novas percepções sobre essas teorias.

Estrutura teórica: A pesquisa emprega teorias sobre o controle do poder do Estado, métodos de controle do poder do Estado e mecanismos para o controle do poder do Estado, a fim de investigar a situação no Vietnã.

Método: A pesquisa emprega dois métodos comuns na pesquisa da ciência jurídica: (1) método de análise de dados secundários; e (2) método comparativo. Estes ajudam a comparar e contrastar teorias de controle de poder estatal implementadas no Vietnã e trazer algumas descobertas essenciais.

Resultados e conclusões: Algumas descobertas valiosas foram reveladas, como a formulação e o desenvolvimento de teorias de controle de poder do Estado no Vietnã, algumas questões teóricas e percepções a serem abordadas.

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Implicações da pesquisa: A pesquisa propõe que algumas tarefas permaneçam desfeitas e outras tarefas sejam cumpridas no futuro. Além disso, uma série de métodos inventivos e mais eficientes para controlar o poder do estado são sugeridos pela pesquisa.


Palavra-chave: Poder, Poderes Estatais, Sistemas Políticos, Controle de Energia.

1 INTRODUCTION

In Vietnam, the continued construction and enhancement of the socialist rule-of-law State are always based on the fundamental principle of "All state power belongs to the people". This principle is enshrined in the Constitution and current laws, is guaranteed to be strictly and thoroughly implemented in practice, ensuring the rights of the People to authorize and delegate powers to state power bodies, without worrying about power being lost or abused. The mentioned fact requires that, in organising state powers, it is necessary to have the assignment, the coordination and the control of state power to ensure that the people are the supreme subject of state powers, preventing the abuse of state power.

In the current political system of Vietnam, the Communist Party of Vietnam (the Party) is a member organization of the Vietnamese Fatherland Front, the leader of the State and the society, and the nucleus of the political system; The State of the Socialist Republic of Vietnam is the centre of the political system. In this aspect, controlling power in the political system is essentially the control of political power, whose focus is on the control of state power.

From the perspective of legal science, control is the activity of monitoring and evaluating the effectiveness and efficiency/performance of the organs of the political system based on the principles and provisions of the Constitution and the laws. This is the time when researchers who study legislation and the laws address the issue of controlling state powers in the political system.

State power control consists of all activities by subjects in the society, employing the methods, order, and procedures provided by the Constitution and the laws in order to establish, maintain, or abolish some certain tasks and rights of the subjects entrusted with power, to supervise, examine, inspect, comment and evaluate the exercise of state powers, to detect, prevent, and eliminate wrongdoings, to reduce the corruption of power, especially the “pretty corruption” caused by officials who benefit from the complexity of the system (Dung & Thanh, 2023), to make state powers truly the power of the people, to contribute to ensuring human rights and citizens' rights, and to protect the legitimate interests of the State, agencies, organizations, and individuals.

Methods of state power control are methods used by subjects to exercise control over state powers, aiming to detect, prevent, and eliminate likelihood of wrongdoings and the wrongdoings of state agencies, cadres, and civil servants themselves in the process of organizing and exercising state power, and to ensure that state power is organized and implemented in accordance with the provisions of the Constitution and the laws, with the desired objectives, and with the highest possible efficiency.

Mechanisms of state power control are the forms, processes, standards and provisions of the Constitution, the laws, and the institutions related to the control of state power, closely
linked together into a unified whole, through which the subjects can exercise the control of state powers in accordance with each method of state power control.

The basic concepts related to the control of state power are the basis for understanding and researching new theoretical perceptions of the Vietnamese Communist Party of the control of state powers in the political system over nearly the last 40 years of reform in Vietnam.

2 THEORETICAL FRAMEWORK

It was the Article 1 of the 1946 Constitution of the Democratic Republic of Vietnam that affirmed: "All the power in the country belongs to the entire Vietnamese people, regardless of races, genders, social statuses, classes, or religion". This is the basis for the principle: "All state powers belong to the People". The 1946 Constitution consisted of only 70 brief articles, but laid a solid foundation of state power, the principles of the division of state power, and the basic institutions and conditions to ensure the implementation of state powers. In particular, the principle that the supreme powers belong to the People, meaning the state is just an effect of power and is not the origin of power (García-Carmona, 2023), is reflected in the constitutional review and amendments.

In the development of the country, starting from the 6th National Congress of the Communist Party of Vietnam (the Congress) (1986), the Party initiated the comprehensive renovation of the country, beginning with economic renovation and management mechanisms. The transitioning from a centrally planned, bureaucratic, and subsidized economy to a socially oriented market economy has gradually created socio-economic premise and infrastructure for the renovation of the superstructure, including reforming the organization and operation of the state power apparatus. At the 7th Congress (1991), the Party approved the Platform for the country construction in the transitional period to socialism, which defined the rule of law and for the first time, with the Party recognising: in order to consistently organize state powers, it is necessary to have a clear separation of three powers: legislative, executive and judicial powers, with mechanisms and means of mutual control.

At the 3rd Meeting of the 7th Central Committee of the Communist Party of Vietnam (the Central Committee) (1992) on Party construction and since the 7th Midterm Meeting of the 7th Congress (1994), the term "A rule-of-law state of the people, by the people, and for the people" has officially appeared in the Party's documents. The policy of constructing a rule-of-law state has become a strategic orientation for the process of renovating the organization and operation of the state apparatus, in which, the construction of the rule-of-law state must always go hand in hand with the organization and exercise of state power. At the 8th Meeting of the 7th Central Committee (in 1995) and at the 8th Congress, the Party identified five fundamental points of view to reform the state apparatus in the orientation of building a rule-of-law state, among which points the principle of organizing state power is supplemented with the content "there should be a close coordination among state agencies in the exercise of the three legislative, executive, and judicial powers ".

Furthermore, in The Documents of the 9th National Congress of the Communist Party of Vietnam, the Party affirmed: "Our State is the main tool to exercise the people's rights, is a rule-of-law state of the people, by the people, and for the people" (the Communist Party of Vietnam, 2001). The 9th Congress set out the task of building a socialist rule of law state and in 2001, in the amendment of the 1992 Constitution, it was noted: "The Socialist Republic of Vietnam State is a rule-of-law socialist State of the people, by the people and for the people. All State powers belong to the people and are based on the alliance between the working class, the peasantry, and the intelligentsia. The State powers are unified and decentralized to State bodies, which shall coordinate with one another in the exercise of the legislative, executive and judiciary powers".
In the document of the 10th Congress, it is clearly stated: “Our State is a socialist rule-of-law state. It is necessary to formulate the operating mechanism of the State, ensuring the principle that all state powers belong to the people. State powers are unified, with assignment and coordination among agencies in the exercise of legislative, executive, and judicial powers. The legal system should be enhanced and the specificity and feasibility of provisions in legal documents should be improved. The institution to check and monitor the constitutionality and legitimacy in the activities and decisions of public agencies should be established and perfected (the Communist Party of Vietnam, 2006).

Thus, before the 11th Congress, the Party's theoretical perceptions of state power control was expressed in the Platform for the country construction in the transitional period to socialism (1991) with the requirement: “there should be mechanisms and measures to control, prevent and punish bureaucracy, corruption, abuse of power, irresponsibility, and the infringement on the democratic rights of citizens”. However, the 1992 Constitution and subsequent legal documents did not institutionalize the important orientation of required effective mechanisms and measures to control the exercise of state power, and to prevent power abuse.

Clause 3, Article 2 of the 2013 Constitution stipulates: “The State powers are unified and delegated to state bodies, which shall coordinate with and control one another in the exercise of the legislative, executive and judiciary powers” (the National Assembly of Vietnam, 2013). In comparison with the 1992 Constitution, the 2013 Constitution has made a very important new step in the separation of powers. Article 69 provides for the legislative power of the National Assembly; Article 94 provides for the Government to exercise executive power; Article 102 provides that the People's Court exercises judicial power.

Although there is a separation of the three rights, all three rights must be in unity, with assignment, coordination, and mutual control; the state has to operate in a rhythmic manner on the basis of conformity, fulfilling the tasks and rights assigned by the people to each right as provided for by the Constitution - the fundamental law of the State and the society. The control of state powers is unified among the people, not among state agencies. “If state agencies are unified, but the people are discontented because their state powers are abused, or lost, then the unification of power in state agencies may probably be futile. Therefore, the purposes of state power control are primarily to prevent the corruption of state powers, not simply to unify state powers. This requires an alteration in the state power control mechanisms” (Tran, N. D., 2012).

Over the years, the Party's theoretical perceptions of the control of state powers has been increasingly supplemented, more specifically and clearly developed, not only in the issuance of documents, directives, or resolutions, but also in the sharp shift in practical actions and jobs of agencies, organizations, and units as well as of cadres, party members, civil servants, officials, and the people. The 13th Congress assessed: “The mechanism for assigning, coordinating and controlling state powers among state agencies in the exercise of legislative, executive and judicial powers has become increasingly effective and has made positive changes” (the Communist Party of Vietnam, 2021). The control of state powers is one of the basic contributing factors to the prevention and combat against corruption.

3 METHODOLOGY

The article employs two common methods in legal science research: (1) Secondary data analysis method; and (2) Comparative method.

The secondary data analysis method is based on the analysis of available documents and data to provide the correct analysis and perception of events and phenomena. The comparative method helps to compare and contrast changes in legal, social, and political changes to draw valuable and valid conclusions.
The combination of these two methods helps to bring out the features, strengths, and shortcomings of the Vietnamese state power control practices as well as proposes suggestions for solving outstanding problems of the control of state powers.

4 RESULTS AND DISCUSSION

4.1 Some Theoretical Issues to be Clarified in the Actual Control of State Powers

In the Review Report on a number of theoretical - practical issues after 20 years of reform (1986 - 2006), the Central Committee affirmed that, in terms of perceptions, the relative independence, the mutual coercion, the mutual inspection and supervision in order to ensure that powers is not corrupted and abused, and the mechanisms to ensure the rights to inspect and supervise state operations of the people have not been clarified among the legislation, execution, and jurisdiction branches. The mechanism of internal inspection and supervision within each branch of power and between branches of power, and social supervision by power-executing agencies are still unreasonable and ineffective, leading to the risks of power abuse, and in fact, there are power abuse, and corruption (policy and law lobby and manipulation by strong economic groups; power abuse and corruption in state agencies...)

The control of state powers is a complicated issue due to the complexity of the organization of state power and the exercise of state powers. On the one hand, the control over the use of state powers to combat abuses is necessary for any democratic and rule-of-law state; on the other hand, the control over the use of state powers should not compromise the flexibility required to carry out tasks in the management functions of the state. The control of state power helps prevent and eliminate wrongful activities of state power institutions, detect, and regulate the exercise of state powers, and ensure that state power is properly exercised to achieve the common goals with maximum efficiency.

Over the past 10 years, since the 10th Congress (2011) of the Party stated that the control of state powers, the prevention and combat against corruption have made significant progress and breakthrough, achieving many very important, comprehensive, and clear results, leaving a good impression, creating a positive and widespread effect in the whole society. According to statistics, the prosecution bodies nationwide have prosecuted and investigated 19,546 cases with 33,868 accused, prosecuted 16,699 cases with 33,037 defendants, tried at first-instance 15,857 cases with 30,355 defendants for corruption, power abuse, and economic violations. From the beginning of the 13th Congress to the end of December 2022, more than 4,200 cases were prosecuted and investigated, with more than 7,500 defendants for corruption, power abuse and economic violations. Notably, 25 officials under the management of the Politburo and the Secretariat were criminally charged (the Government, 2022).

Particularly in 2022, the investigating agencies of the People's Public Security Ministry have handled and investigated 687 cases, 1,439 defendants of corruption violations, of which: 436 new cases and 929 new defendants prosecuted (increasing by 105 cases and 177 defendants compared with the figures of the previous years) (the Government, 2022). Many cases of corruption and especially serious and complicated economic violations, which have attracted the attention of the public, have been conclusively and strictly judged in accordance with the laws. This has had the educating, warning, and preventing effects. The fact shows that corruption is being gradually contained, prevented and is likely to become less severe, making an important contribution to cleaning up the Party and the State machineries, maintaining political stability and socio-economic development, strengthening the confidence of cadres, party members and the people, and enhancing Vietnam’s status and prestige in the international community. Along with the very strong political determination of the Party, the methods, and
mechanisms of state power control that the Party and the State have been implementing have made an important contribution to achieving those results.

The Party has also recognized the shortcomings and limits in the construction and implementation of the power control mechanisms. From the 12th Congress, it has been pointed out: "... the mechanisms for the assignment, coordination, and control of state powers at all levels have not been clearly, synchronously, and effectively defined" (the Communist Party of Vietnam, 2016). Accordingly, the orientations and tasks are set out: “The mechanisms for the assignment, the coordination, and especially the control of state powers among state agencies in exercising legislative, executive, and judicial powers should be clearly established based on the principle that state powers are unified; the rights and responsibilities of each power should be better defined. Simultaneously, the mechanisms for the coordination in exercising and controlling powers at all state levels should also be stipulated” (the Communist Party of Vietnam, 2016); and at the same time “the mechanisms for the control of state powers, and the prevention of power abuse and discipline violations should be perfected and strictly implemented” (the Communist Party of Vietnam, 2016). Then, the Resolution of the 4th and 6th Meeting of the 12th Congress also continued to require: “the mechanisms for state power control should be strictly established based on the Party’s regulations and the State laws, ensuring democracy, publicity, transparency, emphasising accountability, and increasingly inspecting as well as supervising the implementation state powers”.

The 13th Congress also continued to point out: “The power control mechanisms are incomplete; The supervision role of the People has not been adequately fulfilled” (the Communist Party of Vietnam, 2021); along with that, “the mechanisms for state power control in the Party and the State are incomplete, and inconsistent, and are not highly effective” (the Communist Party of Vietnam, 2021). On that basis, one of the solutions proposed by the 13th Congress is: “Increasing the inspection and supervision of cadre management, associated with controlling state powers, and fighting against bribery for official positions” (the Communist Party of Vietnam, 2021). “Enhancing the publicity, transparency, accountability, and the control of power, together with tightening disciplines in the operation of the State and of cadres, civil servants, and public employees” (the Communist Party of Vietnam, 2021).

It can be affirmed that, while, until the 11th Congress, the theoretical perceptions of state power control only revolved around the issues of assignment, coordination and control, from the beginning of the 12th Congress, especially from the 13th National Congress until now, the Party's theoretical perceptions of the control of state powers has witnessed a new development, focusing on clarifying and deepening the origins, causes and nature of state power control; on that basis, to build, perfect, and effectively implement the methods as well as mechanisms for the control of state powers in the political system in general, and in the Party and State in particular. Such methods and mechanisms include: (i) Formulating and promulgating the Party's regulations and the State's laws on control of power to ensure the consistency, the suitability, and the strictness; (ii) Developing and issuing mechanisms for the coordination in the exercise and control of powers at all levels of the government; (iii) Ensuring democracy, publicity, and transparency, promoting accountability, and strengthening the inspection and supervision of the implementation of democracy; (iv) Strengthening the inspection and supervision of cadre management, and fighting against bribery for official positions; (v) Tightening disciplines in the activities of the State, cadres, civil servants, and public employees; (vi) Strongly promoting the supervisory role of the people.
4.2 New Theoretical Perceptions and Issues Related to the Control of State Powers in the Political System in Vietnam in a New Era

In “Some theoretical and practical issues about socialism and the path to socialism in Vietnam”, General Secretary Nguyen Phu Trong - the head of the Party – drew special attention to strengthening the control of state powers in cadre management. The General Secretary requested: “Strengthening the control of state powers in cadre management should be substantive and effective, ensuring the compliance with regulations as well as procedures, the fairness, objectivity, strictness, and caution in each stage of cadres’ work; not accepting those who do not meet the criteria, political opportunist, and those with ambitions for power to enter the ranks of leaders and managers at all levels” (Nguyen, P. T., 2022).

A problem is that it is time to strengthen the control of state powers in cadre management in a substantive and effective way, ensuring the compliance with regulations as well as procedures, the fairness, objectivity, strictness, and caution in each stage of cadre management. Personnel management is "the key of the key". The contingents of cadres at all levels, especially at the strategic levels, are often associated with "great powers and important roles", so the control of state powers in the formulation of strategic-level cadre contingents must be prioritised in order to fight against the bribery for official positions and prevent the risk of power corruption. A more important thing is how to strengthen the control of state powers in cadres’ management because this is always a difficult and sensitive matter, which is directly related to human management.

The new development stage of the country is demanding a new theoretical perception of the Party of the control of state powers in the political system. At the 6th Meeting of the 13th Central Committee, the Party issued the Resolution No. 27-NQ/TW dated November 9, 2022, on continuing to build and perfect the Vietnamese socialist rule-of-law state in a new era. The Resolution No. 27-NQ/TW, which contains new theoretical perceptions of state power control in the political system, focuses on further clarifying and deepening the viewpoints, objectives, focus, tasks, and solutions to continue building and perfecting the Vietnamese socialist rule-of-law state in a new era.

First, regarding state power control. State power is unified, with clear assignment, close coordination, and effective control among state agencies in the exercise of legislative, executive, and judicial powers under the supervision of the people. Compared with the view stated in the document of the 11th Congress which was “State power is unified; with assignment, coordination and control among agencies in the exercise of legislative, executive and judicial powers”, it can be seen that the Party's new theoretical perceptions of state power control is reflected in maintaining that state power is still unified; there is still an assignment, but the assignment must be clear; there is still coordination, but the coordination must be close; there is still great importance attached to the control of power, but the control of state powers must be effective among state agencies in the exercise of legislative, executive and judicial powers. The most important thing is that the whole "clear assignment, close coordination, and effective control among state agencies in the exercise of legislative, executive and judicial powers" must always be maintained, placed "under the supervision of the People".

From the discussed new perceptions, the problem for researchers, scientists and legislators is to investigate and study these perceptions to propose to the Party and the State methods, mechanisms, and forums which are feasible, appropriate and effective in order to ensure that all state power control activities are under the supervision of the People.

Second, regarding the goals of state power control. By 2030, “Completing the mechanisms of assignment, coordination and control among state agencies in the exercise of legislative, executive and judicial powers, ensuring that state power is unified and controlled effectively". The new theoretical perceptions require that the Party not simply define the goals
and requirements of state power control, but also elevate the goal to a higher level: the mechanism of assignment, coordination and control of power must be perfected. and the control of state powers must be effective. This is a problem for scientists in finding scientific and feasible solutions to effectively control state powers.

Third, regarding the focus of state power control. The Party has been insisting on “perfecting the mechanism for controlling state power”, which goes hand in hand with “enhancing the prevention and the fight against corruption; promoting administrative reform, strengthening decentralization, clarifying functions, tasks and powers of organizations and individuals in the state apparatus in parallel with improving enforcement capacity; and building a compact state apparatus, with effective and efficient operation”. The science behind the Party's new theoretical perceptions of state power control is shown in the fact that when anti-corruption activities achieve high efficiency/results, the administrative reform becomes deeper and more substantive, the decentralization of powers among levels is strengthened and expanded, and the functions, tasks and powers of organizations and individuals in the state apparatus are clearly defined associated with upholding responsibility and improving the execution capacity of each organization and individual... It also means that the state apparatus is compact and is operating effectively and efficiently. The fact that the state apparatus is organized in a compact, professional, modern, effective, and efficient manner is another proof that we have perfected the mechanism of state power control.

Fourth, regarding the tasks and the methods of state power control. For the first time, the Party dedicated a separate part in Resolution No. 27-NQ/TW to setting out tasks and methods to improve state power control mechanisms in association with promoting the prevention and fight against corruption. This represents a new development of the Party in the theoretical perceptions of state power control.

4.3 Some Tasks and Methods in State Power Control

First, “the mechanisms for exercising state power should be perfected”; “the control of power within each agency, among state agencies, between the central and local governments, among levels of local government and among agencies within the same level of government should be strengthened”. Another very innovative point is that while, in the past, the Party only mentioned the “control” between state agencies in the exercise of legislative, executive and judicial powers, it has now made a further step which is “mutual control” among state agencies in the exercise of legislative, executive and judicial powers.

Specifically: “Specify more clearly the rights and responsibilities of the executive authorities in controlling the agencies exercising the legislative and judicial powers; of the judicial authorities in controlling the agencies exercising the executive and legislative powers”. The mutual control among the legislative, executive, and judicial branches of power will ensure that each branch of power concentrates on properly performing its responsibilities and rights, avoiding abuse of power, overpowered, and overtaking power, helping the state power to operate properly as provided by the Constitution and laws.

Second, a general, comprehensive, and consistent principle in controlling state power is affirmed by the Party as “all power must be strictly controlled through mechanisms and must be bound with responsibilities. With great powers come great responsibilities. The acts of power abuse must be held accountable and handled. State power control is associated with tightening disciplines in the activities of the State, cadres, civil servants, and public employees. This is also a vivid proof of the Party and State's handling abuses of power, which is a resolute, thorough, and strict, with no grey zone.

Third, the comprehensiveness and synchronism in state power control also requires "a close and effective combination of mechanisms for the inspection, monitoring and control of
state powers by the Party, the State and People, a full implementation of the principles of
democratic centralism, accountability, publicity and transparency in each state agency. The
operational efficiency of Party inspection agencies, advisory and assisting agencies of the Party,
inspection and state audit agencies should continue to be renovated and improved. The
mechanisms for the People to directly control state power should be perfected, ensuring the
right to access to information, petition, reflection, complaint, as well as denouncement, and
other rights of citizens in accordance with the Constitution and the law. The role of the Vietnam
Fatherland Front, socio-political organizations, mass organizations and press agencies in
monitoring and controlling state power should be further promoted.

In the new theoretical perceptions of the Party on state power control, the above tasks
and methods are the manifestation of mobilizing and promoting the synergy of the whole
political system in practicing state power control.

Fourth, one of the objectives of state power control is to fight, prevent and repel
corruption. Tasks and methods to realize this goal are to: “research to establish new institutions
to control powers, prevent and fight against corruption; promulgate regulations on the control
of state power to prevent and combat corruption in the practice of inspection, scrutinization,
audit, investigation, prosecution, adjudication, judgment enforcement, the process of law-
making, and the management and use of finance and public property” (the Communist Party of
Vietnam, 2022).

5 CONCLUSION

So far, inspection, scrutinization, audit, investigation, prosecution, and trial, judgment
enforcement are considered the main forces in anti-corruption activities and have achieved
many very important results, contributing to gradually curbing, preventing and reducing
corruption (the Communist Party of Vietnam, 2021). However, in reality, there are many
corruption cases in which the persons prosecuted and tried are members of the anti-corruption
forces, causing discontent and anger in public, and adversely affecting the image of state
agencies. Therefore, a particularly important issue in the new era is to control state power in
order to prevent and fight against corruption in anti-corruption activities.

The construction and establishment of new institutions on state power control to prevent
and fight against corruption and the promulgation of regulations on state power control to
prevent and combat corruption in the practice of inspection, scrutinization, audit, investigation,
prosecution, trial, judgment enforcement are new and require researchers, scientists, and experts
on legislation and regulation to work and research together to advise and consult the Party and
the State in a practical and effective manner.

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