

Nagoya University- Graduate School of Law

Doctoral Dissertation

REFORMING LOCAL GOVERNMENT IN VIETNAM

Lesson learned from Japan

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Abstract

In the 21st century, democratization and globalization require countries around the world to carry out decentralization as the pathway to good governance and development. However, decentralization is different from country to country; therefore, one needs to distinguish the degree of decentralization that has developed in each stage of a specific nation. Vietnam has carried out decentralization in a consistent manner with the socio-political as the single-party policy and the principle of democratic centralism. Therefore, this study explores the special particularities, the impact of decentralization in the transition period of Vietnam based on the historical review and legal analysis methodology.

Despite embarking on public administrative reform and decentralization since introduced the Doimoi (renovation), especially since the period 2000, the public administrative system in Vietnam still reveals many shortcomings such as red-tape, corruption, cumbersome, and bureaucracy. The public administrative reform could not abolish the remnants of centrally planned economy for adapting the new demands of market socialist oriented economy. Vietnam could not achieve the successful decentralization due to the lack of comprehensive legal regulations and the weak performance of local government system. Hence, the question remains as to what needs to be done to promote the effectiveness of decentralization in Vietnam.

Given the fact that the concepts: governance and good governance are not popular in the political environment of Vietnam; however, Vietnamese authorities defined the criteria such as: effectiveness, efficiency, strength, modern, accountability, and transparency as the ultimate objective of the public administration reform. Clearly, these criteria are also the standard of good governance. Therefore, Vietnamese government is struggling for finding the effective model of local government as the key factor for successful decentralization, in order to meet the demands of globalization era. Evidently, Vietnam has shown the great effort in progress of amending the 1992 Constitution in 2014, introducing the new program of PAR period 2011-2020, specially the pilot case on abolishment of the People's Council at the district and commune level. Hence, this main objective of dissertation is to identify what approach to take and what the possible implications for reforming towards strong and accountable local government in Vietnam from experiences of Japan.

The impact of decentralization depends on how it is implemented. Japan's experience in promoting decentralization is the great example not only for the developed countries but also for the developing countries such as

Vietnam to refer to. Japan has gained the significant successes in the process of transforming from centralization to decentralization through introducing the local autonomy principle, preventing freely central's intervention, reducing the number of municipalities as well as promoting fiscal decentralization. Drawing experiences of Japan in promoting decentralization, this dissertation is motivated by the question: What are the possible lessons for reforming towards a strong and accountable local government in Vietnam from the Japan? Answering this question indicates the main findings of this research.

Briefly, reforming toward a strong and accountable local government system is the primary condition for Vietnam to achieve the successful decentralization as well as to meet the requirement of the integration and globalization era. Therefore, Vietnam should restructure the local government system by two-tier model, redefining the central-local relationship, and enhancing accountability of local public entities as the main solutions for promoting effectiveness of decentralization. This dissertation responds to the urgent needs of Vietnam in progress of reforming legal system and promoting the effectiveness of the public administration system towards a democratic country.

Abbreviations

ADB	Asia Development Bank
ADFS	Agency Delegated Function System
CPV	Communist Party of Vietnam
DNRE	Department of Natural Resources and Environment
DRV	Democratic Republic of Vietnam
FCAR	First Commission on Administrative Reform
LAL	Local Autonomy Law
LAT	Local Allocation Tax
LG	Law on Government
LLG	Law on Organization and Operation of People's Council and People's Committee
LNA	Law on Normative Act
LSB	Law on State Budget
LSCL	Law on State Compensation Liability
NLG	Neighborhood Local Government
MDGs	Millennium Development Goals
MNRE	Ministry of Natural Resources and Environment
MOF	Ministry of Finance
MOJ	Ministry of Justice
MPI	Ministry of Planning and Investment
NGOs	Non-governmental organizations
PAR	Public Administrative Reform
PAR-MP	Public Administrative Reform – Master Plan
PCe	People's Committee
PCI	People's Council
SOE	State owner enterprises
SRV	Socialist Republic of Vietnam
UNDP	United Nation Development Program
VNN	Vietnamese currency (DONG)
WTO	World Trade Organization

Introduction

At beginning of establishment in 1945, Vietnam aimed at building up a socialist country as was the same as the former Soviet Union and China. Under the Max-Leninism doctrine, Vietnam highlighted the centralized character of the socialist state through a mechanism of concentration of state power with the leading role being the Communist Party. Vietnam has experienced with centrally planned economy for a long time. After reunification in 1975, in order to overcome the long lasting economic crisis during 1970s and 1980s, Vietnam introduced Doimoi with the aim at shifting from centrally planned economy to the market socialist-oriented economy in 1986.¹

Doimoi required government to change its role in order to meet the growing demands. Government could not carry out both economic and public administrative functions as used to be in central planning.² Hence, public administrative reforms (PAR) were carried out since 1990s for meeting the demands of market economy with the major focus on rationalizing the legal and regulatory frameworks of the government system, reforming the machinery of the public administrative system at all levels, and renovating the civil servants through training.³ From 2001-10, PAR aimed to create a public administration system that was democratic, clean, strong, professional, modernized, effective and efficient. This system included a socialist rule-by-law of the people, by the people and for the people; a force of civil servants capable and qualified to fulfill assigned tasks, contributing to develop a healthy and well-oriented society, proactively serving the people in their daily life, and promoting the lifestyle of obeying the law in work and life.⁴

However, after more than two decades of Doimoi and ten years of implementing the PAR-MP 2001-10 the public administrative system is still facing with problems such as red-tape, corruption and bureaucracy. In addi-

¹ *Vietnam Achieving the Millennium Development Goals* (Approved by the Prime Minister at Document No. 4947/VPCP-QHQT, date 1st September 2005),10, <http://planipolis.iiep.unesco.org/upload/Viet%20Nam/Viet%20Nam%20MDG%20Fourth%20report.pdf>.

² Under the centralized mechanism, the central government played a dominant role in all aspects whereas local government was a subordinate organ. The democratic centralism principle defined the hierarchical features of government system in which the operation of the state organ at the lower-level was under the control of the state organs at the higher-level.

³ OECD, *Cutting Red Tape Administrative Simplification in Viet Nam: Supporting the Competitiveness of the Vietnamese Economy* (OECD Publishing, 2011), 36.

⁴ Thủ tướng (Prime Minister), *Quyết Định 136/2001/QĐ-TTg Về Phê Duyệt Chương Trình Tổng Thể Cải Cách Hành Chính Nhà Nước Giai Đoạn 2001 - 2010 (Decision 136/2001 on Approving the Public Administrative Reform-master Plan Period 2001-2010)*, 2001.

tion, citizens and businesses are not satisfied with the public services due to many reasons such as: the poor quality of performance, complex administrative procedures, and lack of accountability of civil servants. Significantly, since Vietnam officially became the member of World Trade Organization (WTO) in 2007, and under the pressure of integration and globalization process towards good governance and democracy, Vietnam greatly needs to implement the PAR effectively. Consequently, Vietnam is still struggling for building up a democratic society in the era of integration and globalization. Evidently, Vietnamese authorities has shown the great effort in progress of amending the 1992 Constitution, making new strategies and programs for PAR period 2011-2020, especially implementing the pilot case on abolishment of the People's Council at the district and commune level since 2009. Hence, this dissertation aims at finding the possible lessons for reforming towards strong and accountable local government in Vietnam from experiences of Japan.

Through examining the current issues of the local government system in Vietnam based on the historical review, legal analysis and case study methodology, this research indicates the reason why Vietnam could not achieve the successful public administration reform. As United Nation Development Program (UNDP) concluded that Vietnam could not achieve the objective of the PAR-MP 2001-2010 because the PAR has carried out without the linkage with decentralization.⁵ Government could not utilize the decentralization to abolish the remnants of the centrally planned economy such as the application-approval mechanism, hierarchical public administrative system, red-tape and corruption. Significantly, Vietnam has not yet recognized the important role of local government in the process of promoting democratic society. Local entities are closest to the people's lives because of providing the major public administrative services and response to the needs of residents better than central government. However, local governments could not fulfill the delegated duties and functions effectively due to the lack of high-qualified staffs and fiscal resources. In addition, central government still intervenes into the work of local government because of unclear distribution of functions between the central and

⁵ Jairo Acuna-Alfaro, ed., *Reforming Public Administration in Vietnam Current Situation and Recommendations* (Hanoi: National Political Publishing House, 2009), 83, http://www.un.org.vn/en/publications/government-agency-publications/doc_download/138-reforming-public-administration-in-viet-nam-current-situation-and-recommendations.html.

local governments. Consequently, local government lacks of discretion in exercising the delegated powers and functions in order to respond to the needs of residents as well as to deal with local issues effectively.

It is essential to study experiences of other countries for withdrawing the possible implications for Vietnam's context because the impact of decentralization depends on how it is implemented in consistent with the special particularities of a country. Japan's experience in implementing decentralization is the great example for the developing countries moving towards a democratic society. Despite the fact that the Constitution of Japan provides the local autonomy principle in 1946, local government system in Japan could gain only thirty percent of autonomy because of the subsidies of the central.⁶ In order to ensure that local government have discretion in performing the autonomous functions, Japan has carried out the package of decentralization since 1995, especially since introducing the 1999 Omnibus Law of Decentralization as well as the Law on Local Autonomy (revised).⁷ In addition, Japan gained successes through introducing the unified structure of local government with two-tier, reducing the number of municipalities, and abolishing the Agency of Delegated Functions System (ADFS). In comparatively study with Japan, Vietnam shares some common characteristic in geography such as both countries prolong from North to the South (long and narrow shape) and also divided into three major parts (North, Central and South). Japan and Vietnam also introduced the modern local government system since promulgation of the Constitutions in 1946. However, Japan has gained the significant successes not only in economic development but also in building up a democratic society. Therefore, this study selects Japan as a great example to refer to.

In general, the study aims at identify the possible reforming solutions for local government in Vietnam. The research's objectives focus on answering three questions: (1) Why is there no local autonomy in Vietnam? (2) What are the major issues of the local government system in Vietnam from the legal aspect? (3) What are the possible lessons for reforming towards a strong and accountable local government in Vietnam from the Japan? In order to answer these questions, this dissertation is organized into five chapters.

⁶ Yagi KinnoSuke, "Decentralization in Japan" (United Nations University in Tokyo, April 2004), 10, United Nations University in Tokyo, <http://coe21-policy.sfc.keio.ac.jp/ja/wp/WP30.pdf>.

⁷ Furukawa Shun'ichi et al., *Japan's Road to Pluralism: Transforming Local Communities in the Global Era* (Japan Center for International Exchange, 2003), 21.

Chapter One opens up the conceptual discussion on local government and its relationships to decentralization and good governance. The successful decentralization depends on the ability of local government as well as how it is implemented in a consistent manner with socio-political and economic condition of a country. Therefore, this chapter also identifies the special particularities of decentralization, and the features of local government system under the principle of democratic centralism in Vietnam. Through conceptual study, this chapter will answer the first question of dissertation: why there is no local autonomy in Vietnam. In general, this chapter provides the basic background of decentralization in Vietnam as the primary condition for finding the possible implications for the case of Vietnam.

Chapter Two reviews the history of local government in Vietnam since 1945 until the present in order to identify the changes in the legal framework according to each period, especially in the transitional period from centrally planned economy to a market-socialist oriented economy through Doimoi. This chapter also examines the process of implementing PAR since 1990s in order to identify the needs of reforming local governments and also answer the question why Vietnam could not achieve success in the process of implementing the PAR-MP 2001-2010. In addition, this chapter explores the needs to continue PAR, especially the reforming local government because of pressures from globalization and integration as well as internal aspects

Chapter Three primarily explores the major issues of central-local relations under the principle of democratic centralism such as: independent structure, shifting responsibilities among governmental agencies, and overlapping functions. The central-local relation is one of the most important points in decentralization. Decentralization requires central entities to transfer the power, responsibilities to the local government as well as to identify clearly the relationship between central and local entities. Local government cannot fulfill the delegated functions and duties when it is not enabled to hold decision-making and fiscal power as the key elements of enhancing decentralization. Therefore, this chapter will focus on legal regulations on government which caused local government could not exercise decision-making powers and independently determining their own expenditures and revenue. In addition, this chapter also examines one case of unclear distribution of functions caused the shirking of responsibility between central and local authorities. In brief, this chapter aims at examining legal

frameworks for the central-local relationships in order to identify the dependence of local government, and unclear distribution of functions are the main points affected to the successful decentralization in Vietnam.

Chapter Four looks into the current issues of local government system basing on legal regulations and its practice. Capacity of local entities in performing the delegated functions as well as providing the public services affects directly to the rights and legitimate interests of local residents. In other words, local units will respond to the needs of the local residents better if they have the high-qualified staffs, sufficient local revenue. However, local government in Vietnam is still facing with the shortages of the financial resources, the high-qualified staffs, and the facilities; therefore, it is not able to carry out the delegated functions effectively. Corruption, red-tape, bureaucracy are remained as the critical issues at local level, especially at the grass-root level. Moreover, the three-tier model of the local government system with the addition of significant increasing in the number of local units prevented Vietnam from reducing the administration costs and retaining the high-qualified staffs. Therefore, the weak performance of local government is raised as the main challenge of Vietnam in building up a democratic society. This chapter contributes to identify clearly the reason why Vietnam has not yet achieved the ultimate objectives of the PAR-MR 2001-2010 as well as initiates the reforming solution in the chapter five. Chapter Five proposes the possible implications towards strong and accountable local government system for Vietnam through examining the experiences of Japan in promoting decentralization. There are some significant differences in socio-political and economic conditions; for example, Vietnam follows the single-party regime and democratic centralism principle whereas Japan introduces the multi-party policy and local autonomy principle. However, Vietnam should promote decentralization with the main focus on reforming local government in order to ensure that local government plays a vital role not only in economic development but also in promoting democracy. Lessons are withdrawn from Japan as follows: (1) Restructuring local government system by introducing the two-tier model; (2) Strengthening local governments by preventing freely central's intervention, building capacity for local governments, and promoting accountability. This chapter answers the third question of research's objectives as what are the possible lessons for reforming towards strong and accountable local government in Vietnam from the Japan.

In conclusion, this study contributes to examine deeply the legal framework on public administration as well as to identify clearly the current problems of local governments in Vietnam. Basing on examination the experience of other countries, especially Japan and practical of PAR in Vietnam, the findings of this research answer clearly the question why Vietnam could not achieve the success after a long way of implementing the public administrative reform. Special, this study recognizes that Vietnam needs to focus on reforming towards a strong and accountable local government in order to achieve successful decentralization as the pathway to build up a democratic country.

Chapter 1

Local Government: Conceptual Studies and Its Relationship to Decentralization and Good Local Governance

In the process of democratization and globalization, decentralization is the pathway towards good governance and development. However, the impact of decentralization depends on how it is implemented. Significantly, the successful decentralization depends on the ability of local government in performing duties and functions. Hence, there is a linkage between the concepts of good governance, decentralization, and local government. Significantly, decentralization is different from a country to a country because of the differences of the social-political and economic conditions. Therefore, this chapter aims at identify the decentralization and local government in the special particularities of Vietnam.

1. Conception of local government

1.1 Local governance and local government distinction

In the 21st century, many countries around the world used the concept of governance instead of government. In general, governance consists of some aspects such as: the form of the political regime, the process of exercising authority, and the capacity of government in policy-making, performing as well as the discharge of the functions.⁸ Government in general includes the elements such as structure, functions, mechanisms, principles, institutions. Hence, government and governance are the alternative notion. The term “governance” and “government” is sometime used synonymously as the management of the state. Formally, both governance and government are mentioned together because of its interaction; however, governance refers to broader meaning and scope.⁹ In general, good government ensures for good governance.

However, in practice of Vietnam, there is unclear distinction about the governance and government concepts. In addition, the concept of governance is only introduced into Vietnam by international organizations such as UNDP, WB, Asian Development Bank (ADB) since the late 1990. In Vietnam, governance concept refers

⁸ World Bank, *Governance: The World Bank's Experience* (World Bank Publications, 1994), Executive summary xiv

⁹ Mootheril Raghavan Biju, *Good Governance and Administrative Practices* (Mittal Publications, 2007), 23.

simply to the process of steering, managing, or governing mainly by public administration based on principles, rules, or regulations in order to fulfill its internal and external duties of state.¹⁰ This definition is quite narrow because governance only refers to the works of public administrative system from central to local levels. In general, governance refers to two aspects such as (1) the ability of government including institutions and officials in policy-making and implementing of regulations; (2) the accountability of government to the citizens and the society.¹¹ Consequently, there is no distinction in the concepts of governance and government in practice of Vietnam. In other words, the term governance has not yet developed in the political environment of Vietnam.

Significantly, this dissertation aim at examining the concept of local governance and local government in order to identify the needs for promoting the effectiveness of local government as the key factor of good local governance. Local governance is defined as the formulation and execution of collective action at the local levels which includes the diverse objectives of vibrant, living, working, and self-governing communities.¹² Local government refers to particular institutions and entities provided by specified legal documents such as national constitutions, state constitutions, ordinary legislation or executive order for the purpose of delivering a range of specified services to a relatively small geographically delineated area.¹³

The concept of local government and local governance are clarified by Akitson as follows: Local government is defined as institutions whereas the local governance is interpreted more broadly. Local governance consists of not only the intergovernmental relations but also the relationship with outside stakeholders such as electorate, public, service consumers.¹⁴ The concept of local governance refers to the sustainable development whereas the concept of local governance relates to democratic value because local government plays important role in providing directly services to the local populations, ensuring the implementation of policies, dealing with daily

¹⁰Thuy Nguyen Thi, ed., *Giáo Trình Luật Hành Chính Việt Nam (Textbook on Administrative Law of Vietnam)*, 485-2010 (Hanoi: Nhà xuất giáo dục Việt Nam, 2010), 11.

¹¹ Institute of Southeast Asian Studies, *Getting organized in Vietnam: moving in and around the socialist state* (Institute of Southeast Asian Studies, 2003), 2.

¹² Anwar Shah, *Local governance in developing countries* (World Bank Publications, 2006), 2,3.

¹³ Ibid,1.

¹⁴ Doreen Atkinson and Human Sciences Research Council Integrated Rural and Regional Development Research Programme, *Local Government, Local Governance and Sustainable Development: Getting the Parameters Right* (HSRC Press, 2002), 2.

issues of residents, giving citizens a chance to take part in the decision-making process. Therefore, many developing countries gradually pay attention to improve local governance as a key condition for development. In brief, local governance is the broader concept than local government. However, local government is a key factor for ensuring the effectiveness of decentralization in order to achieve good governance. Significantly, in Vietnam, the concept of local governance and local government are also alternative concepts because there is no specific distinction between the governance and government. Consequently, Vietnam has just only focused on reforming government (institutional and organizational reform) as the main tasks of PAR. The other concepts such as civil society, public participation, and good governance are quite new in Vietnam.

1.2 The linkage between local government and decentralization

The successful decentralization depends on the ability of local government in perform the delegated functions. In other words, local public entities play important role in process of promoting decentralization towards good governance. As UNDP mentions about the interacted influences between good local governance and decentralization follows: good local governance and decentralization will bring various benefits because decentralization enables local government to provide better services to local residents while good local governance ensures the local units to exercises the delegated powers and functions more accountability, transparently, and effectively.¹⁵ In addition, decentralization ensures the local's reflects the real problems of the local as well as responds to the needs of local residents better than the central's decision.¹⁶ Decentralization possibly creates more effective and independent local government because local government has discretion in performing the delegated functions basing on the socio-political and economic conditions of local. In addition, fiscal decentralization refers to transfer of more financial resources to local government; therefore, local entities may take initiative actions in determining its expenditures.

Significantly, effectiveness of local governance requires the implementation of decentralization policies, strategies, legal frameworks, programs and activities in two directions: vertically and horizontally. First the vertical direction refers to the transfer of authority, functions, responsibilities and resources from central government to

¹⁵ "UNDP-Local Governance", n.d., <http://hrba.undp.sk/index.php/introduction/local-governance-human-rights-based-approach-and-gender-mainstreaming-in-the-context-of-europe-and-the-cis/182-local-governance->.

¹⁶ Anne Mette Kjær, *Governance* (Wiley-Blackwell, 2004), 29.

local government institutions; and second, the horizontal direction ensures the empowerment of communities at the grassroots level for building their capacity in making plan, managing and implementing their socio-politico-economic development.¹⁷ Thus, the impacts of decentralization on good local governance depend on how local government performing the delegated powers and functions. However, decentralization may bring great challenges for central in dealing with various issues such as corruption, abuse of power, which mainly caused by local governments. In addition, although decentralization has been implemented, but the challenge of the good governance is great because not all local governments enjoy the same level of capacity. Therefore, decentralization requires the central government to consider carefully about what functions should be transferred to local government and how to ensure that local government can perform effectively.

In general, constitutions and laws provide about the structures, powers, and functions of local government. Local government system is also different from country to country. Local government depends on many criteria that determine principles of establishment local governments such as populations, political and social-economic conditions, regional geography. Consequently, a country carries out decentralization in different ways because of its relationship to local government. In other words, decentralization depends on the special features of local government in each nation. For example, decentralization in the federal system is different from decentralization in the unitary system.

In the world today, the structure of one country is often organized under federal system, unitary system and confederation system. *The unitary system* accounts for 90 percent of countries in the world and it has the following characteristics: first, the legal power is concentrated on central government; second, the central government has the powers to set up or abolish the local government or regional basing on its assessment; the local government can only implement the authority and responsibilities which are transferred by central government.¹⁸ On contrary, *a confederation system* is different from a unitary system. It combines of independent states, each having essentially sovereign powers. In a confederation system, the central government or admin-

¹⁷ “John-Mary Kauzya, *Local Governance Capacity Building for Full Range Participation: Concepts, Frameworks, and Experiences in African Countries*,” 5.

¹⁸ Ann O’M Bowman and Richard C. Kearney, *State and Local Government: The Essentials* (Cengage Learning, 2011), 22.

istration deals with only matters of common concern determining by state members; and central government has no authority to provide laws; that are applicable directly to member state.¹⁹ A *federal system* refers to the dividing of power and functions of government between a central government and local governments which are determined by geographical jurisdictions.²⁰ Federal system has the following features: first, both central government and component governments act directly on the people through the laws and through the election and appointment of government officials; second, authority is divided between central government and local governments; third, each level of government is self-governance.²¹ Thus, federal system is different from a unitary system in major characteristics such as dependency of local government, the division of powers and authority, and central-local relations. Obviously, in federal system, local governments are more independent and often organized under the local autonomy or self-government form such as states, counties, cities, and municipalities. However, those countries are under a federal or a unitary system; they also face with the common problems of local government such as fragmented authority, complexity and conflict within government, limits to democracy accountability, corruption, low-level and poor-quality services, and lack of competence and public service commitment among local staffs.²² Therefore, dealing with these problems, many countries have strengthened local governments by reforming the structure of local governments, implementing decentralization or local autonomy.

Obviously, decentralization in federal system is different from decentralization in unitary states. In the federal system, constitution provides the responsibilities and powers of local government therefore central government cannot repeal or modify it whereas, in the unitary system, the national government holds the right to change the delegated powers and functions because constitution does not regulate in detail.²³ Hence, decentralization in unitary country changes from time to time basing on social –political context of a country in each development

¹⁹ Barbara A. Bardes, Mack C. Shelley, and Steffen W. Schmidt, *American Government and Politics Today* (Cengage Learning, 2008), 82.

²⁰ Bowman and Kearney, *State and Local Government*, 22.

²¹ Bardes, Shelley, and Schmidt, *American Government and Politics Today*, 82.

²² Roger L. Kemp, *Forms of local government: a handbook on city, county, and regional options* (McFarland, 1999), 13.

²³ Gita Gopal and World Bank. Independent Evaluation Group, *Decentralization in client countries: an evaluation of the World Bank Support, 1990-2007* (World Bank Publications, 2008), 6.

period. Consequently, studying the concept of local government should be based on the particular conditions of a country. This study only focuses on the concept of local government as applied in the unitary system as Vietnam and Japan.

Vietnam follows a unitary system in which local governments are considered as the subordinate of central government. Although Doimoi introduced a market-oriented economy since 1986, but many characteristics of centrally planned economy still remain such as: first, the central-local relationship not yet determined clearly by laws; second, the “application-approval” mechanism defines the independence of local government in exercising its powers still remains; third, collective decision-making has applied in governing at both central level and local levels. As the results, local governments are still facing with many challenges such as weak performance, red-tape, corruption which cause Vietnam far from achievement of democracy. Therefore, Vietnam is continuing concern about decentralization implementation and public administration reform as the key factors for resolving problems and issues of the local government system.

1.3 Local government and its relationships to good local governance

Local government, decentralization, and good local governance interact with each other. In other words, there is a linkage between the local government, decentralization, and good governance. Local government is a key factor for promoting good governance because the successful decentralization depends on the capacity of local government to perform the delegated functions and power effectively. Therefore, decentralization requires central government to build capacity of local government in order to achieve the good governance.

Concept of good governance is applicable to all factors of society such as the legislation, public administration, judiciary, private sector, as well as NGOs.²⁴ Cheema defines that: “Good or democratic governance is when authority of government is based on the will of the people and responsive to them.”²⁵ According to this definition, performance of governmental institutions is a key factor for evaluating good governance. In addition, government’s policies only reflect the needs of citizens when they are able to participate in the decision-making process productively. Similarly, good governance is defined as the exercise of power of all levels of

²⁴ Ilufoye, “Democracy and Good Governance: Nigeria’s Dilemma,” 3.

²⁵ G. Shabbir Cheema, *Building Democratic Institutions: Governance Reform in Developing Countries* (Kumarian Press, 2005), 5.

government effectively, transparently, accountably, honestly, equitably.²⁶ Accordingly, Cheema points out that good governance is characterized by the principles of transparency, accountability, rule of law, effectiveness, equity, foreseeable strategy, and as well as the participation of people.²⁷ A combination of proper institutional mechanisms and processes for achieving efficiency and effectiveness in administration within democratic polity is the indicator of good governance.²⁸ In other words, the democratic institutions and the quality of the process and practice of governance are critical factors influence the development of democratic value society. Undeniably, the effectiveness and efficiency of the performance of government (public administrative institutions) are the main indicators for evaluating good governance and the major contributions to the success of democratic development. It should be noted that good governance is a broader concept which not only refers to public administration but also refers as the evaluation of economic development or poverty reduction; however, this paper only examines the criteria of good governance in the public administration context.

In general, the good governance and good local governance share some common standards.

When speaking about good governance, Shimomura introduces the basic components of good governance as follows:

- 1) “Accountability, transparency, openness etc., in exercising the power of government
- 2) Rule of law, competent and credible judiciary, and predictable of public conduct
- 3) Sufficient institutional capacity of the public sectors to ensure effective administrative behavior
- 4) Corruption control
- 5) Control excessive military expenditures.”²⁹

Accountability, transparency and openness refer as a set of principle of democratic government. These principles require central and local government to exercise power or implement policy basing on the needs of local people and also to encourage the public participation in the decision-making process. Significantly, participation in the decision-making process of local people is also emphasized strongly as the key factor for building up democratic government because local governments are closer to citizens than central. Therefore,

²⁶ Johnson Isabelle, “Redefining Concept of Governance” (Canadian International Development Agency, 1997), 3, <http://gg.org.mk/pdf/GovConcept.pdf>.

²⁷ Cheema, *Building Democratic Institutions*, 5.

²⁸ Biju, *Good governance and administrative practices*, 24.

²⁹ Yasutami Shimomura, *The role of governance in Asia* (Institute of Southeast Asian Studies, 2003), 2.

the local's policy reflects the demands of residents better than the central's policy. In addition, the other principles such as rule of law, corruption-control or sufficient institutional capacity of the public sectors are also essential requirements for promoting effective, efficient performance of government.

In practice, these principles are interpreted in various meanings, however, comparatively study they have some common characteristics and common definition as below:

1) *Accountability* is interpreted as a broad concept which consists of transparency, liability, controllability, responsibility, and responsiveness.³⁰ In general, accountability is defined as a requirement for a governmental organ to explain in detail what it has carried out.³¹ Accountability is a measure for ensure the performance of governmental elites to be inspected or reviewed; therefore, it refers to the responsibility of governmental organs in disclosing information (transparency) and in implementation accordance with the laws. In addition, accountability also requires the state organs to respond to the needs of residents in order to ensure that their policies reflect the wills and interests of people. Accountability is considered as an effective element for preventing corruption and promoting transparency in government.³²

2) *Transparency* in government operations has several dimensions such as reliable information on government's fiscal policy intentions or forecast; detail data and information on government's operation; clearly established rules for elected and appointed officials; freedom of a requirement for information; open public procurement and employment practices.³³ Transparency in fiscal and information on operations of governments is considered as the most important condition for corruption control while transparency in official recruitment and regulation is an essential element for democracy. In general, transparency is mentioned about the knowing of what governments are doing, as well as the explanations for their operations.³⁴

3) *Participation* allows citizens, who are the beneficiaries of policies and their implementation, to contribute their ideas into the process of decision-making, and to ensure that the objectives and design of policies will be

³⁰ Jonathan G. S. Koppell, *World Rule: Accountability, Legitimacy, and the Design of Global Governance* (University of Chicago Press, 2010), 33.

³¹ Anwar Shah, *Performance Accountability and Combating Corruption* (World Bank Publications, 2007), 16.

³² *Ibid.*, 15-16.

³³ *Ibid.*

³⁴ *Ibid.*

responsive to citizen's needs.³⁵ Policy will be effective and efficient if it is provided basing on the needs of people and for the people. Especially, in the democratic development process, the participation of citizens in the decision-making process is primary condition for building up a state for the people and of the people.

4) *Rule of law* indicates that law is the basic and limitation for all the activities of state. This principle requires that all the activities and regulations of authority agencies and official to comply with the Constitutions and laws. Rule of law indicates that law is made not based on the wills of politicians and everybody has to obey the law.³⁶ Obviously, rule of law does not refer to any particular legal provisions; in brief, it requires that all actions of the state organs, groups, and individuals must abide by the constitution, laws and regulations, and to exercise their powers within limits of the law.

5) *Corruption-control* illustrates the tasks of government itself to reduce or restraint corruption. World Bank defines corruption is the abuse of public office for the private benefit, as the contrast of good governance.³⁷ Corruption rises as challenges to government in reaching a transparent standard. In order to prevent corruption, government has to design a transparent, accountable government as well as promote public participation.

6) *Capacity of organizations and individuals* affects strongly to the effectiveness of decentralization.³⁸ Capacity refers to ability to carry out the appropriate duties and functions effectively, efficiently and sustainably.³⁹ Local entities and their staffs play a vital role in implementing the policy and providing public services to residents; therefore, the quality of public services depends on the capacity of the public sectors because the low-qualified staffs would not fulfill the duties and functions effectively and responsively. Therefore, decentralization requires to strengthening local officials in order to ensure that they can perform the delegated functions effectively.

³⁵ Ibid., 15.

³⁶ Jean-Jacques Dethier and Universität Bonn. Zentrum für Entwicklungsforschung, *Governance, decentralization, and reform in China, India, and Russia* (Springer, 2000), 374.

³⁷ World Bank, *The State in a Changing World*, World Development Report, June 1997, 99, http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/1997/06/01/000009265_3980217141148/Rendere d/PDF/multi0page.pdf.

³⁸ Jerry M. Silverman, *Public Sector Decentralization: Economic Policy and Sector Investment Programs* (World Bank Publications, 1992), 41.

³⁹ Hilderbrand Mary E and Grindle Merilee S, *Building Sustainable Capacity: Challenges for Public Sector*, Pilot Study of Capacity Building (Harvard Institute for International Development Harvard University, November 1994), 8–17, <http://mirror.undp.org/magnet/cdrb/parti.htm>.

However, in practice, these concepts refer to specific substantial things with various forms from country to country. Good governance translates into: (1) a free, fair, and frequent election, a representative legislature that provides laws and supervision; and independent judiciary that interprets laws; (2) a protection of human right and the rule of law; accountability and transparency institutions; (3) a decentralization of authority and resources to local government for ensuring the active role in governance of citizens; (4) an active role of civil society in setting priority and publicizing the needs of the most vulnerable people in society.⁴⁰ In brief, these criteria are closely interrelated; therefore, good governance requires to a harmonized combination of all principles. Basically, determining governance is good or bad depends on the special features of a country. In practice, criteria of good governance refer to various aspects depending on the economic, political, social and cultural context of one country.

Although, the concept of local governance and good governance has not yet developed in Vietnam's context; however, the authority determined the ultimate aim of PAR in Vietnam is to build up an effective, efficient, strong, transparent, accountable, professional, modern public administration system.⁴¹ Evidently, since early 1990s, government has planned reforms of the executive, legislature and judiciary in order to bring about influential changes in the governmental institutions as well as the processes of governance. Vietnam has carried the PAR-MP 2001-2010 with the ultimate objectives as follows:

Reforming public administration system from a centrally planned one to a democratic, clean, strong, professionalized, modernized, effective and efficient public administration system which operates in line with the principle of the socialist State ruled of law under the leadership of the Party; public cadres and civil servants will have appropriate capacities and ethical qualities able to respond to the requirements of the cause of national building and development.⁴²

Thus, democratic, clean, strong, professionalized, modernized, effective and efficient public administration system is considered as the principles of good governance in Vietnam. However, the public administrative system still has characteristics of centralization such as hierarchical (top-down model) in which central

⁴⁰ G. Shabbir Cheema, *Building democratic institutions: governance reform in developing countries* (Kumarian Press, 2005), 5.

⁴¹ Watez Edouard A, ed., "Modernizing Governance in Vietnam" (United Nations Development Programs, 2001), 7, http://www.undp.org.vn/digitalAssets/3/3815_modgov.pdf.

⁴² The general objective of the PAR Master Program is stipulated in Decision No.136/2001/QĐ-TTg dated 17 September 2001 Overall Program on State Administrative Reform in the 2001-10 period.

government played dominant role in all areas whereas local governments were subordinate sectors of central. In order to abolish the remnants of the centrally planned regime since introducing the Doimoi in 1986, Vietnam has embarked on PAR and decentralization with the aim at improving the quality of governance. However, after more than 20 years of implementation, many problems of local governance remain. Therefore, Vietnamese authorities interpreted the standard such as transparency, accountability, rule of law as the ultimate objective of PAR. This section examined the meaning of each term with the aims at identifying the possible reforming solutions for local government in Vietnam

2. Decentralization and Local autonomy

When centralization could not bring effectiveness of governance then decentralization is an alternative measure. Decentralization that refers to the distribution of fiscal, political and administrative powers and functions from central to local levels spreads out in worldwide with various reasons, at different pace, and by different means.⁴³ Decentralization presents as a primary requirement for a country in the transition period to eliminate remnants of central planning and to promote democracy, good governance, and economic development. If governance is decentralized properly, it will bring two productive outcomes: first, the government officials will be more accountable in providing public services to the residents; second local residents are willing to pay for services.⁴⁴

Decentralization has many implications such as: reducing the burden of workload of central government; giving a chance to subordinates to decide and act independently; creating more motivation and morale of the employees. In general, country around the world has carried out decentralization in many types, forms depending on its particular social – political contexts. For example, the decentralization under the local autonomy principle is different from the decentralization under the democratic centralism principle. This section will focus on identifying the concept of decentralization in special conditions of Vietnam.

2.1 Conception and Forms of decentralization

⁴³ Litvack, Ahmad, and Bird, *Rethinking Decentralization in Developing Countries*, 4.

⁴⁴ Shinichi Ichimura and Roy Bahl, *Decentralization policies in Asian development* (World Scientific, 2009), 2.

It is impossible to standardize the meaning of word “decentralization” that would be acceptable universally. Decentralization is very hard to define as it takes many forms and has several dimensions. Decentralization has innumerable applications in English language, but it runs a common idea as the “away from the centre” in Latin’s roots, which in general indicates the transference of authority, legislative, judicial or administrative, from a higher-level government to a lower level.⁴⁵ In general, decentralization indicates the transfer authority, functions from central to local governments. However, the degree of centralization and decentralization depends on the amount of authority delegated to the lowest level. The central government often faces with difficulties in designing the adequately distribution of functions to local government in order to ensure that local government can perform effectively.

Basically, decentralization refers to the transfer of fiscal, political and administrative responsibilities to different tiers of government and between the public and private sectors. For example, the World Bank indicates that each dimension of decentralization such as political, administrative, fiscal has different characteristics and policy implications as well as conditions for success; therefore, designing decentralization programs requires to consider carefully all the related features.⁴⁶ Thus, decentralization requires central government to implement the three dimensions for achieving an effective, efficient and responsive local government.

Political decentralization indicates the purpose of transferring more power in public decision-making to citizens or their elected representatives. Political decentralization enables citizens to know better their representatives as well as allows elected officials to know better the needs and desires of their voters.⁴⁷ Political decentralization normally refers to situations where political power and authority have been transferred to sub-national levels in the form of *devolution*.⁴⁸

⁴⁵ Shree Nagesh Jha and Prakash Chand Mathur, *Decentralization and local politics* (Sage Publications, 1999), 55.

⁴⁶ Instituto del Banco Mundial, *Decentralization briefing notes* (The World Bank Institute ; Prem Network, 1999), 2.

⁴⁷ Decentralization Thematic Team, “Decentralization,” *The Online Sourcebook on Decentralization and Local Development*, n.d., http://www.ciesin.org/decentralization/English/General/Different_forms.html.

⁴⁸ Evaluation Office, *The UNDP Role in Decentralization and Local Governance: A Joint UNDP-Government of Germany Evaluation* (United Nations Development Programs, February 2000), 30, http://web.undp.org/evaluation/documents/decentralization_final_Report.PDF.

Administrative decentralization aims at transferring authority of decision making, responsibilities, and resources for the delivery of public services to lower levels of local governments and other agencies. Administrative decentralization implies the transfer of functions in planning, financing, and managing of certain public functions from the central government to the lower-levels and the other non-state sectors.⁴⁹ The central government transfers authorities, responsibilities and resources to the lower-levels of government as well as other agencies such as NGOs by the forms of *de-concentration and delegation*.

Fiscal decentralization refers to the assignment of expenditure responsibilities and taxes from central government to the lower-levels of government. In other words, fiscal decentralization refers to the shifting balance of power between ministries in central government and also between levels of government.⁵⁰ Fiscal decentralization is a core component of decentralization because local governments and private organizations are only able to carry out decentralized functions effectively when they have an adequate level of revenues as well as the authority to decide on expenditures.

In sum, decentralization is the process of transferring political, fiscal and administrative functions from the central government to local governments, from public sectors to private sectors including non-governmental organizations. Decentralization has different forms such as *de-concentration, devolution, delegation, and privatization*.

Devolution refers to a situation in which government transfers responsibilities, authority and accountability to lower levels with some degree of political autonomy.⁵¹ In devolution, the local government is accountable to the local population through local elections rather than central government because all authority is decentralized.⁵² Devolution seems closest to the local self-governance or local-autonomy.

De-concentration is defined as “the shallowest form of decentralization, in which responsibilities are transferred to an administrative of the central government, usually a field, regional, or municipal office.”⁵³ De-

⁴⁹Decentralization Thematic Team, “Decentralization.”

⁵⁰ Shinichi Ichimura and Roy Bahl, *Decentralization policies in Asian development* (World Scientific, 2009), 21.

⁵¹ Gopal and Group, *Decentralization in client countries*, 4.

⁵² Kjær, *Governance*, 29.

⁵³ Gopal and Group, *Decentralization in client countries*, 4.

concentration refers to process of shifting functions to lower organs inside the hierarchical governmental system without weakening the role of central government.⁵⁴ Decentralization under the form of de-concentration indicates that the central government still holds authority for making policy and only decentralizes the policy implementation. In other words, central government holds accountable local governments.⁵⁵ De-concentration still remains the hierarchical structure of the government system as it only transfers functions to local governments without authority to provide regulations responsively and effectively.

Delegation is interpreted by Word Bank as “some authority and responsibilities transferred, but with a principal-agent relationship between the central and lower levels of government, with the agent remaining accountable to the principal”.⁵⁶ Thus, delegation refers to a situation in which responsibilities and authority are transferred to local governments by central government; therefore, the dependent relationship between central and local governments is still remained. Local governments act as the agents for the central government, executing certain functions on its behalf. Delegation reduces the workload of central government but does not create independence of local governments. The major feature for defining difference between de-concentration and delegation is the transfer of responsibility within or outside the hierarchy of national government.⁵⁷

Privatization refers to transferring ownership of some state enterprises to the subnational level or the private sectors. “Privatization represents a movement away from state allocation of resources towards decisions on resource allocation being made by private parties and the actions of markets.”⁵⁸ Privatization is used to dealing with weaknesses raised by state owner enterprises and for following the requirement of market economy. Especially, developing countries undergoing the transition period are required to carry out privatization for changing their role in the market, reducing their burden of workload, utilizing financial resources, and controlling corruption.

⁵⁴ Public Economics and Public Administration, “Decentralization: Condition for Success-Lessons from Central and Eastern Europe and the Commonwealth of Independent States” (United Nations New York, 2000), 22, <http://unpan.org/publications/PDFs/ELibrary%20Archives/2000%20Decentralization%20Conditions%20for%20Success.pdf>.

⁵⁵ Ibid.

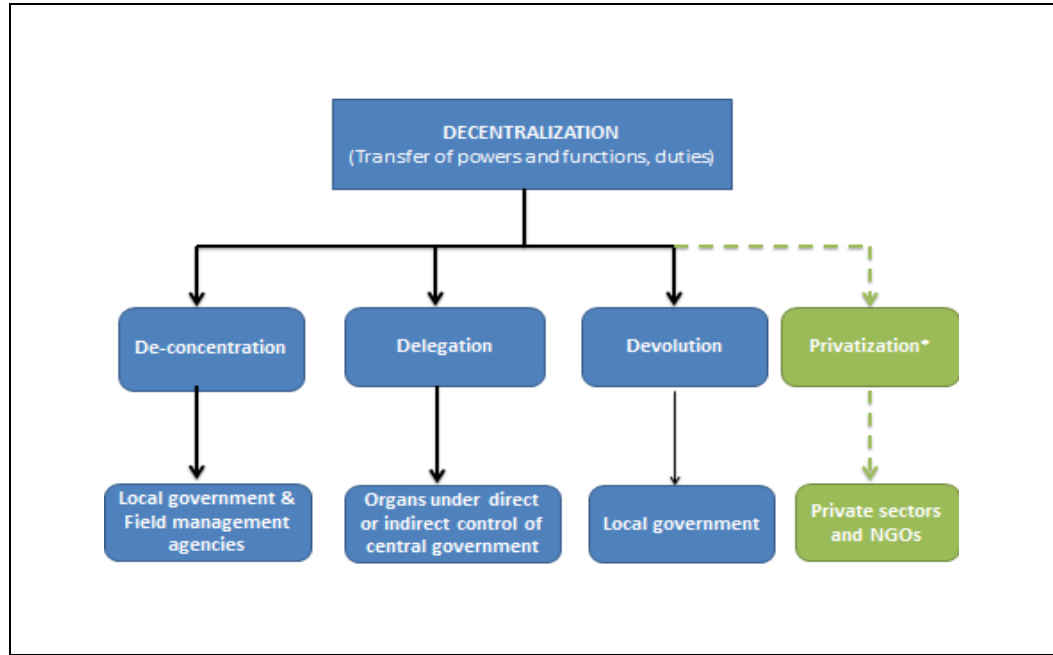
⁵⁶ Gopal and Group, *Decentralization in client countries*, 4.

⁵⁷ Jaap De Visser, *Developmental local government: a case study of South Africa* (Intersentia nv, 2005), 15.

⁵⁸ David Parker and David S. Saal, *International handbook on privatization* (Edward Elgar Publishing, 2003), 39.

In general, the forms of decentralization are described by the table 1.1 as bellow:

Table 1- Forms of decentralization



Sources: summarized by author based on the conceptual studies of decentralization

Centralization and decentralization are not "either-or" conditions. There is no purely existence of decentralization or centralization in a country. In most countries an appropriate balance of centralization and decentralization is essential condition to ensure the effectiveness and efficiency in functioning of government. In principle, central government cannot transfer all functions to the lower-levels; therefore, central government has to determine which functions should be transferred to the local government. The central government should keep the functions that desire a certain outcome and transfer the functions that enable local government to make use of its advantages.⁵⁹ Therefore, decentralization requires the central government to retain important policy and supervisory roles as well as to create or maintain the favorable conditions that allow local governments to take on more responsibilities. Decentralization also requires that local government to be answerable to central for national mandated services, as well as to hold their local residents responsible for other transferred functions. Decentralization without strong commitment to practice good governance and

⁵⁹ Jennie Ilene Litvack, Junaid Ahmad, and Richard Miller Bird, *Rethinking decentralization in developing countries* (World Bank Publications, 1998), 11.

accountability of local governments to the public would not be successful in achieving its intended goals. Thus, the success of decentralization often depends heavily on training for both national and local officials in decentralized administration as well as capacity building for local governments, private enterprises and local non-governmental groups in the planning, financing, and management of decentralized functions.

2.2 Decentralization under the democratic centralism principle

In practice of implementing decentralization, each country has pursued its own forms and pace of decentralization. For example, Paul Smoke mentioned that East Asian countries focus on de-concentration, delegation, or devolution of functions and authority in the various extent of decentralization. The degree of decentralization depends on the distribution of functions from central to local government. The democratic centralism principle creates the hierarchical public administration system; therefore, decentralization under the democratic centralism includes the special features in comparative study with decentralization under the local autonomy principle.

Vietnamese scholars explain the concept of decentralization in various meanings. For example, the forms of decentralization are in common interpreted as *delegation, devolution, de-concentration, and socialization*. In Vietnam, the term ‘socialization’ replaces for ‘privatization’ because of the political ideology of the market-socialist oriented economy. Moreover, the concept of decentralization is not defined by laws as well as legal theory or practice; therefore many terms such as: division, decentralization, assignment, authorization, and proxy are used overlapped which caused confusion.⁶⁰ As Nguyen Khac Hung mentions about confusion of the concept of decentralization in Vietnam as follows:

There has been much confusion about the “right” direction for decentralization in Vietnam. This is indicated in the fact that a distinction is made between decentralization of function (*phan cap*) and decentralization of power (*phan quyen*), whereby the latter is seen as negative, and the former is positive. In reality, there is a tendency for the allocation of tasks (decentralization of function) to be contrary to the desired decentralization of power. This is widely seen as a major unwanted element of current situation as it amounts to a lack of central power to control, leading to a weaker State rather than stronger one.⁶¹

⁶⁰Huong Chu Van, “Yêu Cầu Phân Cấp, Phân Quyền Trong Thực Thi Quyền Lực Nhà Nước ở địa Phương (The Requirements for Delegation and Devolution in Exercising State Powers at the Local Level),” *Luathoc*, 2008, <http://luathoc.cafeluat.com/showthread.php/10413-NCLP-2008-12-Yeu-cau-phan-cap-phan-quyen-trong-thuc-thi-quyen-luc-nha-nuoc-o-dia-phuong>.

⁶¹ Shinichi Ichimura and Roy Bahl, *Decentralization policies in Asian development* (World Scientific, 2009), 235.

The gaps between ideals and realities require to study the concept of decentralization properly in Vietnamese context since decentralization will not bring achievement if it is not understood deeply. In general, decentralization is translated into Vietnamese language as – ‘*phân cấp quản lý*’ which illustrates the process of transferring authorities from higher level to lower level.⁶² The local government can only fulfill the delegated functions or duties if they hold the decision-making powers and have revenue resources. If local governments are not transferred powers, they will not be able to carry out duties effectively. In conclusion, decentralization indicates a *process of transferring powers, duties, functions as well as responsibilities* from central to local governments in accordance with laws.

Vietnam first introduced economic reforms in 1986 in which stimulated initial progress on decentralization and intergovernmental reform. Therefore, Viet Nam’s experience with decentralization since 1991 is part of a broader transformation process. During that time, Vietnam has carried out decentralization with mainly focused on the transfer of administration tasks from central government to local governments in the form of delegation. De-concentration was primarily applied in a situation of transfer responsibilities from ministries to the local field management agencies which called ‘*so, phong, ban*’ (department, office, section). De-concentration indicates that local field management agencies are under the control of the ministries as well as the public administrative organs or executive institutions (People’s Committee) at the same level when performing their functions.

In addition, Vietnam had followed centrally planned economy of the socialist model after the Vietnam wars in which local government was the subnational organ of central government. Hence, the application-approval mechanism was a fundamental feature remaining in the relationship between central and local governments. For example, some scholars illustrate that local governments only performed as administrative units of central government because they did not have powers to determine their own policies. Addition to that, the fiscal system was highly centralized; therefore, local governments did not hold independent fiscal resources or legislative responsibilities. Local government lacked of power in tax collection and in determining its

⁶² Nguyen Thi, *Giáo Trình Luật Hành Chính Việt Nam (Textbook on Administrative Law of Vietnam)*, 63.

expenditures; therefore, local's budget was the sub-element of the central plan.⁶³ Decentralization could not have the positive results in China and Vietnam because central government still retains the upward accountability by focusing on de-concentration whereas other countries such as Thailand, Philippines, and Cambodia are gradually shifting their focus from the de-concentration to devolution⁶⁴

In brief, Vietnam has carried out political, administrative, fiscal decentralization since 1990s, which contributed to change the role of government. Local governments have some discretion. For example, provinces have powers in decision making, tax collection. However, local governments are not empowered adequately for carrying out their duties and functions; as a result, Vietnam could not utilize the effectiveness of decentralization due to difficulties as follows:

First, Vietnam remains one-party state and a fairly centrally driven system; therefore, the leading role of Communist Party and the role of government are not able to distinguish clearly. The highly centralize political is considered as the major issues that prevent the state from implementing decentralization comprehensively. In addition, hesitation of competent agencies in transferring decision-making power and financial resources to local levels affected heavily to decentralization process in Vietnam.⁶⁵

Second, the democratic centralism principle is provided by the Constitution creates dual accountability and hierarchical system in which the central government holds the powers in legislation and administrative jurisdiction. Consequently, central government still plays the dominant role in public administration as well as to adjust freely the powers and responsibilities which are transferred to local governments.

Thirdly, the four-tier hierarchal structure of government remains dependent relationship between the levels of the government system. "Vertical and Horizontal" principle as one feature of the democratic centralism principles creates a dependent system. The lower level has to obey all regulations of higher levels. In other words, the legal documents which provided by lower level must comply with Constitution, laws, and legal regulations of

⁶³ Richard Miller Bird, Robert D. Ebel, and Christine Wallich, *Decentralization of the socialist state: intergovernmental finance in transition economies* (World Bank Publications, 1995), 1.

⁶⁴ World Wold Bank, *East Asia Decentralizes: Making Local Government Work*, illustrated ed. (World Bank, 2005), 28.

⁶⁵ Fritzen Scott A., "Probing System Limits: Decentralization and Local Political Accountability in Vietnam," *Probing System Limits: Decentralization and Local Political Accountability in Vietnam* 28 (2006): 3.

higher levels. The state organs at the higher-level hold power to abolish the decisions of the lower-level in case of inconsistency. Therefore, the question remains as such whether the local governments hold the true decision-making powers and are free from intervention of the higher-levels. In addition, hierarchical structure also causes of shifting responsibilities among levels of government then it prevents government from promoting accountability as a requirement of good governance.

Fourth, the PAR 2001-2010 has carried out without the linkage with decentralization program.⁶⁶ Consequently, local government could not perform the delegated functions because of organizational and institutional reforms did not improve the ability of local government. Addition to that, Vietnam still lacks of a comprehensive legal framework of decentralization; therefore, the distribution of powers from central to local government causes many issues such as the abusing state power by local governments or lacking in capacity to fulfill their transferred functions and responsibilities.

Fifth, local governments, especially at the grassroots levels lack of capacity to perform their duties and functions because of many issues such as the shortage of the high-quality officials and necessary facilities in providing public services. Consequently, the weak performance of local government raises many challenges to government in the process of promoting public participation as well as holds back the democratic development.

Final, Vietnam has village's cultural features; so, local residents still bear in their mind that '*phep vua thua le lang*' (Village's custom versus King's rule). Therefore, decentralizing implementation creates challenges for central government in transferring decision-making powers to local governments because the number of illegal document gradually increases. There are many reasons that cause local governments to provide illegal documents such as the local officials lack of legal knowledge, local's interest; hence, central government hesitates to transfer more authority in decision making for local governments.

In conclusion, the concept of decentralization in Vietnam refers to transfer of powers, functions, duties, and responsibilities from central government to the direct lower level of local governments (from central to provincial level) based on following principles: (1) decentralization must ensure the important functions are remained

⁶⁶Acuna-Alfaro, *Reforming Public Administration in Vietnam Current Situation and Recommendations*, 83–114.

to central government while other functions are encouraged to transfer in order to create flexible and responsive local governments; (2) decentralization requires authority and responsibilities are transferred basing on social political and economic context of a specific local area; (3) decentralization must be provided by laws.⁶⁷ Obviously, Vietnam has just focused on administrative decentralization in which authority and functions are mainly transferred between the public administration institutions which include four-tier such as central government, provincial, district, and communal level. However, each developing country has its own features of performing decentralization. Hence, the change of decentralization through the degree of the transferring authorities and functions from central government to local governments depends on the internal and external contexts. In many unitary systems, local autonomy refers as a good model for strengthening local government, readdressing central-local relations; therefore, the highest degree of decentralization is local–autonomy or self-government should be addressed next. As consequence, a number of questions arise for the case of Vietnam; for example, what are appropriate forms of decentralization; how to implement decentralization in consistent with the special particularities; and why not local autonomy in Vietnam.

2.3 Local autonomy

Local autonomy indicates the local government holds powers to exercise autonomous functions without freely central's intervention. Local autonomy combines political, administrative and fiscal dimensions and can be considered as the highest degree of decentralization. The concept of local autonomy always includes the general idea of decentralization; however, local autonomy indicates more specifically to political and fiscal decentralization than to administrative decentralization.

The concept of autonomy is not well-designed in legality as it is used differently depending on the context. The term autonomy today is used in three different branches of science such as philosophy, natural sciences, and political science.⁶⁸ The term is also used to indicate various dimensions such people's autonomy, cultural autonomy or local autonomy. However, this paper only focuses on the concept of local autonomy which is defined on the basis of a legal and political context. As Reed mentioned centralization or local autonomy also

⁶⁷Nguyen Thi, *Giáo Trình Luật Hành Chính Việt Nam (Textbook on Administrative Law of Vietnam)*, 63.

⁶⁸ Markku Suksi, *Autonomy: applications and implications* (Martinus Nijhoff Publishers, 1998), 7.

associates with the concept of powers, in order to answer who should controls, who makes decisions, and who has the influence⁶⁹ In general, autonomy is defined as the transfer of certain powers from central government to the autonomous entity.⁷⁰ Local autonomy is defined as the power of local governments to enact laws.⁷¹ According to this definition, local autonomy is referred to the ability of local government to legislate and perform its functions more independently.

Local autonomy system refers as an effective measure for accelerating the balanced development of nation, increase responsiveness and accountability of governments to its citizens, and for maximizing the public participation.⁷² Thus, local autonomy indicates the ability of the local government for self-government whether at the regional, provincial, city, or municipal level. Local autonomy model is an effective way for achievements of good governance. As Jeffrey Chapman opined local government autonomy is important because it creates a necessary condition for letting local governments to play three critical roles in maximizing value; in allowing citizens to make know about public expenditures and in competing with other jurisdictions.⁷³ Thus, such a system gives residents an opportunity to make government to be responsive to their own needs, and it also enables people to enhance public responsibilities as well as reveals people about public expenditures. Therefore, local autonomy is an effective mechanism for good governance and democracy because this model is qualified by a set of principles including a transparency, accountability, and participation. Allowing for local autonomy is essential requirement for reforming local governments towards a democratic society.

Local autonomy calls for implementing decentralization by transferring power of central government to local governments. Therefore, setting up an ideal intergovernmental relation is one of the most important points in operating the local autonomy.⁷⁴ However, every country faces with difficulties in determining clearly the

⁶⁹ Steven R. Reed, *Japanese prefectures and policymaking*, Pitt series in policy and institutional studies (Pittsburgh, Pa.: University of Pittsburgh Press, 1986), 4.

⁷⁰ Marc Weller and Stefan Wolff, *Autonomy, self-governance and conflict resolution: innovative approaches to institutional design in divided societies* (Routledge, 2005), 12.

⁷¹ Rod L. Evans and Mark Hance, *Legalized gambling: for and against* (Open Court Publishing, 1998), 242.

⁷² Ali Farazmand, *Administrative Reform in Developing Nations* (Greenwood Publishing Group, 2002), 5.

⁷³ Chapman Jeffrey I., "Local Government, Fiscal Autonomy and Fiscal Stress: The Case of California" (Lincoln Institute of Land Policy, 1999), 4, http://www.lincolnst.edu/subcenters/property-valuation-and-taxation-library/dl/chapman_2.pdf.

⁷⁴ Farazmand, *Administrative Reform in Developing Nations*, 21,22.

shared functions between central government and local government. Consequently, a country has to define what functions that should be transfer to local government and how to limit the central's intervention for ensuring the local autonomy principle.

There are no common principles of local autonomy which are applied to all countries. It means that each country based on its social-political and economic conditions determines its own principles. For example, Constitution of Japan provides that: "Regulations concerning organization and operations of local public entities shall be fixed by laws in accordance with the principle of local autonomy."⁷⁵ However, the Japanese constitution provides no definition of local autonomy principle; therefore, the principle of local autonomy indicates various interpretations; for example; the principle of local autonomy defines as a combination of two elements: the right of local agencies to carry out its function independently basing on their own will, and the right of local citizens to determine that will.⁷⁶

The local autonomy principle refers to different things to a different country in accordance with concrete conditions of each period. However, local autonomy principles have their roots from theory of "home rule" in which initiative and immunity are the basic dimensions of local autonomy.⁷⁷ Initiative power refers to the ability of local government to take on various important actions without having authorized permission from state, and immunity power is a mean for preventing the local government's actions from displacement by state laws.⁷⁸ In general, initiative and immunity play two functions: first, they prevent central government from interfering into the local government's works; second, they ensure the independence of local government in implementing their actions. Therefore, local autonomy refers mainly to independent relationship between central government and local governments. In other words, local autonomy principle prevents central government from interfering freely into the works of local governments. Hence, the law should regulate in detail the relationship between central and local government.

⁷⁵ The 1946 Constitution of Japan, Article 92.

⁷⁶ Kurt Steiner, *Local government in Japan* (Stanford, Calif.: Stanford University Press, 1965), 121.

⁷⁷ Gordon L. Clark, *Judges and the cities: interpreting local autonomy* (University of Chicago Press, 1985), 64.

⁷⁸ Sylvan G. Feldstein and Frank J. Fabozzi, *The Handbook of Municipal Bonds* (John Wiley and Sons, 2008), 19.

The autonomous province only requires to establishing the local legislative organ and local administrative organs because there is a need for dividing between central and local governments.⁷⁹ The legislative organ is representative organ for local population, and the administrative organ is the executive organ that elected by legislative organ or directly by the residents. In addition, local residents often exercise the rights to vote directly the chief of autonomous administration of the province as a governor as an element of democracy. The degree of decentralization will determine that local is autonomous or not. If the legislative and administrative organs have more powers transferring from central government, they will be more independent in their actions and responsive to the needs of local people.

In general, local autonomy or self-government refers to independence of local government in implementing its duties and functions without free interference of central government. Therefore, determining autonomous local government is based on following criteria such as: (1) local government must have its own legislative and administrative organs elected by local people; (2) local autonomous government requires to have its own financial recourses for ensuring independence in expenditure; (3) local government must have power in decision-making for providing legal regulations on local issues effectively; (4) local government must hold power of personnel functions; fifth, the relation between central and local government must be regulated by laws.⁸⁰

Decision-making is one of the most important factors in the process of democratic development; therefore, local government needs to hold decision-making power. When local government holds decision-making powers, the local resident will have more opportunities for participating in the decision-making process. Participation of local people in the process of decision-making also improves the feasibility and efficiency of decisions. In addition, local governments can take initiative in controlling the socio-economic development of local by exploiting the advantages of the region (local). Therefore, decision-making must always consider the political, cultural, and socio-economic environments of the locality. If local government does not have the right to make a decision, all the activities will come under the control of the central government and then local autonomy will dissipate.

⁷⁹ Hans Kelsen, *General Theory of Law And State* (The Lawbook Exchange, Ltd., 2007), 316.

⁸⁰ R. J Bennett, *Local Government and Market Decentralization : Experiences in Industrialized, Developing, and Former Eastern Bloc Countries* (Tokyo; New York: United Nations University Press, 1994), 370.

A local government must be financially independent and needs to have some income resources from the taxation, services' fee, and the other fees. Local government can effectively utilize financial resources, because they know that which field needs priority for investment in their region. In addition, local government will try their best to increase the local budget to have enough money for development. However, a government needs to consider that some regions that are poor in natural resources and have low density will, have relatively low revenues. Thus, to ensure these local governments can operate independently, the central government must allocate a budget to these local governments. In this situation, all expenditures of local governments depend on the allocation of central's budget, thus, they will be under the control of the central governments. Independent financial resource is primary condition for implementing local autonomy.

Local government needs to hold power in personnel function as the essential conditions for ensuring local government to perform its functions more effectively and independently. Under a centrally planned economy, the main authority tended to attract talent and capable persons away from the local level and toward the center. Those who move to the center do not want to return to the field after they have completed training. As result, local governments find either unwilling workers who are seeking opportunities to leave or those who have tried unsuccessfully to leave. If the governor or mayor is selected by higher organs, the degree of decentralization will be smaller as it creates a dependent relationship between the local government's leader and the central government. Thus, the central authority can control or interfere into the works of local governments easily.

Finally, the law needs to provide in detail the relationships between central and local government in order to prevent the intervention of central government. Under centrally planned economy, there was no clear distribution of functions between the central and local units. Local governments did not hold power in planning and decision-making; therefore, they could not act independently. Because of dependence in organization and operation, local governments are not able to deal with local issues actively and responsively. Furthermore, there are no legal measures for limiting or preventing the intervention of central government. As the powers of local government are normally not regulated by Constitution then central government hold authority to decide which powers should be transferred or held back. Therefore, the powers are subject to change regularly from time to time that caused many obstacles for local governments.

According to Kjelberg and Dente (1988), concerning to model of local government, the autonomous model and integrated model are the two major controversial ideological perspectives. The autonomous model refers to wide discretion, limited range of tasks and minimum interference by central organs and the integrated model indicates to the large range of tasks, intertwinement between the local and central competencies, and the central's control through partnership. The significant difference between two models is the implementation mechanism.⁸¹

The concept of local autonomy has not developed in Vietnam both in legal theory and practice. Adam McCarty mentions that: "The structures of a market economy are created, but real decision-making autonomy is never given."⁸² In Vietnamese words, the term "autonomy" is interpreted as "*tự trị địa phương*", and "self – governance" is referred to "*tự quản địa phương*". Significantly, the legal political theory considers autonomy principle as the separation of state powers while Vietnam confirms to follow the concentration of state powers. In addition, self-governance refers only to the governance of non-state agencies (voluntary groups) which are called social organizations. Consequently, the social-political conditions of Vietnam do not allow of implementation the local autonomy principle.

In brief, local autonomy illustrates the highest degree of decentralization in political, financial and administrative dimensions. Autonomous characteristics require that local governments must be dependent in decision-making, expenditures, personnel functions as well as financial recourses. The legal framework of local government should regulate clearly the relationship between central and local government as the basic conditions for implementation of local autonomy principle.

3. Local government under the democratic centralism principle.

3.1 Theory of democratic centralism.

The concept of democratic centralism was used at very beginning of the social-democratic movement in Russian in 1906 as the basis of Bolshevik organization for the party. Until 1977, the Constitution of the former So-

⁸¹ Muramatsu Michio and Iqbal Farrukh, "Understanding Japanese Central-local Government Relations" (World Bank, 2001), 4, <http://info.worldbank.org/etools/docs/library/128820/Moramatsu%202001.pdf>.

⁸² McCarty Adam, "Governance Institutions and Incentive Structures in Vietnam" (EconWPA, 2001), 4, <http://129.3.20.41/eps/pe/papers/0110/0110002.pdf>.

viet Union regulated officially the democratic centralism principle.⁸³ Democratic centralism refers to the Leninist organization model in which central government holds policy-making powers and all organizations and individuals have to obey.⁸⁴ Democratic centralism principle is a fundamental regulation for organization and operation of the Communist Party and the State. As Michael Waller concludes that there are four elements of the democratic centralism as follows:

- 1) The application of the elective principle to all leading organs of the party, from the highest to the lowest;
- 2) Periodic accountability of party organs to their respective party organizations;
- 3) Strict party discipline and subordination of minority to the majority;
- 4) The absolutely binding character of the decisions of the higher organs upon the lower organs and upon party members.⁸⁵

According to these elements, democratic centralism refers to the dependence of lower to the higher level as the criteria of concentration of state power. Democratic refers to discretion of governmental organs in performing their duties and functions in accordance with laws as well as enhancing the participation of the citizens in public administration. This principle indicates the combination of two components as democracy and the centralization. State agencies are organized and operate under the democratic centralism principle which shapes the *hierarchical* system of state structure as well as a mechanism of *collective* leadership. Hierarchical system characterizes by *top-down* model in which the lower level must obey all commands of the higher levels, whereas collective leadership refers to the outcomes are determined by the majority vote. The function of democratic centralism principle is to ensure the dependence of the lower to the higher-level, and of the local level to the central level.⁸⁶ Thus, this principle illustrates the dependency in governmental structure as well as in decision-making power. In addition, this principle combines three elements as electiveness, accountability, subordination. Electiveness is fundamental to the real democracy in theory whereas subordination refers to centralization.

⁸³ Ferdinand Joseph Maria Feldbrugge, Gerard Pieter van den Berg, and William B. Simons, *Encyclopedia of Soviet Law* (BRILL, 1985), 249.

⁸⁴ “definition of democratic centralism from Oxford Dictionaries Online”, n.d., <http://oxforddictionaries.com/definition/democratic+centralism>.

⁸⁵ Michael Waller, *Democratic Centralism: An Historical Commentary* (Manchester University Press ND, 1981), 62.

⁸⁶ Karen Turner-Gottschang, James Vincent Feinerman, and R. Kent Guy, *The limits of the rule of law in China* (University of Washington Press, 2000), 182.

Accountability indicates directed report to the people as a component of democratic centralism.⁸⁷ State management theory requires the harmonious combination of centralism with democracy. However, in practice, the political process of centralism has predominated over democracy as the central entities played the dominant role in state management and local governments were subordinate organs. The lower level had to obey all decisions made by the higher level, and the local governments did not have any discretion.

Vietnam has followed the model of the former Soviet Union by introducing this principle as follows: “The National Assembly, the People's Councils and other state bodies are organized and function according to the principle of democratic centralism”⁸⁸ (Article 6). Therefore, this article is considered as the fundamental condition for organization and operation of the government system. According to the Vietnamese authorities, this principle indicates two aspects: (1) centralism refers to the concentration of state powers to the highest state organ; (2) democracy indicates the distribution of functions to the lower-state organs. Significantly, this principle requires the harmonious combination because centralism without democracy will create a bureaucratic, dictatorial government and democratic without centralism will cause the problems of undiscerning democracy and anarchism.⁸⁹

Similarly, China also applied the Leninist principle to attempt to unify both the action and thinking of the whole population. As the result, China set up a network of hierarchically organized institutions in which Chinese Communist Party played dominant role.⁹⁰ In addition, under the democratic centralism principle, it is hardly to set the line between government and Communist Party. For example, Ioffe illustrated the government system under this principle as follows: “The practice of many years has not only produced a system of control and supervision, but also an original protocol governing the relationships between Party officials and officials

⁸⁷ Olimpiad Solomonovich Ioffe, *Soviet Law and Soviet Reality* (BRILL, 1985), 23,24.

⁸⁸ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*, 2001, <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf>.

⁸⁹ Institute of Southeast Asian Studies, *Beyond Hanoi: Local Government in Vietnam* (Institute of Southeast Asian Studies, 2004), 140.

⁹⁰ Jia Hao, Lin Zhimin, and Zhimin Lin, *Changing Central-Local Relations in China: Reform and State Capacity*, illustrated. (Westview Pr (Short Disc), 1993), 2.

of non-Party-agencies.”⁹¹ In Vietnam, the 1992 Constitution provides the leading role of Communist Party as such:

“The Communist Party of Vietnam, the vanguard of the Vietnamese working-class and loyal representative of the interests of the working class, the working people and the whole nation, who adheres to Marxism-Leninism and Ho Chi Minh’s thought, is the force assuming leadership of the State and society. All organizations of the Party shall operate within the framework of the Constitution and the law.”⁹² (Article 4)

Communist Party plays the important role in leading State and society by providing Party’s rules. Although, Party’s documents are not legal documents, they have played a vital role in setting up political-economic policy for development. In practice, the development strategy of State follows the Party’s orientation because the constitution determines the leading role of the Communist Party. However, the purpose of this section does argue about the role of Communist Party as it focuses on dependency of local governments in both political and administration.

In brief, democratic centralism is embodied mostly in governmental agencies and creates the hierarchical structure of government. This principle indicates the entire mechanism of centralization as a fundamental requirement for establishment and operation of the public administrative system. This principle determines all relationships between the central and local governments and among the levels of local government. Therefore, similar to the former Soviet Union, Vietnamese legal system is in general under the influence of control mechanism and dual accountability which are emphasized as characteristics of the democratic centralism principle. Therefore, local governments in Vietnam have their own distinguished features in comparison with other Asian countries undergoing decentralization.

3.2 Features of local government in Vietnam

Vietnam is similar to other former socialist countries by introducing the single-party regime and the democratic centralism principle; therefore, the concept of local government is interpreted in a different way. Local government in general includes representative organ and administrative organ. The People’s Council (PCI) is the representative organs that carries out legislative and supervising functions and is elected by local residents.

⁹¹ Ioffe, *Soviet Law and Soviet Reality*, 31.

⁹² Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*.

Administrative organ- the People's Committee (PCe) is the executive organ of the People's Council at the same level. In addition, PCe also has authority to establish line departments in order to support to its works. In addition, local government in Vietnam refers to units at the provincial, district and grassroots level (three levels), and the PCI and PCe are established at each level.

In general, the hierarchical relationship and the vertical-horizontal dependence are the special features of local government in Vietnam. These following aspects illustrate these features clearly such as:

First, the administrative organ depends on the state authority at the same level. The 1992 Constitution provides legal status of the state power agencies as follows:

“The National Assembly is the highest representative body of the people, the highest state authority in the Socialist Republic of Vietnam.”⁹³ (Article 83);

“The People's council is the State authorities in respective localities, the representative bodies of the people's will, aspirations and rights as masters in their localities; they are elected by the local population, and are responsible to the latter and to the higher State authorities.”⁹⁴ (Article 119)

The National Assembly and the PCI play a key role in legislation and implementing supervision function as the representative organs which elected by citizens as well as carry out their supervision to the government and the PCe respectively. This dependence refers to the horizontal dependent relation. In addition, there is no separation of state power in organization and operation of state organizational system; therefore, administrative organs must obey all decisions made by state power agencies. Moreover, the documents of executive organs must comply with legal document of state power agencies as an indicator of dependence.

Second, the local levels obey the order of central level; the organ at the lower-level organ follows the decision made by organs at the higher-level. This feature indicates the hierarchical administrative system in which lower level depends on higher level in both organization and operation. This condition refers to the vertical dependent relation. The lower entities have to obey all commands of higher organs without arguing. If the lower units recognize the command is illegal, they have to notify to competent agency. The lower entities do not hold the right to arguing and refusing of implementation of that command. This feature indicates the obedience without any conditions.

⁹³ Ibid. Article 83

⁹⁴ Ibid. Article 119

Third, the legal documents of local governments must comply with Constitution, laws and legal documents of the state organs at higher level. Local government cannot make decisions which contrary with decisions of higher levels. This feature proves that there is no discretion in decision-making power of local government. In principle, decision of local government is legal if the context of decision refers to the same content as regulated by the organs at higher –level.

Fourth, the distribution of powers and functions from central to local level must consider carefully the following requirements:(1) The central government must take in its hand the most important functions which affect to the whole country; (2) In order to reduce the burden of workload, the central organs should make a bold transfer the other functions to the local levels; (3) The distribution of powers and functions must be regulated by law.⁹⁵ Central government set up these requirements as the principle of decentralization in order to ensure that decentralization does not break the centralization of state power. For instance, under centrally planned economy, central government processed all powers and carried out all functions and there was no element of decentralization. Hence, local government was the subordinate organ. Vietnam has carried out decentralization since 1990s; however, these requirements indicate the limitation in distributing the functions and powers from central to local levels.

Fifth, the organization and operation of local administrative organ follow the vertical-horizontal relationships. In order to ensure the unity of state power, hierarchical administrative system requires the lower level to depends on the higher levels (vertical control) and the PCI at the same level (horizontal control). This feature indicates the horizontal-vertical dependence of administrative organ at the local level. For example, the PCe at the provincial level is directly under the control of the government and supervision of the provincial People's Council. The PCe is responsible to report to and must obey all commands of these organs. Despite carrying out the executive function, the PCe could not take initiative role in decision-making as well as in dealing with local issues. Similarly, under democratic centralism, China also retains the dependence of provincial local government to central government by two ways as such: the integration of local People's Congress with the national

⁹⁵ Thuy Nguyen Thi, ed., *Giáo Trình Luật Hành Chính Việt Nam (Textbook on Administrative Law of Vietnam)*, 485-2010 (Hanoi: Nhà xuất giáo dục Việt Nam, 2010), 62,63.

People's Congress through the election system and the dual subordination of local governments.⁹⁶ Therefore, administrative system could not exercise the powers and provide the public services effectively and responsively due to the lack of discretion.

In brief, the democratic centralism principle is not only a political leading policy but also a legal regulation. This principle creates the special particularities of the public administration system in Vietnam such as the top-down model, hierarchical system, the control mechanism, and the dual accountability. These features indicate the dependence of local government. Consequently, central government still plays the dominant role in all aspects whereas local governments cannot carry out their duties and functions effectively. Although Vietnam has carried out decentralization as a key factor for reforming the government system in order to meet the demands of the market socialist oriented economy since 1990s; however, under the democratic centralism principle, decentralization has some distinguished differences with other developing countries. Therefore, examining the features of local government in Vietnam is a vital requirement for identifying the possible reforming solutions in accordance with Vietnam's context.

4. Conclusion

This chapter studied the concepts of good governance, decentralization and local autonomy, local government as the fundamental theory of public administration. Decentralization is the way to build up a democratic government and good governance, accountable, and responsive governmental system. In other words, capacity of government to exercise the powers and provide the public services is the major factor that affects to the value of governance and democracy. Especially in the globalization era, international organizations identify transparency, accountability, public participation, corruption control, and rule of law as the major criteria for evaluating the value of democracy and good governance.

In general, local government is the main factor of local governance. Therefore, good local government is the fundamental requirement for achieving good local governance. The main objective of the study is the local government (institutions) as it is a key factor in the process of promoting decentralization towards democracy

⁹⁶ Anwar Shah, *Local governance in developing countries* (World Bank Publications, 2006), 31.

and good governance. Basing on examining those concepts as well as the special features of local government and decentralization in Vietnam, the main findings of this chapter are:

First, a link exists between local government, decentralization, good governance as well as democracy. In other words, local government, decentralization, democratization and globalization are the interacted combination. Local government plays an important role in the process of promoting good governance and democracy because it provides the major public services to residents while decentralization is the effective measure for strengthening the powers of local government. Significantly, the local policies often reflect the interests and needs of the resident better than the policies of the central government; therefore, reforming local government is the key factor for moving towards a democratic society.

Second, many countries around the world, especially the post-socialist countries has carried out decentralization for abolishing the remnants of centralization. In general, decentralization often refers to three dimensions such as politic, administration, and finance and consists of the forms such as de-concentration, delegation, devolution and privatization. Decentralization is different from country to country in the forms and the methods of implementation. Significantly, a local autonomy refers to the highest level of decentralization because this principle ensures the independence of local government in performing its duties and functions without intervention by the central. In contrast to the theory local autonomy, democratic centralism principle creates a hierarchical system with dual accountability, and the central government plays a dominant role in public administration while the local government is considered as the subordinate level of central. Hence, this chapter answered the leading question as such to why there is no local autonomy in Vietnam.

Third, the concept of decentralization in Vietnam is simply defined as the transfer of powers from the higher-level to the direct lower-level in accordance with the law. Decentralization has been carried out in administrative and financial dimensions in the form of de-concentration and delegation; however, the control mechanism and commands as the characteristics of the centrally planned economy still remain. As a result, the decentralization has not yet enables local government to have more discretion in exercising the decision-making and financial powers.

Forth, public administrative system in Vietnam organizes and operates under the democratic centralism principle; therefore, central government is the highest organ of the executive system and local government exercises the delegated functions and powers under the central's control. This principle ensures the independent relationship between the central and the local levels, between the higher and the lower-levels as the major factor of concentration of state powers. Consequently, decentralization in Vietnam is different from other countries in the way of implementation; for instance, Vietnam has focused on delegation and de-concentration rather than devolution while the other countries have paid more attention on devolution.

In brief, Eyden illustrated about the importance of conceptual studies as follows: "If one does not know the names, there is no knowledge of things".⁹⁷ Therefore, studying the concepts of good governance, local autonomy, decentralization, and local government in Vietnam is the basic requirement for identifying more clearly the issues of decentralization in practical aspect. The findings of this chapter will contribute to explore the needs of reforming local government in accordance with domestic conditions of Vietnam as well as the globalization context. In addition, identifying the special particularities of local government and decentralization in Vietnam provided the reasons for explaining why the local autonomy principle is not applicable in Vietnam as well as for defining the research's objective in the following chapters.

⁹⁷ Ton Van Der Eyden, *Public Management of Society: Rediscovering French Institutional Engineering in the European Context* (IOS Press, 2003), 8.

Chapter 2

History of Local Government and Reforming Process in Vietnam

In Vietnam, the turning point to the modern local government system started since the foundation of the Democratic Republic of Vietnam (DRV) in 1945. In general, the organization and operation of government are subject to change from time to time in accordance with the needs raised by practical conditions. In other words, the government system in each period has its own features depending on the special socio-political and economic conditions of each development period. According to historical development of Vietnam, the history of local government is divided into two major periods such as the wartime period and the peacetime period. However, this chapter will focus on examining the history of local government in the peacetime period as well as reviewing the reforming process in order to identify the needs to build up a democratic local government in the process of integration and globalization.

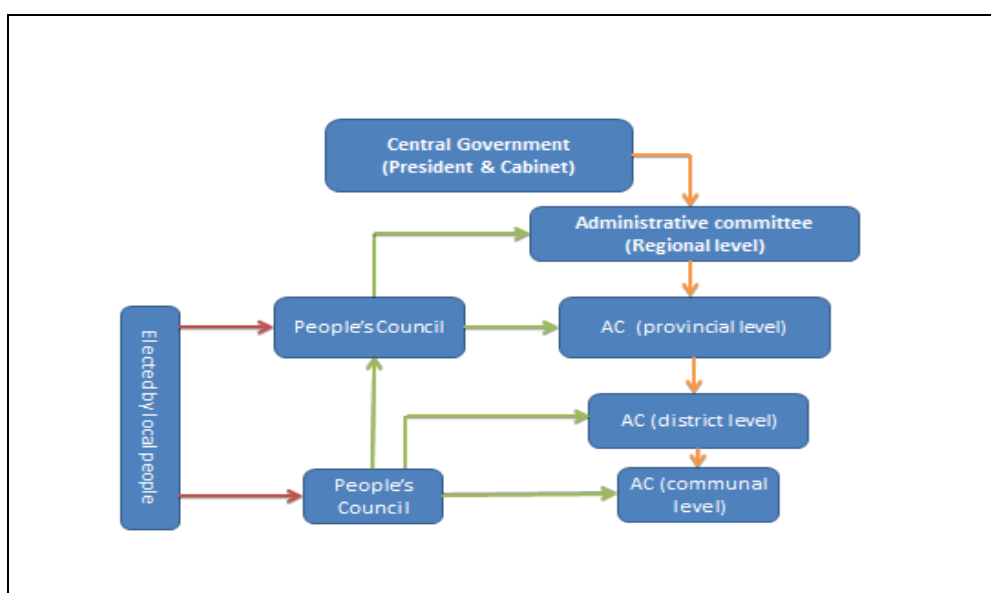
1. Overview of the local government in the wartime period

On September 2, 1945, President Ho Chi Minh read the declaration of independence which established the Democratic Republic of Vietnam (DRV). On March 2, 1946, the first legislature called the National Assembly held its first session in Hanoi, setting up a government led by President Ho Chi Minh. In 1946, Diet promulgated the constitution of the DRV as the fundamental legal framework of organization and operation of government system.⁹⁸ This constitution (hereinafter the 1946 Constitution) represents the fundamental law for organization and operation of state bodies. The local government system which combined the People's Council, and the Administrative Committee and together was stipulated in Chapter Four and Five of this constitution. However, in this period, the DRV had to begin the Anti-French resistance (from 1946 to 1954). Thus, the state encountered a lot of obstacles during the process of implementing its duties. Due to war conditions, Vietnam was divided into three regions of management as Bac bo (the North), Trung bo (The Central), and Nam bo (the South).

⁹⁸ Nghị Viện Nhân Dân (Parliament), *Hiến Pháp năm 1946 của nước Việt Nam Dân Chủ Cộng Hòa (The 1946 Constitution of Democratic Republic of VietNam)*, 1946.

According to the 1946 Constitution, Vietnam had three regions: the North, Central, and the South. Each region divided into three-tiers as province, district, and commune.⁹⁹ The local residents elected directly the People's Council (PCI) at two levels as the provincial, and commune level based on the principle of suffrage. The PCI set up the administrative committee at the same level and the next higher-level; therefore, the executive organ existed at four-levels (including the regional and district level).¹⁰⁰ The table 2 describes the structure of local government system under the 1946 constitution.

Table 2- The structure of government according to the 1946 Constitution



Source: Summarized by author according to the 1946 Constitution

In addition, the Ordinance 63 on November 22, 1945 regulated the organization and operation of the PCI and Administrative Committee at the four levels as follows: The local government was organized into four-tiers while the PCI was established only at the provincial and communal level. The functions of the local government system provided that the People's council resolved the problems that belonged to its area and such resolutions cannot conflict with orders of superior organs. Therefore, the administrative committee was responsible for the execution of the orders of superior organs, accomplishment of the PCI when they were ratified by supe-

⁹⁹ Nghị Viện Nhân Dân (Parliament), *Hiến Pháp năm 1946 của nước Việt Nam Dân Chủ Cộng Hòa (The 1946 Constitution of Democratic Republic of VietNam)*, 1946. Article 57.

¹⁰⁰ Ibid, Article 58.

rior organs, and handling of the administrative works in its region.¹⁰¹ According to this provision, the 1946 constitution did not provide the relationship between the central government and local government. The administrative system during this period organized under the central planning regime.

In 1954, Vietnam achieved victory after nine years of resistance against the French (1946-1954). However, Vietnam was temporarily divided into two regions with two different political regimes. The Geneva Agreement on cessation of hostilities in Vietnam (July 20, 1954) aimed at unifying the country by general election in 1956. However, this agreement could not be actualized; therefore, the DRV under the leading of President Ho Chi only exercised its sovereignty in the North area only. Hence, the DRV entered a new period of resistance against American from 1954 to 1975. In order to adapt to a new situation with the war against America, the DRV had to change its strategies, tasks, and duties to match with the new circumstances. Thus, the National Assembly promulgated a new Constitution on December 31, 1959.

The structure of government according to the 1959 Constitution was different from the system defined by the 1946 Constitution. First of all, the president was not a member of the government as provided in the 1946 Constitution. The president of the DRV represented the nation both in domestic and foreign affairs. (Article 61)¹⁰²

The government is still called “*Hội Đồng Chính Phủ*” (Council of Government) representing the executive organs of the highest organ of state power, and the highest administrative organ of the DRV. (Article 71)¹⁰³

Chapter Seven of the 1959 Constitution regulated the People’s Council and the Administrative Committee at all levels. The organization of the local administrative units was fixed as follows: the country was divided into provinces, autonomous areas, cities directly under central government; a province was divided into districts, cities and towns; and a district was divided into communes (Article 78). Consequently, local government system formed into the three-tier structure. Local government at three levels consisted of the People’s Council and the Administrative Committee. The People’s council was the local organ of state power and accountable to the

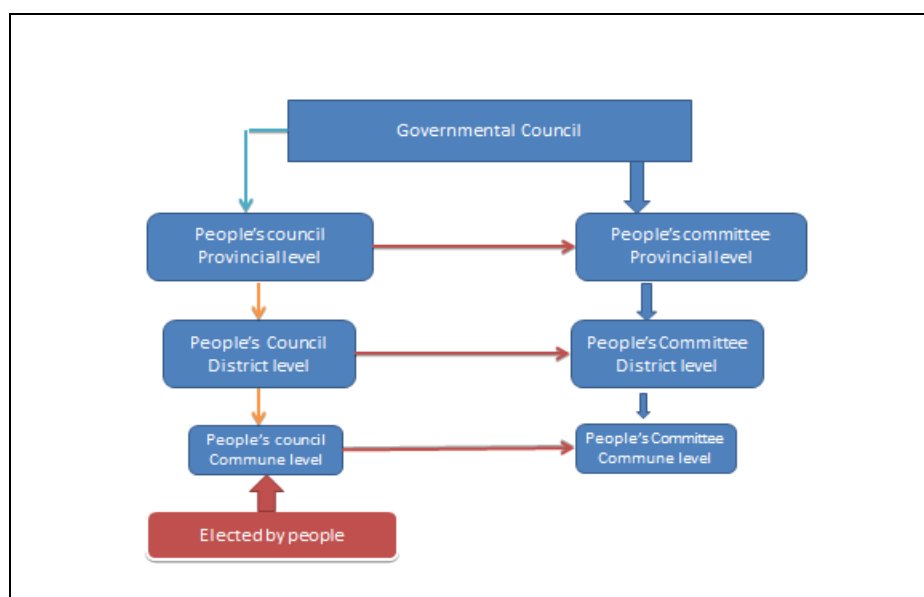
¹⁰¹ Ibid, Article 59.

¹⁰² National Assembly, *Hiến Pháp Năm 1959 Của Nước Việt Nam Dân Chủ Cộng Hòa (The 1959 Constitution of Democratic Republic of VietNam)*, 1959, http://www.hcmulaw.edu.vn/humanrights_en/index.php?option=com_content&view=article&id=50:constitution-of-the-socialist-republic-of-vietnam-1959&catid=28:constitution-of-vn&Itemid=44.

¹⁰³ Ibid. Article 71

local people who have elected the members (Article 79, 80). The tenure of the People’s Council at Provincial level, autonomous areas and cities directly under the central government was three years, and at the district and commune level, tenure was two years (Article 81). Administrative committees were the executive organ of the People’s Council and carried out the public administrative affairs (Article 87). The Administrative committee was responsible to and reported to the People’s council and the administrative committee of superior level. The table 3 shows the organization of local administrative organs according to the 1959 Constitution as below:

Table 3 - The structure of government according to the 1959 Constitution



Source: Summarized by author according to the 1959 Constitution

The 1959 Constitution provided the duties and functions of local administrative organs more concretely (Chapter 7, from Article 78 to Article 96) in comparison with the 1946 Constitution (Chapter 5, from Article 57 to Article 62). Moreover, the Law on Organization of the People’s Council and Administrative Committee in 1962 was the fundamental law that regulated the functions and duties of local government in detail. In addition, this law also defined the authorities of administrative committee in socio-economic, cultural and financial fields; however, the major functions of the administrative committee were the implementation the resolutions of People’s council and orders of superior organs. Truong Dac Linh discussed that the constitutional provisions on organization of the local government system marked tendency and influenced by the organizational model

of the Soviet Union such as clearly determining socialist principle of collective rights, enhancing the position and role the People's Council that is no longer merely "the agency on behalf of local people" but also the bodies of state authority on behalf of the local state.¹⁰⁴ On April 30, 1975, Vietnam succeeded in unifying the North and South as the United States pulled-out of the war. Vietnam then proceeded to step into a new period of peace and independence with the aim at building up and developing the country. The next section will discuss how local government system organized and operated in the peacetime period

2. The centrally planned economy period (1975-1992)

Vietnam carried out a general election throughout the country after the liberation of the South area. On July 2, 1976, the DRV changed its name into the Socialist Republic of Vietnam (SRV).¹⁰⁵ Vietnam embarked on the task of building its country in the form of socialist reflecting a transitional period. Under Marxist-Leninism, Vietnam highlighted the centralized character of the socialist state. In 1980, the National Assembly promulgated a new constitution based in part on both the 1946 and 1959 constitutions. The principle of democratic centralism was the form of organization and operation of all state organs.¹⁰⁶

Vietnam carried out the centralization mechanism in all fields of society. Under the centralized mechanism, the public sector played a dominant role in all aspects; for example, state ownership was the decisive factor in socialism. Consequently, the administrative system performed not only the administrative functions but also the economic functions. For example, the State had a monopoly of foreign trade and over all others economic activities with foreign (Article 21) or state played a decisive role in national economy (Article 180).¹⁰⁷ In general, each administrative unit functioned as an administrative agency as well as an economic manager state enterprises and run industrial and agricultural production enterprises of various sizes. Griff discussed about the role of government in economic development such as: "State institutions under a planned economy are often

¹⁰⁴ Truong Dac Linh, "Chính Quyền địa Phương Ở Việt Nam: Quá Trình Hình Thành, Thay Đổi Và Vấn Đề Đổi Mới Hiện Nay (Local Government in Vietnam: The Process of Establishment, Changes and Reforming Issues)," *Sai Gon Luật* (n.d.): 5, http://www.saigonluat.vn/vnt_upload/File/PGS-TS%20Truong%20Dac%20Linh/Chinh%20quyen%20dia%20phuong%20o%20Viet%20Nam.pdf.

¹⁰⁵ Quốc Hội (National Assembly), *Hiến Pháp năm 1980 của nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1980 Constitution of Socialist Republic of Vietnam)*, 1980. "Introduction".

¹⁰⁶ *Ibid*, Article 6.

¹⁰⁷ Quốc Hội (National Assembly), *Hiến Pháp năm 1980 của nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1980 Constitution of Socialist Republic of Vietnam)*, 1980.

involved directly in the production and distribution of goods and services”.¹⁰⁸ Therefore, administrative system faced with many challenges such as burden of workload, ineffective public services, red-tape, and corruption. In addition, the 1980 Constitution defined the organization and operation of state organs basing on the collective leadership mechanism as of democratic standards; for example, the State council was the highest organ of the National Assembly and the Collective President of the SRV (Article 98).¹⁰⁹ However, collective decision making did not enhance accountability of individuals in practice. In other words, collective leadership faced with difficulties in examining a responsibility of individual; therefore, this mechanism would not promote an accountable government.

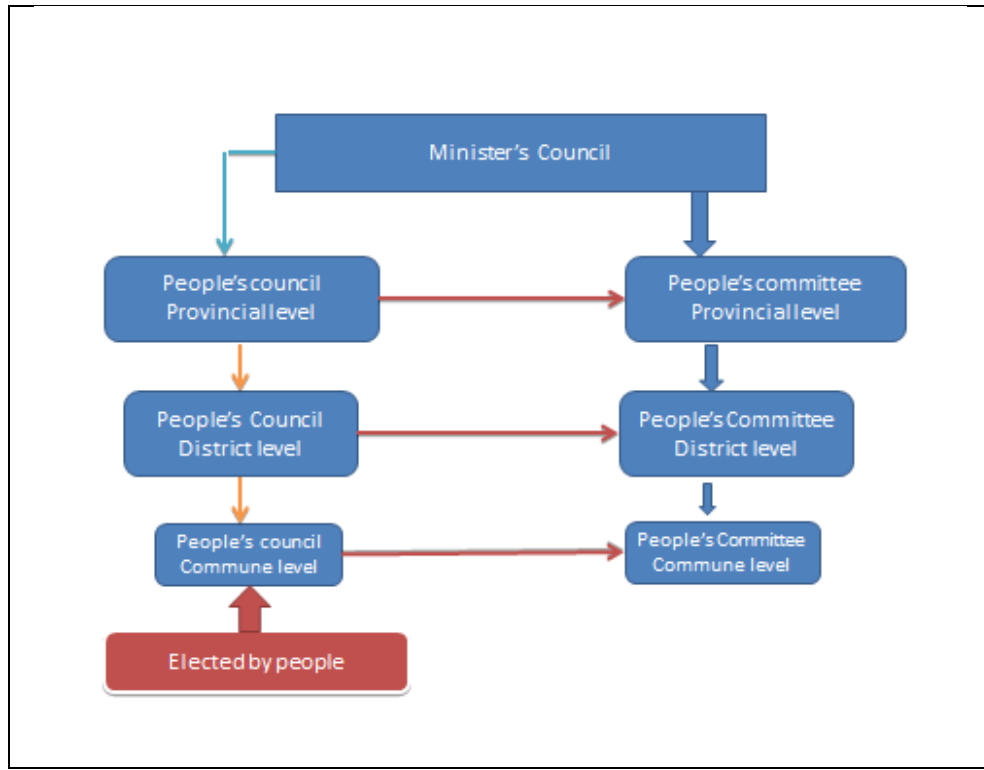
The “*Hoi dong bo truong*” (Minister’s Council) was the highest organ of public administrative system. In general, the administrative system was similar to the administrative system under the 1959 Constitution. For instance, the local government system included the People’s Council and People’s Committee and followed the three-tier model. The PCI was the local organ of state power and elected directly by local residents. The PCI held powers to establish the People’s Committee. The PCe played function as the executive of the PCI as well as the administrative organ at local area (Chapter 9).¹¹⁰ Table 4 illustrates the organization of administrative system of this period.

¹⁰⁸ Keith B. Griffin, *Economic Reform in Vietnam* (Palgrave Macmillan, 1998), 38,39.

¹⁰⁹ Quốc Hội (National Assembly), *Hiến Pháp năm 1980 của nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1980 Constitution of Socialist Republic of Vietnam)*.

¹¹⁰ *Ibid.* Chapter 9.

Table 4 - The structure of government according to the 1980 Constitution



Source: Summarized by author according to the 1980 Constitution

In 1983, the National Assembly enacted Law on Organization of the People's Council and the People's Committee (LLG). This law regulated the fundamental issues concerning the functions, duties, and authorities of the local system. In general, the public administrative system under centrally planned economy included the special features such as: (1) Local administrative units were demarcated according to production-related factors such as the land area, the density of population or the economy of scale, rather than historical and cultural factors; (2) Each administrative level functioned both as an administrative agency and as an economic manager; (3) Party committees and mass organizations played an important role in mobilizing local people to implement government and party policies; and (4) Administrative structure was based on the principle of management along the territorial line.

Typically, the bureaucratic centralism and state subsidies system were the special features of centrally planned economy because government used commands to dominate economic activities as well as administrative opera-

tions. Therefore, administrative body was authoritative, sluggish, and ineffective. As Nguyen Dang Dung described, Vietnam from 1946 to 1992 had the organization of local governments with the typical feature of a central-planned regime called a system based on administrative subsidies. All legal documents of the State such as the constitution and laws express the organization of the local governments. The organization and operation of the local governments could be summarized as having the following characteristics:

- 1) Vietnam is divided into four levels of governments (administrative units) including central level and three levels of local governments as the pyramid style;
- 2) There is unclear distinction in the organization and operation of each level of government in accordance with geographical conditions such as urban, rural, or mountainous areas.
- 3) The organization and operation of the lower government is the copy of the superior government (like Soviet union);
- 4) The centrally planned economy does not create conditions for inferior government to take initiative of doing its works, the inferior government only focused on requesting leading opinion or proposal from superior government based on mechanism of application - approval;
- 5) There is no distinction of authority between local government levels;
- 6) Government apparatus is under the tightly leadership of the Communist Party; and
- 7) The central government supervises and controls the local government through the organization and operation; therefore, local government depends on the central government.¹¹¹

In summary, local governments under the centrally-planned economy operated as the subordinate organs of the central government. Local entities carried out not only the executive functions but also controlled the state enterprises by involving deeply into economic activities. After a long time of implementing a centrally planned economy, Vietnam could not achieve success in developing the country, especially in economic aspect. Significantly, since other socialist countries recognized the weaknesses of centrally planned economy and embarked on the transitional period, Vietnam had to struggle for reforming solutions in order to deal with poverty and backwards. Confronted with the situation of a centrally planned economy, the Communist Party of Vietnam (CPV) promulgated the Doi moi policy in 1986. According to this policy, the market socialist oriented economy replaced for the centrally planned economy regime. The new market socialist oriented economy requires the government system to change the functions for adapting with the new environment. The next section will examine the changes of local government system in Vietnam under the market socialist oriented economy period.

¹¹¹ Dung Nguyễn Đăng, *Một Số Vấn Đề Về Hiến Pháp Và Bộ Máy Nhà Nước (Some Issues on Constitution and State Apparatus)* (Hanoi: Nhà xuất bản giao thông vận tải (Transportation Publishing House), 2001), 479–481.

3. The period of market socialist oriented economy (from 1992 up to present)

The role of government in a market oriented economy is very different from that in a centrally planned economy. The market economy regime requires government to reduce its dominant role in economic aspect and to focus on performing administrative functions. Government needs to focus on designing the rules and policy for the economic development instead of intervening directly in production and distribution of goods and services under as it did in the centrally planned economy period. Therefore, central government and local government have to change the roles in order to meet the new demands of the market economy. However the organization of the local government system continued to remain the same from in the period of central planning.

In 1989, the National Assembly promulgated a new law on organization of the People's Council and the People's Committee, which replaced the 1983 law. The functions and duties of these organs did not change much. For example, both laws provided that the People's Council discharges its duties and powers in accordance with Article 115 of the 1980 Constitution ensuring the unification of the leadership of the central government, and also raised the sense of initiative of the local organs.¹¹²

In 1992, the National Assembly enacted a new constitution, which states that the organization of administrative system is as follows: the Government is the executive organ of the National Assembly, and also the highest organ of state administration of the SRV (article 109).¹¹³ In addition, the 1992 Constitution regulates the legal status of local government including the PCI and PCE as follows:

- (1) The People's Council is the local organ of state power, and representing for the wills, aspirations, and mastery of the people.
- (2) The local people vote directly for the members of the People's Council.
- (3) The PCI is accountable to the state organs at the higher-level as well as to the local residents.
- (4) The PCI elected the PCE at the same level.
- (5) The PCE is the executive organs of the PCI at the same level and the administrative organ at the local level. (Article 119 and 123).¹¹⁴

¹¹² Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Năm 1983 Và Năm 1989 (Law on Organization and Operation of the People's Council and People's Committee in 1983 and 1989)*, n.d.

¹¹³ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*, 2001, <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf>.

¹¹⁴ Ibid. Article 119

The 1992 Constitution confirms the regime of a market oriented economy as well as design the new functions of state organs. For example, the prime minister played a major role in the cabinet and appoints other cabinet ministers, dismisses the chairman or deputy-chairman of the People's Committee at provincial levels as well as holds power to restructure government agencies.¹¹⁵ In addition, the function of ministry is also different from the centrally planned economy as follows: "Ministers and other members of the Government are responsible for state management within the spheres and branches under their nation-wide authority, ensure the right to autonomy of establishments in their business and production activities as provided by the law" (Article 116).¹¹⁶ However, the 1980 Constitution only stated that "Under the unified leadership of the Council of Ministers, ministers and heads of other agencies under the Council of Ministers are responsible for organizing and directing his field management in a whole country."¹¹⁷ Thus, ministries cannot carry out their functions affecting the autonomy of entities in their business and production as a requirement of a market economy.

However, the 1992 Constitution did not create a big change in the local government system. For example, the local government still follows the three-tier model and operates under the democratic centralism principle. Therefore, local governments still depend deeply on the central government. In other words, the legal frameworks did not provide clearly the distribution of functions between the central and local entities. In addition, the LLG in 1994 did not define clearly the differences between the PCI and PCe in performing public administration at local area. In general, local government organized and operated basing on the 1994 LLG and the 1996 Ordinance on Regulations of Duties and Specific Powers of the People's Council and the People's Committee. However, the 1994 Law revealed some issues after 9 years of implementation as follows: (1) Regulations on the organization, powers, and duties of the PCI and PCe at three levels were very in general, therefore, it could not determine clearly the role of each level in accordance with the demands of decentralization launched by Party and State.(2) there was no clear defining about the collective leadership, individual responsibility, transferring officials; (3) The size of the structure and operating measures of the local governments were

¹¹⁵ N. John Funston, *Government and Politics in Southeast Asia* (Institute of Southeast Asian Studies, 2001), 385.

¹¹⁶ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*. Article 116.

¹¹⁷ Quốc Hội (National Assembly), *Hiến Pháp năm 1980 của nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1980 Constitution of Socialist Republic of Vietnam)*, 1980. Article 111, paragraph 1.

illustrated generally in order to be applicable to all administrative levels; therefore, it could not be reasonable for the urban government.¹¹⁸ Therefore, the National Assembly promulgated a new Law on Organization and Operation of the People's Council and the People's Committee in 2003 (LLG 2003) in accordance with the amendment of the 1992 Constitution on December 25, 2001.¹¹⁹

In general, the LLG 2003 has some differences in comparing with the 1994 Law as follows: (1) The LLG determines in more detail the powers and duties of the local government in urban, rural areas. For example, the PCe at the city under directly central government holds powers to manage or decide measures for enhancing environmental protection or safety of public transportation, and for mobilizing financial resources (Article 96); (2) The LLG 2003 indicates the delegation of powers and duties among three-tier of local government system. For example, the 1994 Law only consisted of five articles to interpret the powers and duties of the PCe (chapter 3, Part 1 from article 41 to article 45) while the LLG 2003 includes 34 articles on determining the powers and duties of the PCe at the three levels (from article 82 to article 118); (3) The LLG also defines the differences in organization and duties of each level based on the features of administrative units. For example, the number of delegation of PCI is determined basing on the size of population.

However, the LLG 2003 does not determine clearly the relationship between the central and local governments as well as enables local government to have more discretion in performing the duties and powers. As the result, public administrative system in Vietnam still faces with many challenges such as corruption, red-tape, and shirking of responsibility between state organs. As Truong Dac Linh concluded, the organization of central government changed dramatically compared with the 1980 Constitution; however, the organization of the local governments under the 1992 Constitution, the 1994 law, and the 2003 law has not changed much in comparison

¹¹⁸ VietBao summarized (Theo Vn-express), "Nội dung chính và những điều còn tranh cãi trong luật tổ chức Hội Đồng Nhân Dân và Ủy Ban Nhân Dân," *Việt Báo*, July 5, 2003, <http://vietbao.vn/An-ninh-Phap-luat/Noi-dung-chinh-va-nhung-dieu-con-tranh-cai-trong-Luat-To-chuc-HDND-UBND/10824791/218/>.

¹¹⁹ Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No11/2003/QH 11 Dated 26 November 2003)*, 2003.

with the prior of Doimoi.¹²⁰ Therefore, Vietnam is still struggling for building up an effective, accountable, and transparent local government system towards a democratic society.

4. The calls for reforms

The trend in globalization requires countries to carry out PAR as a key factor for ensuring sustainable economic growth. Vietnam also considered the PAR as the major solutions for enabling the government to adapt with the new challenges and meet the development targets. UNDP mentioned about the role of PAR in Vietnam such as: “Public administration reform today is at the heart of Vietnam’s efforts to move further towards a socialist market economy”.¹²¹ Vietnam has carried out the PAR since 1990s with the ultimate objectives in building up a modern, professional, strong, and transparent public administration system. This section examines the PAR of Vietnam since the Doimoi up to present for analyzing the reasons why the PAR could not have the productive outcomes and also aims to illustrate the needs of reforming local government.

4.1 *The Doimoi (1986-2000)*

Vietnam recognized that the centrally planned economy could not have positive results in economic development, especially in facing with economic crisis and serious food shortages. At the Sixth National Congress in December 1986, the Vietnamese government presented a comprehensive reform program for liberalizing and deregulating the economy under the title of Doimoi.¹²² This renovation program introduced solutions for promoting economic development and integrating into the rest of the world.¹²³ The objectives of Doimoi were to develop the private sector, promote agricultural production, reduce the role of state enterprises, move the focus to the light industry, attract foreign investment, and promote exports.¹²⁴ Thus, Doimoi required the comprehensive reforms in all aspects of state management for following the rules of a market economy.

¹²⁰ Truong Dac Linh, “Chính Quyền địa Phương Ở Việt Nam: Quá Trình Hình Thành, Thay Đổi Và Vấn Đề Đổi Mới Hiện Nay (Local Government in Vietnam: The Process of Establishment, Changes and Reforming Issues),” 8.

¹²¹ United Nation Development Programs in Vietnam, “Public Administration Reform”, n.d., <http://www.undp.org.vn/what-we-do/focus-areas/democratic-governance/public-administration-reform/?languageId=1>.

¹²² Amnon Levy-Livermore, *Handbook on the Globalization of the World Economy* (Edward Elgar Publishing, 1998), 488.

¹²³ Peter Boothroyd et al., *Socioeconomic Renovation in Viet Nam: The Origin, Evolution, and Impact of Doi Moi* (IDRC, 2000), 3.

¹²⁴ Levy-Livermore, *Handbook on the Globalization of the World Economy*, 488.

A market-oriented economy requires government to change its role. The role of government should change from “controlling to enabling” for the purpose of creating a favorable environment for all stakeholders to take part in and to develop the economy.¹²⁵ First, Doimoi required that the government focused on separation of economic and administrative functions as they did under central planning. The government should loosen their control and intervention into the business of state owner enterprises (SOE) and focus on regulating policies for a market economy.

In January 1995, Vietnam embarked on a first comprehensive public administration reform that focusing on restructuring governmental organizations, simplifying administrative procedures and rebuilding civil services.¹²⁶ This program was considered as a core part of socioeconomic development strategy in Vietnam. According to the Central Resolution 8 (Section VII), administrative reform program was carried out with the main focused on determining clearer the powers and duties of each level of government, continuing research in order to concretize the decentralization between central government and provincial government, establishing the Administrative Court, and renovating the civil service.¹²⁷

The administrative reform in this period had been carried out slowly. Vasavakul summarized the administrative reform in this period as follows:

- 1) In reorganization of government institutions aspect, reform focused on reducing the number of governmental units as they were considered as cumbersome system. For example, “the number of ministries and ministerial-level organizations fell from 28 in 1987 to 27 in 1992 and 22 in 1995, while the number of organizations under the central government was reduced from 27 in 1987 to 22 in 1992, rising to 26 in 1995”.
- 2) In central-local aspect, the revised 1994 law on organization of People’s Council and People’s Committee determined more clearly the central-local relations in comparison with the 1989 law.
- 3) In separation of economic and administrative functions, the establishment ‘economic conglomerates’ (tap doan kinh doanh) were reduced control powers of the ‘line’ and ‘functioned’ ministries in business of SOEs.

¹²⁵ Chris Rowley, *The Changing Face of Vietnamese Management* (Taylor & Francis, 2009), 211.

¹²⁶ N. John Funston, *Government and Politics in Southeast Asia* (Institute of Southeast Asian Studies, 2001), 385.

¹²⁷ Bộ Nội Vụ (Ministry of Home Affairs), “Đường lối, chủ trương của Đảng về Cải cách hành chính trong tiến trình đổi mới (The strategy and policy of Communist Party on administrative reform in the process of renovation),” *Cải cách hành chính nhà nước (Public administrative reform)*, August 24, 2004, http://caicachanhchinh.gov.vn/Plus.aspx/vi/News/71/0/101/0/1/Duong_loi_chu_truong_cua_Dang_ve_Cai_cach_hanh_chinh_trong_tien_trinh_doi_moi.

- 4) In building civil servants, the reform focused on defining the concept of civil servants and the needs for building legal framework for determining clearly the status and responsibilities of civil servants.¹²⁸

Although Vietnam promulgated the 1992 Constitution and the 1994 LLG in order to reform the government system for adapting with the new economic environment; however, public administration system during this period still retained the characteristics of the centrally planned economy. Government carried out the PAR in the low pace; consequently, PAR could not deal with the red-tape, corruption as well as simplify the administrative procedures for promoting economic development. Therefore, government of Vietnam introduced another ten-years PAR with the aim at building up an effective, strong, modern, professional, and transparent public administration system in 2001.¹²⁹

4.2 The PAR master plan 2001-2010

After reviewing the five-year plan of administrative reform (1995-2000), the government concluded that the administrative systems retained at least six problems. These six problems were:

- 1) The administrative system is not able to meet the demand of new management mechanism and to provide public services effectively because of remaining central planning characteristics;
- 2) The distribution of functions and duties among public administrative system is not clear enough;
- 3) Institutional administrative systems are not synchronized, administrative procedures are overlapping and lack of uniform, cumbersome, byzantine order and discipline was not strictly;
- 4) Organizational structure is cumbersome with many layers, lack of the mechanism for ensuring smoothly operation of institutions that using state budget resources;
- 5) The civil servants also create many obstacles such as red-tape, corruption, bureaucratic to citizens due to the low-quality, lack of professional skills;
- 6) The local administrative units are not responsive to the complex issues at local areas as well as not enable residents to participate into their work effectively.¹³⁰

Therefore, Government provided the decision on PAR-MP period 2001- 2010 for defining the ten-years administrative reform programs in order to achieve the goal of Ten-Year Socio-Economic Development Plan endorsed by the Ninth Party Congress in April 2001. The PAR 2001-2010 included various objectives as follows:

¹²⁸ Suiwah Leung, *Vietnam Assessment: Creating a Sound Investment Climate* (DIANE Publishing, 1996), 44 –68.

¹²⁹ Thủ tướng (Prime Minister), *Quyết Định 136/2001/QĐ-TTg Về Phê Duyệt Chương Trình Tổng Thể Cải Cách Hành Chính Nhà Nước Giai Đoạn 2001 - 2010 (Decison 136/2001 on Approving the Public Administrative Reform-master Plan Period 2001-2010)*, 2001.

¹³⁰ Thủ tướng (Prime Minister), *Quyết Định 136/2001/QĐ-TTg Về Phê Duyệt Chương Trình Tổng Thể Cải Cách Hành Chính Nhà Nước Giai Đoạn 2001 - 2010 (Decison 136/2001 on Approving the Public Administrative Reform-master Plan Period 2001-2010)*, 2001.

- 1) Building up a democratic, clean, strong, professional, modernized, effective and efficient administrative system;
- 2) Ensuring a government system follows the socialist rule-by-law in order to build up a state of the people, by the people and for the people;
- 3) Creating a force of civil servants capable and qualified to fulfill assigned tasks, contribute to develop a healthy and well-oriented society, proactively serve the people in their daily life, and promote the lifestyle of obeying the law in work and life.¹³¹

In general, the ultimate objective of the PAR-MP 2001-2010 was to build up the administrative system that would be able to meet the requirements of a market socialist oriented economy in 2010. This decision also indicates the nine specific objectives of reform such as governmental institutions, public administrative procedures, public finance, civil servants, local government system, and salary system.¹³² In brief, the reforms included the four areas such as institutional reform, organizational structure, human resources, and public finance.¹³³

In general, government could not achieve the significant successes in the process of implementation the PAR-MP 2001-2010. Government evaluated the achievements as well as failures of the PAR-MP in the following aspects:

First, the legal frameworks for organization and operation of government system are gradually improved by providing the laws such as: the Law on Organization of Government in 2001, Law on organization of the PCI and PCe in 2003 (revised the 1994 Law), Law on civil servants and cadres in 2008, Law on Promulgation of Legal Normative Documents 2008, Law on state budget (2002) and other related documents such as Decree 187/2007 ND-CP on organization, powers and duties of the ministries and ministerial-level agencies. Hence, governmental institutions carry out their duties and functions in accordance with the laws as the requirement of rule of law state. Typically, the legal frameworks for protecting the right and legitimate interest of citizens in relationship with the governmental sector has been promulgated such as Law on Administrative Complaints and Denunciation (amendment in 2004, 2005) and renew in 2011 by Law on Administrative Complaints and Law on Denunciation; Ordinance on Administrative Proceeding (2006) which replacing by Law on Adminis-

¹³¹ Ibid. Part II, Section 1

¹³² Thủ tướng (Prime Minister), *Quyết Định 136/2001/QĐ-TTg Về Phê Duyệt Chương Trình Tổng Thể Cải Cách Hành Chính Nhà Nước Giai Đoạn 2001 - 2010 (Decision 136/2001 on Approving the Public Administrative Reform-master Plan Period 2001-2010)*.

¹³³ Rowley, *The Changing Face of Vietnamese Management*, 190.

trative Proceeding in 2010, Law on State Compensation Liability (2009), Ordinance on Grassroots Democracy (2007). In brief, these legal documents cover the major aspects of public administration for ensuring that citizens can hold accountable governments. However, in reality, these legal frameworks still have many weak points such as overlapping and fragmental regulations, unclear definitions, and loophole that caused many problems in the law enforcement process. The legal normative documents include 26 types with the increasing number significantly since 2000; such as 200 decrees of government, 1000 guiding circulars and decisions of line ministries and local governments; therefore the legal framework in Vietnam is complicated and inconsistent.¹³⁴ It is worth noting that, in general, Vietnam has promulgated legal framework covering the major necessary aspects; however, the legal system still retains many issues caused the PAR-MA is far from the successes.

Second, government reduced the number of administrative units by introducing the concept of multi-sector and multi-function ministry and the one-stop-shop model. At central level, the ministries were merged to be a multi-function ministry ; for example, Government XII (2007-2011) had reduced to 22 ministries and ministerial-level agencies and eight government agencies such as the Ministry of Industry and Trade was merged from Ministry of Industry and Ministry of Commerce; Ministry of Fisheries was merged inside Ministry of Agriculture and Rural Development; Ministry of Culture-Sports and Tourism was established by joining the Ministry of Culture with Committee on Sports and Tourism General Department; and reorganizing the Ministry of Information and Communication.¹³⁵ The local governments also reorganized the specialized agencies to correspond to the central model. In addition, the OSS was started as a pilot in Ho Chi Minh city in 1996 and in Quang Binh, Quang Tri and Ninh Binh provinces. In 2003, the OSS model became compulsory program in all district and commune levels by Decision 181/2003/QĐ-TTg dated 4 September 2003 (this decision was replaced by Decision 93/2007 dated 22 June 2007). The OSS model was also called for applying at central government units such as ministries in 2007. As the result, the multiple OSSs were established all level govern-

¹³⁴ Ibid.

¹³⁵ “Những Vấn Đề Đặt Ra Trong Tổ Chức Bộ Quản Lý đa Ngành, đa Lĩnh Vực (The Main Issues Are Raised in the Multi-sector and Multi-function Management)”, n.d., <http://www.napa.vn/VI/GIOITHIEU/BMTC/CACDONVI/VNCKHHC/THD/Trang/bodanganh.aspx>.

ments; for example, nearly 99% of district government and 96% of commune government applied the OSS model in 2009. Hence, the idea of “joint government” is raised against due to the lack of connection between each level of government.¹³⁶ However, there are some problems that prevented the success of PAR such as the multi-sector and multi-functional ministries did not indicate clearly the result of reducing the staff numbers and administrative units; line ministries did not cooperate tightly in determining development objectives and reviewing the national program for achieving the goals; there is a weak link between the reform of administrative procedures with the redistribution of functions and work procedure of related agencies as well as institutional reform in OSS model.¹³⁷

Third, reforming administrative procedures has been carried out by reviewing all administrative procedures at both central and local levels in order to support Vietnam in the process of being WTO’s member in 2007. Significantly, the Decision 30 on “Master Plan to Simplify Administrative Procedures in the fields of State Governance” made by Prime Minister in 2007 aimed at promoting the successful in the Five-Year Economic Plan (2006-10) and facilitating Vietnam in the process of being a member of WTO. The Project 30 indicates the government’s effort in simplifying administrative procedures as a requirement for preventing corruption, red-tape as well as building up better relationship between government and citizens as the slogan “governmental officials serve the people”. In reality, administrative procedures are cumbersome, complex causing many obstacles for citizens and business in daily lives and works as mentioned bellow:

The justification for Project 30 was based on the fact that in spite of the many recent positive reforms, Vietnam’s citizens and businesses are still facing obstacles caused by Aps in their daily lives and operations. High administrative costs and risks reduce the benefits of market reforms, promoting corruption and informality, and reducing productivity, growth and market opportunities outside Vietnam. Red tape and cumbersome public administrative procedures also impose burdens on the poor which prevented them from benefiting from improved standards of living and employment opportunities. Moreover, complicated and troublesome administrative procedures were continuing to affect the relationship between the Government and society.¹³⁸

¹³⁶ OECD, *Cutting Red Tape Administrative Simplification in Viet Nam*, 56,57.

¹³⁷ Jairo Acuna-Alfaro, ed., *Reforming Public Administration in Vietnam Current Situation and Recommendations* (Hanoi: National Political Publishing House, 2009), 93–114, http://www.un.org.vn/en/publications/government-agency-publications/doc_download/138-reforming-public-administration-in-viet-nam-current-situation-and-recommendations.html.

¹³⁸ OECD, *Cutting Red Tape Administrative Simplification in Viet Nam*, 37.

After three years of implementation, Project 30 had positive results in simplifying administrative procedures especially in the economic aspect such as with investments and export, business registration. For example, Vietnam Customs General Department has carried out the Project 30 by providing the list of customs procedures and reviewing all necessary procedures. Through examining 44 procedures, this organ recommended to revise 22 procedures and to abolish 2 procedures. The method of revising procedures includes the abolishment of unimportant requirements, simplification of the process of implementation by using e-registration, and making transparency to people for easier implementation.¹³⁹ In brief, all ministries and local governments have reviewed the administrative procedures in accordance with their competent and load up to their web page. However, the major issue of administrative procedures is the lack of consistency because all ministries and local governments are transferred powers to set up the administrative procedures in accordance with their duties and functions.

Forth, concerning to reforming the personnel system, the PAR-MP focused on reforming regulations on recruitment, training and promoting the civil servants. The legal regulations on civil servants and cadres outline comprehensively the obligations of civil servants, recruitment, training and retirement. In general, laws define the mechanism on recruitment, promotion, salary system with the aim at retaining the high-qualified civil servants. The legal framework of civil servants has been revised several times since 1998 to 2010; for example, the ordinance on civil servants and cadres were revised in 1998, 2000, 2003, and finally replaced by the Law in civil servants and cadres in 2008 (came to effect in 2010). Significant, government has carried out the reforming the salary system with the aim at improving the living conditions of civil servants, retaining the high-qualified staffs, as well as preventing corruption. For example, government has increased the minimum wage from time to time such as: the minimum wage in 2002 was 210.000 VND per month; in 2005 was 350.000 VND per month; in 2010 was 730.000 VND; and in 2012 government made a decision to increase the mini-

¹³⁹ “Cải Cách Thủ Tục Hành Chính Hải Quan: Đúng Tiến Độ Và Đảm Bảo Chất Lượng, (Reforming Administrative Procedures on Customs: Schedule and Quality Assurance),” *Hải Quan Việt Nam (Vietnam Customs)*, March 8, 2010, <http://www.customs.gov.vn/Lists/TinHoatDong/ViewDetails.aspx?List=d46d405b-6620-4748-ae7-07b0233fdae6&ID=17598>.

minimum wage up to 1.050.000 VND.¹⁴⁰ However, the salary system could not retain high-quality civil servants because salary does not ensure the minimum living standard for such workers. Recently, the number of civil servants resigning their job has increased that considered as the wave of moving out of state organs. For example, the Department of Home Affairs in Ho Chi Minh City pointed out that around 1000 civil servants resign annually, especially an increasing number of qualified and professional workers.¹⁴¹ In addition, government could not achieve the success in reducing the number of civil servants at the central level and the local level according to Decree 132/2007 ND-CP dated 8 August 2007. For instance, after three years of carrying out reduction, the number of civil servant recently has increased 25 % from 200.000 in 2000 to around 260.000 staffs. Consequently, government is facing with difficulties in increasing the wage due to the lack of financial resources.

In summary, government concluded about the PAR after ten years of implementations such as: 1) The quantity of legal documents has increased but remained of a poor quality as the legal regulations are inconsistent, complex and overlapping; 2) There is a reduction in the number of ministries and ministerial-level agencies but increasing the number of units in each ministry; 3) The mechanism for determining responsibility of the heads of each state organs was not clear enough; 4) The reforms in public finance are in the first stages, and reforming the salary system will not encourage civil servants to carry out their functions and duties responsibly or effectively.¹⁴² Hence, the question is raised as to why the PAR-MP could not achieve the objectives as desired. There major reason as follows: 1) there is a lack of linkage in implementation of the PAR-MP with decentralization. From a conceptual study, decentralization refers to distributions of powers, functions and duties among governmental organs in order to ensure they are able to perform effectively as well as determines clearly central-local relations that retained blurred in the central planning period; therefore, it must be connected closely to

¹⁴⁰ Thủ tướng (Prime Minister), *Nghị Định Số 31/2012/NĐ-CP Ngày 12-4-2012 Của Chính Phủ Quy Định Về Mức Lương Tối Thiểu Chung (Decree No 31/2012 Dated 12 April 2012 on Increasing the Minimum Wage)*, 2012.

¹⁴¹ “Khi Hàng Loạt Công Chức Dứt Áo Ra Đi (when Civil Servants Gave up Their Jobs),” *Hội Liên Hiệp Phụ Nữ Thành Phố Hồ Chí Minh (Women Union of Hochiminh City)*, October 31, 2011, <http://www.baomoi.com/Home/LaoDong/www.phunuonline.com.vn/Khi-hang-loat-cong-chuc-dut-ao-ra-di/7268521.epi>.

¹⁴² “Chính Phủ Nhìn Lại 10 Năm Cải Cách Hành Chính (Government Reviewed Ten Years of Public Administration Reform),” *VietNamNet*, April 2, 2011, <http://vietnamnet.vn/vn/chinh-tri/15024/chinh-phu-nhin-lai-10-nam-cai-cach-hanh-chinh.html>.

reforming institutions and organizations in PAR;¹⁴³ 2) there is poor linkage between the four areas of PAR such as the reforming administrative procedures have been performed without strict connection with institutional reform and organizational reform. The policies on administrative procedural reform only focused on outputs such as the result of issuing the number of permits on time or the reducing amount of time rather than focused on redistribution of functions and powers in institutional and organizational reform.¹⁴⁴ In addition, the objectives of PAR-MP were too broad whereas it lacked of strict link among spheres of reform; 3) the PAR-MP could not achieved the ultimate objectives of building an effective, efficient, strong, modern, professional, transparent public administration system because of a lack of effective mechanisms for monitoring and evaluating process of implementation. The Ministry of Home Affairs was not able to monitor all aspects of reform because its scope was beyond its authority¹⁴⁵ Therefore, Vietnam has come up with other reform programs in period 2011-20 in order to achieve the development targets.

4.3 Revising the 1992 Constitution and PAR in 2011-2015

Reform is ending work to any developing country in achieving the development tasks, especially under the pressure of integration and globalization era. Rondinelli and Cheema mentioned: “Globalization is one of the factors to be reckoned with. Because of the rapid development of the internet communication network, chances are increasing that different levels of government in Japan will begin to have contacts with various governments across the world.”¹⁴⁶ Globalization creates not only new economic opportunities but also new political, social, technological and institutional difficulties, which requires governments to handle the promoting of equality, sustainability and eliminating poverty.¹⁴⁷ Though Vietnam has integrated deeper into the global economy after becoming a WTO member in 2007, the red-tape and inefficient administration remains as the obsta-

¹⁴³ Jairo Acuna-Alfaro, ed., *Reforming Public Administration in Vietnam Current Situation and Recommendations* (Hanoi: National Political Publishing House, 2009), 83,102–104, http://www.un.org.vn/en/publications/government-agency-publications/doc_download/138-reforming-public-administration-in-viet-nam-current-situation-and-recommendations.html.

¹⁴⁴ *Ibid.*, 75–77.

¹⁴⁵ Rowley, *The Changing Face of Vietnamese Management*, 190.

¹⁴⁶ Akira Nakamura, “Administrative Reform and Decentralization of Central: A cross of national comparison with Japan.” *Asian Review of Public Administration*, Vol. VIII, No. 2 (July-December 1996), 11.

¹⁴⁷ Dennis A. Rondinelli and G. Shabbir Cheema, *Reinventing Government for the Twenty-first Century: State Capacity in a Globalizing Society* (Kumarian Press, 2003), 2.

cle to economic competition.¹⁴⁸ Hence, Vietnam is still struggling to build up an effective, efficient, transparent and accountable government system as the major factor of good governance and democracy.

After more than two decades since introducing Doimoi in 1986 and ten years of implementation of the PAR-MP 2001-10, the public administrative system still reveals many weaknesses such as red-tape, corruption, unaccountability, lack of transparency. These problems hold back the economic development of Vietnam as well as prevent it from succeeding in building a democratic country in consistent with the globalization process. Therefore, Vietnam has planned to reform the 1992 Constitution and introduce PAR 2011-20 in order to achieve the MDGs as commitment. The National Assembly (XIII) provided Resolution 13/NQ-QH on August 6, 2011 to amend the 1992 Constitution. In addition, the government provided Resolution 30/2011 NQ-CP on November 8, 2011 that providing the PAR period 2011-2020 for building up an effective, efficient, transparent, public administration system in consistent with the rule of law principle, democratic value.¹⁴⁹ Hence, these documents determine the objectives, plans and contents of reform.

PAR 2011-20 also confirms to continue the objectives set by PAR 2001-10 by focusing on the six areas of reform such as mechanism, organizations, administrative procedures, civil servants, public finance and modernization of the public administration system. The PAR 2011-20 is divided into two parts: the first part (2011-15) includes objectives such as reforming the state agencies at the central and local level for abolishing the overlapping of functions, redistributing reasonably the functions and duties of each local level; and the second part (2016-20) aims at building up an effective, efficient, transparent, comprehensive and strong public administration system from central to local level. In addition, promoting the quality of civil servants and reforming administrative procedures in order to ensure that reaches the 80% of citizens who will be satisfied with the administrative procedures in 2020. However, the plans for PAR 2011-20 also do not determine clearly the show the...connection closely with decentralization as PAR 2001-10.

¹⁴⁸ Rowley, *The Changing Face of Vietnamese Management*, 187.

¹⁴⁹ Chính Phủ (Government), *Nghị Quyết Số 30/NQ-CP Ngày 8 Tháng 11 Năm 2011 Về Chương Trình Tổng Thể Cải Cách Hành Chính Nhà Nước Giai Đoạn 2011-2020 (Resolution No30 on Providing Administrative Reform Programs Period 2011-2020)*, 2011, Article 2, Section 3.

Obviously, institutional and organizational reform is essential for meeting requirement of the market-oriented economy. The Doimoi requires government to change its role by separating economic management and public service delivery from state management functions as building capacity of the administrative organs.¹⁵⁰ Therefore, the PAR reform since 1990s has transformed the public sectors transmitted from the centrally planned period. However, Vietnamese government has not yet utilized the decentralization as an effective solution for a country in the transition period as many other developing countries have followed. In other words, central government has lacked the capacity to bring local government in line with global expectations.¹⁵¹ However, Vietnam has carried out the reforming local governments or promoting decentralization inadequately. The central government has not yet recognized the vital role of local government in delivering public administrative services and responding to the needs of residents. Local governments are expected to be closer to residents as their officials know the demands of their communities better than the distant central government.¹⁵²

PAR-MP 2001-10 lacked of a strict link with decentralization as well as harmonized combination among reform aspects; consequently, local government lacks of ability to perform the delegated functions and duties. If central government does not transfer adequate powers to local government, it will not be able to respond to the needs of local residents effectively.¹⁵³ Consequently, local government faces with many issues such as the overlapping functions, shortage of human and financial resources, facilities for providing the public services to local residents. These challenges limit the effectiveness and efficiency of the public administrative system. Since 1986, local governments have not yet changed their role much in keeping with the requirement of the market-oriented economy. Despite revising the legal frameworks of local government in 1994 and 2003, the laws did not introduce the new model of the local government system in comparing with the model existed in the central planning period. For example, the democratic centralism principle is the fundamental principle for organization and operation of public administration system. Therefore, this principle retains the hierarchical

¹⁵⁰ Acuna-Alfaro, *Reforming Public Administration in Vietnam Current Situation and Recommendations*, 77,78.

¹⁵¹ Tom Ginsburg and Hongyi Chen, *Administrative Law and Governance in Asia: Comparative Perspectives* (Taylor & Francis, 2008), 224.

¹⁵² Mwangi S. Kimenyi and Patrick Meagher, *Devolution and Development: Governance Prospects in Decentralizing States* (Ashgate Publishing, Ltd., 2004), 206.

¹⁵³ Jaap De Visser, *Developmental Local Government: a Case Study of South Africa* (Intersentia nv, 2005), 35.

relationship in which the local government is under the control of the central government. In addition, the central entities focused on the upward accountability through the mechanism of application-approval and central's command as a requirement of concentration of state powers. Consequently, local government does not have discretion in implementing the delegated functions. In other words, the central entities can intervene into the works of local governments without limitation. Significantly, the central government did not focus on building capacity for local government in order to ensure that local units have ability to perform the delegated functions. As a result, local government cannot provide the public services to local resident efficiently and effectively. The important role of local government in promoting the democratic value and good governance is crucial to examine. Chandler indicated the role of local government as follows: "Local government is important not only because of the many services it provides to the citizens, but also its capacity, which is far from fully realized, to contribute to a more democratic free and humane society."¹⁵⁴ In general, local government provides many services such as education, police, fire protection, welfare, medical services, public health, garbage disposal, public financial assistance that effect directly to the quality of people's live.¹⁵⁵ Thus, capacity of local governments to deliver the public services affects directly to the rights and legitimate interests of citizens. Hence, building local government's capacity to provide public services is a vital requirement for achieving the high-quality public administration system.

Significantly, decentralization is a component of democratic reforms because of its contribution to the democratic process by many ways such as providing opportunities for larger participation, preventing the overload development of central organs, and enabling local governments to involve in local and regional economic and social development.¹⁵⁶ However, UNDP evaluated that Vietnam has carried out the PAR without focusing the important role of decentralization.¹⁵⁷ In other words, Vietnam has come a long way in the process of changing

¹⁵⁴ J. A. Chandler, *Local Government Today* (Manchester University Press, 2001), IX.

¹⁵⁵ Shinichi Ichimura and Roy Bahl, *Decentralization Policies in Asian Development* (World Scientific, 2009), 30.

¹⁵⁶ Public Economics and Public Administration, "Decentralization: Condition for Success-Lessons from Central and Eastern Europe and the Commonwealth of Independent States" (United Nations New York, 2000), 25, <http://unpan.org/publications/PDFs/E-Library%20Archives/2000%20Decentralization%20Conditions%20for%20Success.pdf>.

¹⁵⁷ Jairo Acuna-Alfaro, ed., *Reforming Public Administration in Vietnam Current Situation and Recommendations* (Hanoi: National Political Publishing House, 2009), 83, <http://www.un.org.vn/en/publications/government-agency->

the role of government from central planning to market-oriented economy by introducing the PAR, but there is a lack of the national program for promoting decentralization. Therefore, Vietnam should review the practice of decentralization elsewhere and model local governments in order to adjust it to socio-political context of the nation.

In progress of building up a government system towards democratic value, Vietnam is planning to amend the 1992 Constitution as well as implementing the PAR 2011-2020. The process of transformation into industrialized and modern country in 2020 requires the government system to promote its role in developing economy as well as in providing public services more transparently, accountably, and efficiently. Therefore, Vietnam should focus on reforming local government as a key factor for promoting effectiveness of decentralization.

5. Conclusion.

The present local government system of Vietnam was established first in 1945 and has been changing from due to the evolving social-political conditions. This chapter examined the history of local government in each period is the fundamental requirement for identifying the major features of local government system in Vietnam. The historical development of local government is divided into three periods. However, this chapter focused on identifying the role of local government in the periods of the centrally planned economy and the market-socialist oriented economy in order to define the needs for reforming local government based on the historical point of view.

This dissertation examines the key points: 1) the local government system in Vietnam retains the hierarchical structure and vertical-horizontal relations since its establishment. In other words, reforming local government has brought about the large changes in the structure, organization, and operation of the local government. Despite Doimoi introduced Vietnam into a new stage of economic development; however, the public administration system could not follow the demands of this renovation as well as the requirements from global contexts. The functions of government under the centrally planned economy have not yet changed to meets the needs of the marker-oriented economy. Despite of the fact that, the decentralization as well as the public administration

reforms have been carried out since 1990s; however, they could not have positive results in promoting effectiveness and efficiency of local government system. Consequently, local government could not carry out the public administration functions effectively because of corruption, and red-tape, overlapping of function and the shortage in financial resource; 2) this chapter analyzed why Vietnam has come a long way in implementing the PAR, however, was un-able to produce results. The PAR-MP (2001-10) was introduced with the ultimate objectives of building up an effective, efficient, strong, clean, transparent, accountable public administration system. Government has carried out the four major aspects that include institutions, administrative procedures, civil servants, and public finance reform; however, PAR did not have positive results due to many reasons such as the lack of a strict link with decentralization. As a result, the capacity of public administrative organs as well as the quality of the civil servants to perform the public affairs remains very poor. Therefore, Vietnam needs to continue performing the PAR in order to achieve the MDGs in 2015 towards a democratic nation; 3) reforming local government is essential condition for promoting effectiveness of decentralization. The process of globalization and integration requires Vietnam to have a strong commitment in building up a strong, clean, transparent, accountable public administrative system, especially because it became a member of the WTO in 2007. In addition, reforming local government was not the main objective of the PAR 2001-2010. Thus, the local government reveals many weaknesses as the obstacles in the process of implementing the PAR and promoting decentralization Vietnam. In brief, this chapter determined the needs for reforming local government in Vietnam as the major factor for building up a democratic society and promoting good governance in the future.

Chapter 3

Legal frameworks for the central-local relationships in Vietnam

Both China and Vietnam inherited “*the unity of powers*” doctrine as the concentration of state powers from the former Soviet Union. Government system of Vietnam has special particularities such as the single party policy and democratic centralism principle.¹⁵⁸ Therefore, this socialist regime created a subnational government structure in which local governments acted as administrative units or departments of the central authority without independent fiscal and legislative responsibility.¹⁵⁹ In addition, under a centrally planned economy, the central government played dominant role in all sections whereas local government had little or no financial autonomy. Significantly, the lines were blurred between the responsibilities of the central and local governments between ministries and agencies as well as between the political party and government entities.¹⁶⁰ Since Vietnam introduced *Doimoi* in 1986, the role of central government has changed in order to meet requirements of renovation. Vietnam has carried out the PAR with the aim at improving governmental effectiveness improvement, anti-corruption, poverty reduction, and a new public service-orientation in dealing with citizens. Accordingly, government has performed decentralization as primary condition for economic development as well as for good governance. However, public administration system in Vietnam still faces with issues of corruption, red-tape, and low-quality of performance. In addition, local government cannot perform the delegated function effectively.

Central-local relation is the most important factor of decentralization. It is essential for a nation to streamline and clarify the primary and secondary responsibilities of each level of government in order to establish an effective partnership between different levels of government.¹⁶¹ The central-local relationship, especially in dis-

¹⁵⁸ John Gillespie, Albert H. Y. Chen, and Hongyi Chen, *Legal reforms in China and Vietnam: a comparison of Asian communist regimes* (Taylor & Francis, 2010), 21.

¹⁵⁹ Richard Miller Bird, Robert D. Ebel, and Christine Wallich, *Decentralization of the socialist state: intergovernmental finance in transition economies* (World Bank Publications, 1995), 3.

¹⁶⁰ McCarty Adam, “Governance Institutions and Incentive Structures in Vietnam” (EconWPA, 2001), 21, <http://129.3.20.41/eps/pe/papers/0110/0110002.pdf>.

¹⁶¹ G. Shabbir Cheema, *Building democratic institutions: governance reform in developing countries* (Kumarian Press, 2005), 145.

tributing functions and responsibilities has been changing from time to time due to the changes of legislation.¹⁶² Central-local relationships depend on the social-political and economic conditions of each development period. Globalization and integration are also external conditions for changes in central-local relations. For example, in order to achieve the MDGs and follow the rules of the WTO, Vietnam has carried out many reforms such as local government finance, structure, and administrative procedures as in others developing countries. Hence, the laws should regulate in detail the central-local relationships as the primary condition for promoting the effectiveness of decentralization.

This chapter will focus on challenges raised by current legal regulations of decentralization and local governments. Following legal documents such as Constitution, Law on Government (LG), Law on Organization and Operation of People's Council and People's Committee (LLG), Law on State Budget (LSB), Law on Normative Act (LNA), Law on State Compensation and the other related documents will be examined for identifying problems of central-local relationships.

1. Intergovernmental relations

Intergovernmental relation refers to the relationship between central and local in distributing of powers and duties from central to local as well as intervention by the central government. Intergovernmental relations exist in many different aspects of public administration with the aim at balancing the powers among levels of government.¹⁶³ Every country divides into central or local levels for carry out functions and duties which regulated by laws. A central government faces with the matters of determining which functions distribute to local government. Under centrally planned economy, central government just transferred functions to local governments without transfer of powers. Therefore, local government acted as the subordinate organ of the central organs. The laws did not determine clearly the relationship between the central and local entities.

Vietnam has carried out decentralization as an alternative of centralization. Decentralization refers to the process of transferring authorities or powers from central government to local governments. The success of

¹⁶² Paul Carmichael and Arthur F. Midwinter, *Regulating local authorities: emerging patterns of central control* (Routledge, 2003), 16.

¹⁶³ Steven R. Reed, *Japanese prefectures and policymaking*, Pitt series in policy and institutional studies (Pittsburgh, Pa.: University of Pittsburgh Press, 1986), 4.

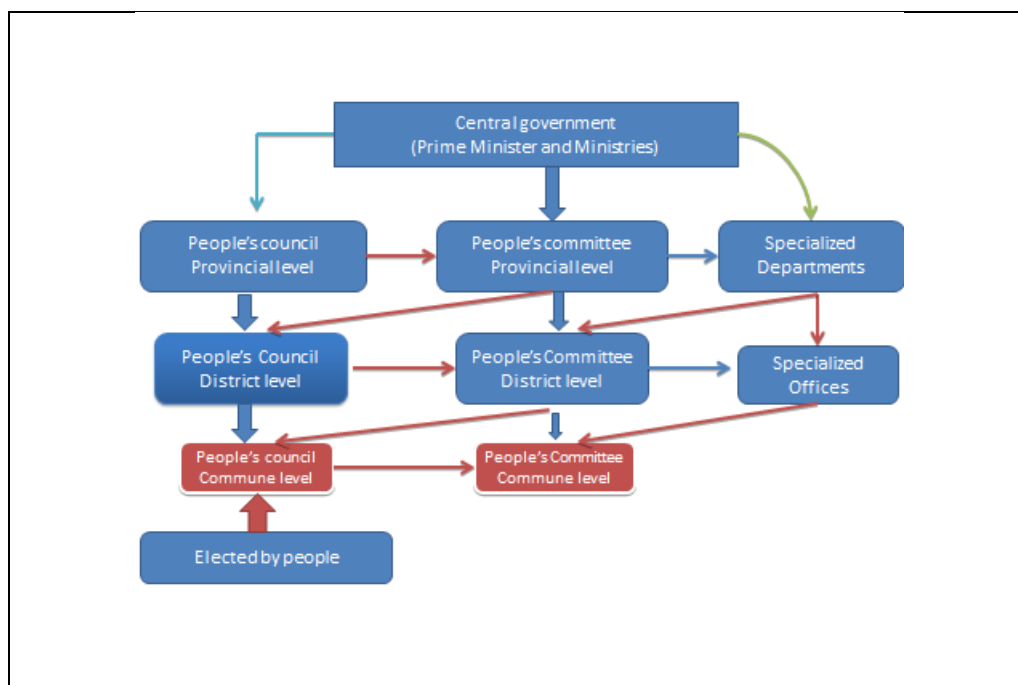
decentralization depends deeply on the capacity of local governments to perform the delegated functions. Therefore, central government has to consider carefully about the transferring of functions in accordance with the ability of local government. Moreover, decentralization also depends on political social conditions of a country as well as the situation of local government itself. Therefore, the most important thing for central government is to determine by laws the authorities and responsibilities of each level of the governmental system. Decentralization requires a nation to determine clearly the central-local relationships as a key factor for ensuring the local government to perform the delegated functions without freely intervention by central government. Therefore, examining the intergovernmental relations is essential to identify the reason why Vietnam could not achieve the productive results in the process of implementation decentralization.

1.1. Model of dual accountability in organization

The administrative system of Vietnam is organized into four levels, including the central, province, district, and commune. The 1992 Constitution defines the principle of democratic centralism as the fundamental regulation for organization and operation of the public administration system (Article 6).¹⁶⁴ In general, the Vietnamese government system has the special particularities as mentioned in the chapter 1 such as the hierarchical system, dual accountability and vertical-horizontal relationship. The government includes a Prime Minister, Departments, and Ministries and Ministerial-level agencies. The local government consists of People's Council, People's Committee, and the specialized agencies. Table 5 shows the public administrative system and its relation with state power agencies in Vietnam according to the 1992 Constitution as below:

¹⁶⁴ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*, 2001, <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf>.

Table 5 – The structure of government under the 1992 Constitution



Source: Summarized by author basing on the 1992 Constitution

In general, the dual accountability exists in organization and operation of each local unit. For example, the People's Committee at the provincial level is under the supervision of the central government (vertical relation) as well as under the supervision of the People's Council at the same level (vertical relation). Therefore, identifying the legal status of the central and local level contributes to clarify the dependent intergovernmental relations.

1.1.1 The central government

Article 109 of the 1992 Constitution provides that: Government is the executive body of the National Assembly and the highest administrative state body of SRV. Government has numerous duties and powers as follows:

- 1) Government assumes the unified administration of the implementation of all political, economic, cultural, social, national defense, security, and external activities of the State;
- 2) It ensures the effectiveness of the State apparatus from the central down to the grass-roots level;
- 3) It ensures respect for and observance of the Constitution and the law;
- 4) It promotes the people's rights as masters in national construction and defense, ensures the stabilization and improvement of the material and cultural life of the people;

- 5) It ensures the effectiveness of the State apparatus from the central down to grassroots level (Article 109).¹⁶⁵

The term “highest administrative state body of the SVR” implies the highest powers of government in the implementation of executive functions. This term refers to top-down model of governmental structure in which it implements general functions. As Shah argues a top-down hierarchical model prevents citizens from holding accountability of government.¹⁶⁶ Top-down model requires lower-levels to follow all decisions made by the higher levels as well as to limit the public participation in the decision-making process; therefore, local government cannot have discretion in performing the duties and functions.

In addition, in the field of organizing the public administrative system, the local government also depends on the central government, especially in the personnel aspect. Central government holds powers and duties in this field as follows:

- 1) to organize and direct the operations of the system of State administrative apparatus uniformly from the central to grassroots levels;
- 2) to ensure the effectiveness and smoothness of State management in the State administrative system, whereby the subordinate administrative bodies must submit to the leadership, and strictly observe decisions, of the superior administrative bodies;
- 3) to decide and direct the assignment and decentralization of branch and field management within the public administrative system;
- 4) to direct the public administrative reform, building a democratic, clean, strong, professional, modern, effective and efficient administration.¹⁶⁷

According to this regulation, the central government holds powers to organize the public administration system from the central to the grassroots level in order to ensure the hierarchical relationships. The local government is under the supervision of the central government. This relationship refers to the vertical dependence.

In addition, Ministries, ministerial-level agencies (hereinafter referred to as the Ministry) as the agencies of government (*Chinh phu*) perform the state management of the sectors and the public services, which are deliv-

¹⁶⁵Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*, 2001, <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf>.

¹⁶⁶Anwar Shah, *Local governance in developing countries* (World Bank Publications, 2006), 21.

¹⁶⁷Ibid. Article 16, section 2.

ered in the whole country in accordance with their competence (Article 2).¹⁶⁸ Ministries are field or functions management organs, therefore, the local organs are also under the supervision and control of the ministries. Ministry holds power to supervise the implementation of its regulations at local area through the line department of PCE. For example, the Ministry of Training and Education holds powers to supervise the implementation of the Department of Training and Education of a province. Hence, this relationship indicates vertical relation between Ministries and Departments of People's Committee and also with the People's Committee. In brief, these regulations determine dual accountability of local governments to government as well as ministries. Dual accountability creates a problem of shaping administrative behavior of the lower levels because they have to obey both specialist (line) command and a general purpose 'functional' command.¹⁶⁹ Thus, the lower levels lack of discretion in performing the powers and functions. As a result, many issues such as overlapping functions, shirking of responsibilities occurred as the result of dual accountability.

1.1.2 The dependence of the local governments on the central government

The local governmental system includes the People's Council and People's Committee which are set up at three levels as provincial, district and commune. Article 119 provides that "The People's Council is the state authority in respective locality, the representative body of the people's will, aspirations and rights as masters in their localities; it is elected by the local population, and responsible to the latter and to the higher state authorities."¹⁷⁰ Article 123 regulates that: "People's Committees are elected by People's Councils and are the executive agencies of the respective People's Councils. They are the local administrative state bodies, which have the responsibility to implement the Constitution, laws and texts adopted by the higher state authorities and resolutions of the People's Council."¹⁷¹ Thus, these regulations determine the fundamental legal status of the local governments.

¹⁶⁸ Thủ tướng (Prime Minister), *Nghị Định 178/2008 Quy Định Chức Năng Nhiệm Vụ Quyền Hạn Của Bộ, Cơ Quan Ngang Bộ Ngày 03 Tháng 12 Năm 2007 (Decree on Regulating the Functions, Duties and Authorities of Ministry and Ministerial Level Agencies)*, 2007.

¹⁶⁹ Painter Martin, "Public Administration Reform in Vietnam: Problems and Prospects," *Winley Inter Science, ABI/INFORM Global* (December 2002): 8, http://relooney.fatcow.com/00_New_652.pdf.

¹⁷⁰ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*.

¹⁷¹ Ibid.

Local residents vote directly for the member of the People's Council as the representative organ. The People's committee is the executive organ that operates under the supervision of the People's Council at the same level. The relationship between the PCI and PCE is considered as a horizontal dependent relation. Significantly, the People's Council plays a functions as the local state power and represents for the local residents. However, the People's Council also depends on the administrative organ at the higher levels. For example, Article 17, section 1 of LG states that government holds powers to guide and inspect the People's Council in the implementation of the constitution, laws and legal regulations made by other state organs at higher-levels, and to inspect the legality of the resolutions of the People's Council.¹⁷² These regulations only provide for the dependence of the local government in general by illustrating the responsibilities for implementing legal documents of higher state authorities. Furthermore, Article 118 of the 1992 Constitution provides that "the country is divided into provinces and cities directly under the central authority".¹⁷³ Thus, provincial local government is under the control of central government as the vertical relation. In brief, legal frameworks of central-local relationship ensure the dependence of local government on the central organs in organization and operation.

Additionally, the Law on Organization of Government (LG) provides the authority of Prime Minister in approving the result of election of members of People's Committee; in dismissing, transferring, and demoting the Chairman and Vice-chairman of the Provincial People's Committee, and also has the powers to approve the dismissal of the other members of People's Committee at the provincial level (Section 5, Article 20).¹⁷⁴ Hence, this article defines the dependence relationship between the Prime Minister and the head of the administrative agency. In addition, the LLG provides that: People's Council has authority to appoint or dismissal the Chairman and vice-chairman of People's Committee at the same level (Article 17 section 1).¹⁷⁵ This law also provides that the chairman of People's Committee must be a member of the People's Council at the same level and

¹⁷² Quốc Hội (National Assembly), *Luật Tổ Chức Chính Phủ Số 32/2001/QH10 (Law on Organization of Government No32/2001/QH10)*, 2001.

¹⁷³ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*.

¹⁷⁴ Quốc Hội (National Assembly), *Luật Tổ Chức Chính Phủ Số 32/2001/QH10 (Law on Organization of Government No32/2001/QH10)*.

¹⁷⁵ Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No11/2003/QH 11 Dated 26 November 2003)*, 2003.

the People's Council elects the People's Committee and the result of election at the provincial level must be approved by Prime Minister (Article 119).¹⁷⁶

In sum, these articles in general provide the same procedures for setting up People's Committee (executive organ) and the chairman of People's Committee. When the Prime Minister does not approve the result of election then the People's Council has to conduct another election. However, these regulations create dependent relationship between the Chairman of PCe and Prime Minister. In addition, the citizens do not vote directly for the chairman of PCe as they only vote for the members of the PCI. In turn, the members of the PCI elect the chairman of the People's Committee. This election mechanism does not allow local residents to hold accountability of the local leaders. In practice, the local residents cannot know who will be a chairman of the executive organ because he/she is only responsible to the People's Council at the same level and the head of the administrative organ at the higher-level. Therefore, this election method refers to the central leadership and less of democratic model in Vietnam. Direct election of a governor creates more democratic value society because it creates a connection between the residents and local government whereas a system of appointment converts prefecture into branches of the central government.¹⁷⁷

Contrary to the top-down model, the bottom-up model allows for more democracy to citizens by enhancing public participation in the decision-making process as well as promoting accountability of government. The 1947 Constitution of Japan, Article 92 provides that "Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy."¹⁷⁸ Thus, Local Autonomy Law of Japan (LAL) defines the organization and operation of local government system under the local autonomy principle. Significantly, this law limits intervention of central government into the works of local government in order to ensure the autonomous functions. For instance, the LAL provides the types of involvement of central or prefecture (*to, do, fu, ken*) with ordinary local public entities such as advice or recom-

¹⁷⁶ Ibid.

¹⁷⁷ Kenpō Chōsakai (Japan) and John McGilvrey Maki, *Japan's Commission on the Constitution, the Final Report* (University of Washington Press, 1980), 173.

¹⁷⁸ *The Constitution of Japan, 1947*,
http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html.

mentation; request for submission of data; request for recertification; consent; and direction (Article 245).¹⁷⁹ Hence, this law is a great example for a country in preventing interference freely from central government. In addition, local residents of Japan also exercise their right to vote directly to the governor or mayor (Article 17).¹⁸⁰ Therefore, Japanese voters feel closer to local government than to higher levels of governments because local governments are able to represent, protect, and secure for local interests better.

In brief, the legal regulations of organization of the PCe which provides in different laws define the dependent relationship of the local public entities on the central units. The dual accountability model creates the dependence of the local public entities on the central organs. The hierarchical system is a top-down model in which the central entities control the local units through their organization and operation. Therefore, local government does not have discretion in performing the delegated functions.

1.2 Control mechanism in operation

The 1992 Constitution ensures the powers of the central government in leading the works of the public administration system as follows:

“To lead the work of ministries, organs at the Ministerial level and bodies under the Government's authority, of People's committees at all levels; build and perfect the unified administrative State apparatus from the central to the grassroots level; direct and control the implementation by People's Councils of the texts of higher state organs; create favorable conditions for People's Councils to discharge their duties and exercise their powers as defined by law; train, foster, deploy and employ the body of State officials and employees.” (Section 1 Article 112)¹⁸¹

Thus, the 1992 constitution provides that the central government has authority to lead the work of People's Committee at all levels. However, constitution does not provide concrete forms or measure of leading by central government. In addition, article 114 also provides the authority of prime minister to direct the work of People's Committee at all levels (section 1). These articles illustrate the “top-down” model of central-local relations. The Constitution allows central entities to “lead” or “direct” the work of the local units; therefore, the

¹⁷⁹ “Revised Local Autonomy Law 1994” (日本財団図書館 (電子図書館) The Nippon Foundation Library, 平成11年度), <http://nippon.zaidan.info/seikabutsu/1999/00168/mokuji.htm>.

¹⁸⁰ “Revised Local Autonomy Law 1994” (日本財団図書館 (電子図書館) The Nippon Foundation Library,, 1994), <http://nippon.zaidan.info/seikabutsu/1999/00168/mokuji.htm>.

¹⁸¹ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*, 2001, <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf>.

local entities must abide by all decisions and regulations made by central organs. Moreover, the laws do not define the terms “lead” or “direct” in detail; therefore, the central entities can interpret these terms in various ways. These regulations enable the central units to intervene freely into the works of local organs. In addition, the LLG also provides that the PCE at the lower level is under the control of the PCE at the higher level, and the PCE at the provincial level is under the control of central government (Article 7).¹⁸² Hence, these regulations create vertical responsibilities or hierarchical system of the administrative system in Vietnam.

In general, the local governments still perform their duties and functions dependently as the laws have not yet determined concretely the types and measures of intervention of central government. The local governments are still subordinate organs that operate under the control of central entities. Thus, a control mechanism still exists in central-local relations. As the Martin Painter illustrates the problem caused by control mechanism:

The fundamental problem is the structure of “dual accountability” that shapes lower level administrative behavior. Chains of command and accountability are characteristically duplicated in the shape of specialist ‘line’ command and a general purpose ‘functional’ command. The head of provincial administrative department in a line with ministry is under the command of both under the national ministry head office and provincial level officials. Neither national nor provincial governments possess their own uninterrupted hierarchies of administrative command, but share overlapping structure. One common consequence of such a system is the gaps in the control system, while another is duplication and buck-passing on the part of head office.¹⁸³

Local governments have to obey all commands of central organs as the requirement of the hierarchical system in which lower levels have to obey all decisions made by higher-levels. One of the key requirements of the democratic centralism principle is that local units have to obey all decisions made by the central organs. Therefore, there is little evidence of a case of rejecting the order of higher levels or central government in practice of public administration in Vietnam.

In addition, the PCE is executive organs of the PCI and operates under the control directly of prime minister and ministries and ministerial-level agencies. The central ministries will provide the joint circulars guiding the functions, tasks, powers and organizational structure of the specialized (line) agencies of the People's Commit-

¹⁸² Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Năm 1983 Và Năm 1989 (Law on Organization and Operation of the People’s Council and People’s Committee in 1983 and 1989)*, n.d.

¹⁸³ Martin Painter, “Public Administration Reform in Vietnam: Problems and Prospects,” *Public Administration and Development* 23, no. 3 (August 1, 2003): 8.

tee at all levels (Article 11, Section 6).¹⁸⁴ The ministries will supervise the PCE at all levels in their implementation of tasks falling under their ministerial jurisdiction (Article 26).¹⁸⁵ Ministries also hold authorities to supervise, inspect, and suspend the implementation of decisions of PCE that are contradictory to ministerial legal documents and also ask for abolishing such decisions from the Prime Minister (Article 4, section 5).¹⁸⁶ Therefore, the PCE lacks of discretion in implementing the delegated functions and duties because of under the control and jurisdiction of central entities.

Why Vietnam retains the legal framework on the governmental system for ensuring the control mechanism while many developing countries have followed a new trend of local autonomy is open to question. Under the market-oriented economy, the central government still wants to maintain a dominant role in implementing executive functions. Hence, the control mechanism is considered as an instrument for checking the exercise of powers of local governments. Similarly, some Chinese scholars also consider that the important part of legal reform is maintaining the control mechanism because it is a measure for preventing the abuse of powers as well for improving the principle of democratic centralism in China.¹⁸⁷ As Paul Smoke concluded decentralization in Vietnam brought some benefits such as the provinces having more power; public participation and demand for political voice at the grassroots level has increased. However, Vietnam needs to carry out the reform continuously because decentralization could not abolish the central authority's control.¹⁸⁸

In brief, central-local relations are based on the control mechanism in which the central entities plays dominant role and takes lead in all areas of public administration whereas local units are subordinate organs. Although the PAR was launched in the 1990s; the central-local relations still have many issues as obstacles for creating

¹⁸⁴ Thủ tướng (Prime Minister), *Nghị Định 178/2008 Quy Định Chức Năng Nhiệm Vụ Quyền Hạn Của Bộ, Cơ Quan Ngang Bộ Ngày 03 Tháng 12 Năm 2007 (Decree on Regulating the Functions, Duties and Authorities of Ministry and Ministerial Level Agencies)*, 2007.

¹⁸⁵ Quốc Hội (National Assembly), *Luật Ban Hành Văn Bản Quy Phạm Pháp Luật Của Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 31/2004/QH11 Ngày 3 Tháng 12 Năm 2004 (Law on Promulgation of Legal Normative Document of People's Council and People's Committee No31/2004/QH-11 Dated 3 December 2004)*, 2004.

¹⁸⁶ Thủ tướng (Prime Minister), *Nghị Định 178/2008 Quy Định Chức Năng Nhiệm Vụ Quyền Hạn Của Bộ, Cơ Quan Ngang Bộ Ngày 03 Tháng 12 Năm 2007 (Decree on Regulating the Functions, Duties and Authorities of Ministry and Ministerial Level Agencies)*, 2007.

¹⁸⁷ Chih-yu Shih and Zhiyu Shi, *Collective democracy: political and legal reform in China* (Chinese University Press, 1999), 83.

¹⁸⁸ World Wold Bank, *East Asia Decentralizes: Making Local Government Work*, illustrated ed. (World Bank, 2005), 26.

independent local governments. First, the principle of democratic centralism creates the hierarchical administrative system as well as the vertical-horizontal relations in which the central government is the highest organ of the administrative system; Second, central authority holds power to appoint or dismiss the chairman of the PCC at the provincial level; as a result, it causes pressure to the leader of local governments Third, the central government can intervene into the works of the local government freely due to the control mechanism are guaranteed by laws.

2. The intervention from central government

Vietnam also likes the other developing countries in which centralization is giving away to experimentation with decentralization models as the promise way.¹⁸⁹ Decentralization requires the central government to transfer the decision-making and fiscal powers to local government in order to ensure that local entities are able to work independently and effectively. Successful decentralization depends on the financial and human resources of local government as well as the intergovernmental relations.

Vietnam has carried out decentralization with the aim at strengthening the local public entities by transferring the decision-making and fiscal powers during 1990s. However, the legal frameworks of central-local relationships do not allow local government to have discretion in exercising the decision-making and fiscal powers. In other words, central government can intervene into the process of exercising the decision-making powers and fiscal powers of local government. Hence, Vietnam has not yet achieved the highest degree of decentralization.

2.1 Control over the decision-making power

When the central entities hold the policy-making power then local governments were the handmaiden of the national government.¹⁹⁰ In general, the local units exercise the decision-making power for making the rules, policies or dealing with the specific issues happened at local area. Without decision-making powers, local governments cannot exercise their powers independently. In other words, local government exercises the public administration function mainly through the policies and decisions. Therefore, decentralization requires the

¹⁸⁹ David V. Gibson, Manuel V. Heitor, and Alejandro Ibarra Yunez, *Learning and Knowledge for the Network Society* (Purdue University Press, 2005), 90.

¹⁹⁰ Bird, Ebel, and Wallich, *Decentralization of the socialist state*, 1.

central entities to transfer the decision-making power to local government as the vital condition for ensure that capacity of local units in performing the functions. However, the Vietnamese central entities still hold power to control the process of implementing the decision –making power of local government. In other words, local public entities could not perform the decision-making powers independently.

In Vietnam, central government transfers the decision-making powers to the People’s Council and People’s Committee at all levels. For example, the Law on Promulgation of Legal Normative Act of the People’s Council and the People’s Committee in 2004 (hereinafter as the 2004 Law on Legal Normative Act) determines that the PCI and PCE hold powers to promulgate the legal normative decision (Article 1).¹⁹¹ For example, the People’s Council holds powers to making the policy and plan for economic development (Article 2).¹⁹²

However, the term “decision-making” power is interpreted as the authority of a state organ in promulgating the “*legal normative decision*” (quyết định quy phạm) by Vietnamese scholars.¹⁹³ According to public administrative theory of Vietnam, decisions in general are divided into two types as normative decisions and disposition.¹⁹⁴ In general, legal normative decision consists of policies, rules, and regulations that apply for the whole country, for a regional, or for a local area. In principle, National Assembly is only a state organ that holds the legislative power because there is no separation of state power in Vietnam’s context. However, the central government (Chinh phu) also holds powers to provide the legal normative documents not only for instruction but also for setting new rules when are considered necessary.¹⁹⁵ In addition, local government also holds power to promulgate the legal normative decision as a factor of the decentralization in decision-making powers.

¹⁹¹ Quốc Hội (National Assembly), *Luật Ban Hành Văn Bản Quy Phạm Pháp Luật Của Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 31/2004/QH11 Ngày 3 Tháng 12 Năm 2004 (Law on Promulgation of Legal Normative Document of People’s Council and People’s Committee No31/2004/QH-11 Dated 3 December 2004)*, 2004.

¹⁹² Ibid.

¹⁹³ In Vietnam, the “democratic centralism principle” defines the concentration of state powers. There is no separation of state powers; therefore, the term “rule-making” is only referred to the legislative powers that are exercised by the National Assembly; the other state organs only hold “decision-making” powers.

¹⁹⁴ Thuy Nguyen Thi, ed., *Giáo Trình Luật Hành Chính Việt Nam (Textbook on Administrative Law of Vietnam)*, 485-2010 (Hanoi: Nhà xuất giáo dục Việt Nam, 2010), 102.

¹⁹⁵ Quốc Hội (National Assembly), *Luật Ban Hành Văn Bản Quy Phạm Pháp Luật Năm 2008 (Law on Promulgation of Legal Normative Document in 2008)*, n.d.

Concerning to the decision-making power in Vietnam's context, the hierarchical system requires the local entities to make decisions that comply with the Constitution, Laws and other legal documents of the state organs at higher-levels. For example, the decision of the PCe at the provincial level must be in consistent with the constitution, laws and decisions of the central entities such as the government and ministries. Therefore, the local entities do not have discretion in exercising the decision-making powers.

In brief, decentralization in Vietnam has not yet enabled local government to carry out the decision-making powers independently. Significantly, the laws narrow the cases of promulgating the decisions of local entities as well as allow the central entities to intervene into the process of making decision of local organs through the mechanism of examining legality of local's decision. Therefore, this section examines the scope of decision-making powers and the mechanism on dealing with illegal documents in order to illustrate the limitation of decentralization in Vietnam.

2.1.1 Promulgating the legal normative documents of the local government

According to the 2004 Law on Legal Normative Act, local entities do not have total discretion in making decision as the law limits the number of cases. For example, Article 2 provides authority to the PCI and PCe in promulgating legal documents in following cases:

- 1) People's Council issued legal documents in the following cases: a) Decision of the guidelines, policies and measures to ensure implementation of the Constitution, laws and documents of superior State agencies; b) decide on the plan of economic development - social, budget, defense and security at local level c) decide on measures to stabilize and improve the lives of the people and complete the task entrusted by the superior; d) Decision of the jurisdiction assigned to the guidelines, measures have characteristics consistent with economic conditions - of the local society to promote the local potentials, but not left with the legal documents of superior State agencies; e) A document issued by state agencies on assignment for People's Council defined a specific problem.
- 2) People's Committee issued legal documents in the following cases: a) To implement the Constitution, laws, documents of superior State agencies, and resolutions of the People's Councils at the same level of economic development - social, defense and security; b) To implement the State management function in local and implementation of other policies in the area; c) To implement orders of higher levels on providing the regulations on particular subject.
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¹⁹⁶ Quốc Hội (National Assembly), *Luật Ban Hành Văn Bản Quy Phạm Pháp Luật Của Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 31/2004/QH11 Ngày 3 Tháng 12 Năm 2004 (Law on Promulgation of Legal Normative Document of People's Council and People's Committee No31/2004/QH-11 Dated 3 December 2004)*.

In general, local governments hold authority in making decision in three cases such as: (1) to provide a guideline for implementation legal documents of state organs at higher levels; (2) to provide their own regulations on dealing with local issues and implementing their management functions; (3) to exercise the commands of state organs at higher levels. Therefore, local government only makes decisions in specific cases defined by laws. These regulations indicate that local entities cannot exercise the decision-making powers flexibly. Consequently, the local's decision could not respond to the needs of residents as well as deal with the local's issues effectively. In practice, local governments face with many challenges when implementing decision-making authority as follows:

First, concerning to the case of providing guidelines, local governments have authority to provide guidance for implementing the legal documents of state organs at higher levels in a local context. However, the hierarchical public administration system requires the local's decision to comply with the decisions of the state organs at the higher-levels. However, local authority often provides the guideline with the two major purposes as follows: 1) Local entities often provide the guidelines with the repeated content from the decision of the higher-level entities in order to avoid the violation of inconsistent principle. For example, when PCe at the provincial level provides decision on reforming the education system in the local area, this decision must comply with Constitution, Law on Training and Education, Degrees of Government, Regulations of Ministry of Training and Education, and resolutions of PCI at the provincial level. Consequently, this decision does not determine the reforming solutions based on the local's conditions. 2) Local authority provides the guidelines with the new contents that are applicable in the local context. Consequently, local officials often follow the guideline of the local authorities in the process of implementation. Therefore, individuals and organizations face with difficulties in determining which decisions shall be applied for the specific cases happened at local area.

Second, the 2004 Law on Legal Normative Act provides that legal decisions of PCI and PCe must comply with the Constitution, laws and legal documents of superior state agencies, to ensure consistency, the hierarchy of legally the text of the legal system; normative regulations of the People's Committee also must comply with the

resolutions of the People's Council at the same level (Article 3, section 1).¹⁹⁷ However, in practice, the number of the illegal documents has increased significantly as they conflict with the legal documents of the higher-level state organs. A decision is considered as illegal even it is reasonable, feasible, and applicable in the local contexts because it is inconsistent with other legal documents of the higher-level of state organs. In general, the authority organs define these decisions as the “*brake-fence*” case. For example, in dealing with small, narrow houses which have been built in Hanoi area, the PCE of Hanoi provided regulations criteria on issuing the certification of land used right of citizen or household family in which defines that land must be not smaller than 30 m² (Decision No 58/2008). Then, Department of Examining legal documents – Ministry of Justice has determined this decision was illegal because it was not consistent with the provisions of current laws (the current text has not prescribed a minimum area of the particular conditions of a certificate of land use rights). If the decision prescribed the minimum area to issue certificates of land use rights must be 30 square meter or more, it would affect the rights and legitimate interests of citizens in exercising land use rights. Therefore, the PCE was required to abolish this decision.¹⁹⁸ Similarly, Ministry of Justice also warned that decision No 07/2008/QĐ-UBND of Nghe An province was illegal because of setting out standards for issuing driving license of more than ten seats car such as that person must have at least three-year experience in driving, or to take HIV test in the case of renewing or changing their driving license. This decision was illegal because the Road Traffic Law and Decree 110/2006/ND-CP on business conditions for automobile transportation did not regulate such standards.¹⁹⁹

Thirdly, local government hold power to make decision basing on the order (requirement) of the higher-level of state agencies for dealing with local issues or emergency cases that occur in local areas. However, the local

¹⁹⁷ Ibid.

¹⁹⁸ To examine legal documents promulgated by the ministries and ministerial-level agencies as well as the People's Councils and the People's Committees of the provinces and centrally-run cities according to the prevailing laws; to propose the revision of documents contrary to the laws according to its own competence or handle these under the Prime Minister's authorization. – Degree No.178/2007/ND-CP dated on December 3rd, 2007 on defining the functions, tasks and organizational structures of ministries and ministerial-level agencies. See: Bảy bộ, 13 tỉnh, thành chậm xử lý văn bản trái luật (Seven ministries and thirteen provinces are in slow processing the illegal documents.)<http://phapluattp.vn/2010092312081887p0c1013/bay-bo-13-tinh-thanh-cham-xu-ly-van-ban-trai-luat.htm>

¹⁹⁹ “Bảo Thanh Tra Điện Tử - Chế Tài Trách Nhiệm ở Đâu? (Journal of Inspector - Lack of Mechanism for Identifying the Responsibility of Authorities)”, n.d., <http://thanhtra.com.vn/tabid/77/newsid/33705/temidclicked/1062/seo/Che-tai-trach-nhiem-o-dau/Default.aspx>.

authorities have to follow the guidance of the higher-level authoritarian agencies; as the result, local government lacks of the discretion in the decision-making process. As Reed argued the central government should not provide policy area if local governments are conducting their functions sufficiently.²⁰⁰ A decision of local entities will be applicable and feasible when it reflects the concrete political, social, and economic situations of a local area. In other words, the decision of local government is closer to the needs of the residents as well as the local condition than the national government's decision. In addition, the central organs are not able to carry out many policies effectively without the cooperation of the local units. Therefore, the central entities should allow the local governments to promulgate the normative legal documents in order to deal with the local issues independently.

In Japan, for example, Article 94 of the 1947 Constitution provides that "Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law. The local government will be able to manage an issue more independently when they have discretion in making the decision. As a result, the decision of the local government will reflect the local demands more than the decision of central government. Consequently, the differences in the policy made by the different local government are very popular in Japan. In addition, the local governments in Japan have shown initiatives in formulating policies for their own revitalization. For example, one of the famous Japanese cases was the Yokohama City case in the mid-1906s formulated pollution-control guidelines and agreements which is forced Tokyo Gas, and Tokyo Electric Power to abide by these regulations. Consequently, the central government had to adopt some of the strongest pollution controlled policies in the world."²⁰¹

In conclusion, the national government has transferred the decision-making powers to local government as a requirement of decentralization in Vietnam. However, a local government is not able to exercise the decision-making powers effectively due to the requirement of the consistence with the documents of the higher-level state organs. In addition, the mechanism for dealing with the illegal documents by the local government is also an obstacle in promoting the discretion in performing the decision-making power.

²⁰⁰ Reed, *Japanese Prefectures and Policymaking*, 5.

²⁰¹ Muramatsu, Iqbal, and Kume, *Local government development in post-war Japan*, 51,52.

2.1.2 Mechanism on examining and handling with the legal normative decision of local government.

Decisions will be effective and efficient if they are reasonable, feasible and applicable in local's contexts. In Vietnam, decisions of local governments often indicate the two major cases as follows: the decision of the local government is always consistent with the regulations of state organs at higher-levels as the chairman of local government tries to avoid conflict with the central government; and (2) the decision of the local government regulates the new things which have not mentioned in legal documents of central government – as with “brake fence” cases.

Dealing with illegal decisions, the 1992 Constitution also set out mechanism for solving illegal decisions of local governments. For example, Article 114 (section 4) provides that prime minister has a power to suspend the implementation of or to abrogate decisions, instructions of the PCE at the provincial level that conflict with the Constitution, Laws, and other legal documents of the state agencies at the higher-level. Relatively, Article 124 also provides that chairman of the PCE has the power to suspend the implementation of or rescind improper texts adopted by agencies of the PCE or those of the PCE at the lower-level; to suspend the implementation of improper resolutions of the PCI at the lower-level as well as submit the recommendations to People's Council at the same level for abolishment.

In addition, the LLG 2003 also determines that the mechanism for solving the illegal documents of the local government as follows:

- 1) The PCI holds power to examine the legality of the document of the PCE at the same level and of the PCI at the lower level as well as to abolish a part or the whole document that conflicts with the legal documents of the higher-level state organs (Article 62);
- 2) The chairman of the PCE holds power to examine the legality of the document made by the PCI and PCE at the lower-level (Article 127, paragraph 2, section 4, 5).²⁰²

In general, this law has not defined clearly the criteria for determining the legality of document; as the result, many discussions are raised as the obstacles for local government in the process of implementing decision-making power. In reality, the legality of the local's normative legal document is often examined based on elements such as the legal content of document, procedures, competence, form, and date of issue. If a decision is

²⁰² Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No11/2003/QH 11 Dated 26 November 2003)*, 2003.

inconsistent with the legal documents of the higher-level of state organs, it will be abolished by the person with authority. For example, the chairman of the PCE at the provincial level has the power to abolish an illegal document of the PCE at the district level. The abolishment of the normative legal document is based on the administrative procedure. In addition, the lower-level does not have the right to complain about the abolishment as it is the command of the higher-level that requires obedience.²⁰³

However, the prime minister as well as the chairman of the PCE will determine the legality of the document based on the result of the examination of the legality of decision that is carried out by the Ministry of Justice (at central level), the Department of Justice (at provincial level), the Office of Justice (at district level). In other words, the prime minister and the chairman of the PCE delegate the function of examination to the Ministry of Justice and its specialized agencies at the same level.²⁰⁴ For example, Article 2 (section 7-a) defines that the Ministry of Justice has powers to examine the legality of the decisions made by other ministries, ministerial-level agencies, the People's Council, the People's Committee at the provincial level, and to propose the handles to the prime minister.²⁰⁵ Thus, the power of administrative jurisdiction is in the hands of the prime minister as well as the chairman of the PCE; therefore, there is no independent decision-making authority in both theory and practice in Vietnam. In addition, the laws also defines that authorities can revise or cancel the illegal document during 30 days since the competent agency announced about the illegality of documents.²⁰⁶

Nevertheless, central authorities have transferred the decision-making power to the local government with the aim at empowering local units in dealing with its issues more responsively. However, the local authorities could not carry out the decision-making power effectively because of the central government still control over the decision-making process. In addition, Vietnam still lacks of independent mechanism in examining and han-

²⁰³ Only decision which is applied to the individual or business organ is the subject of the Law on Administrative Complaint in 2001 (this law was promulgated first time in 1998 and revised in 2004, 2005).

²⁰⁴ Chính Phủ (The Government), *Nghị Định Số 98/2008/NĐ-CP Quy Định Chức Năng, Nhiệm Vụ, Quyền Hạn Và Cơ Cấu Tổ Chức Của Bộ Tư Pháp (Decree No98/2008 Defining the Functions, Tasks, Powers, and Organizational Structure of the Ministry of Justice)*, n.d., http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=2863.

²⁰⁵ Ibid.

²⁰⁶ Chính Phủ (The Government), *Nghị Định số 40/2010/NĐ-CP Về kiểm tra và xử lý văn bản quy phạm pháp luật (Decree No40/2010 Defining on Examining and Handling the Legal Normative Document)* http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=25939

dling the illegal normative document made by local authorities; therefore, local government does have discretion and faces with challenges in exercising the decision-making powers due to reasons as follows:

1) Local governments do not have discretion in the process of implementing the decision-making powers as the law that restricts the cases of promulgating the normative legal document as well as retains the principle of consistence with the document of the higher-level of the state organs. In general, local authorities often make decision basing on the guidelines of the higher level. Consequently, the local government often repeats the content of the higher-level's decision.

2) Local governments cannot take initiative action in conducting the decision-making powers. If a local government provides a new policy which not yet regulated by the central government, that policy will be considered as the illegal case or “*brake fence*” case as mentioned above.

3) Central government holds the administrative jurisdiction powers in dealing with legality of the normative legal decisions made by the provincial local governments. In addition, the laws define the procedure for dealing with illegal decisions of local governments is the administrative procedures; therefore, the central government can intervene into the process of exercising the decision-making powers of local government. Significantly the Law on Organization of People's Procuracy in 1992 that defined the powers of the public procurators in examining the legality of document was abolished by the Law on Organization of People's Procuracy in 2002.²⁰⁷ Consequently, Vietnam lacks of effective mechanism in examining the legality of documents made by the local government.

4) Local governments lacks of skill staffs in implementing decision-making authority. According to examination on legality of 3,632 decisions of Government from November 2003 to May 2005, around 400 were illegal in which 4 -5% of decisions did not comply with documents of state at higher levels, around 15% of decisions did not follow the regulations on procedures of promulgation; around 20% were lacked of legal ground. Significantly, the authority organs stated that 40 ‘break-fence’ decisions among 60 decisions of provincial govern-

²⁰⁷ Quốc Hội (National Assembly) Luật tổ chức Viện kiểm sát nhân dân Số 34/2002/QH10, Điều 1. (Law on Organization of People's Procuracy in 2002 defines the People's Procuracy shall exercise the right to prosecute and control the judicial activities in accordance with the Constitution and law).

ment the investment field.²⁰⁸ On contrary, some decisions are legally but the contents of decisions are impossible for implementation due to the lacks of feasibility or unresponsiveness of local resident's needs.

5) The local residents could not participate in the decision-making process of local authorities effectively because the current legal frameworks did not create effective mechanism for promoting public participation. In addition, the laws do not define clearly responsibility of local authorities in responding and handling the recommendation of local residents. Significantly, the laws did not define the duties of local authorities in explaining the reasons of why local authorities did not accept the resident's comment on drafting decision.

In brief, Vietnamese local authorities cannot exercise the decision-making power effectively due to challenges raised from central government as well as local officials themselves. Central entities still keep control over the process of decision-making of local organs. Local authorities cannot introduce the decisions with the new contents because of the requirements of consistence. In addition, local authorities lack of legal capacity in drafting the legal normative decisions. Therefore, Vietnam needs to promote the ability of local officials in exercising decision-making powers as well as minimize the central's control in order to promote decentralization.

2.2 The financial control

Under a centrally planned economy, the financial management of local budgets in Vietnam was highly centralized. Revenues and expenditures of local governments were under direct control of the central government. For example, the central government gave revenue to local government and local authorities only followed the commands of central. Hence, the local government did not have discretion in fiscal management.²⁰⁹ The shortage of local revenue is a key factor of unsuccessful decentralization which creates many problems such as the dependence of local government on the higher levels of government, limitation of local autonomy, and weakening the accountability of local government due to the lack of a strict link between

²⁰⁸ “Bức Xúc Về Việc Ban Hành Văn Bản Quy Phạm Pháp Luật Chậm, Trái Luật (Critical criticize about the promulgation of legal document untimely and illegally),” *Vietnamese Law Consultants*, October 2005, <http://vietnamese-law-consultancy.com/vietnamese/content/browse.php?action=shownews&category=&id=49&topicid=632>.

²⁰⁹ “revenue assignment in Vietnam”, n.d., 3, http://warp.ndl.go.jp/info:ndljp/pid/1022127/www.mof.go.jp/jouhou/sokei/kouryu/kou27/kou27_12.pdf.

services and finance.²¹⁰ As Richard Bird suggested the central authorities should strengthen local governments by enabling them to make fiscal decisions dependently such as to decide their own expenditures, taxes system or spending.²¹¹ If one of the fiscal elements such as tax policy, expenditures, and intergovernmental financial is not designed well, it will affect to the financial system in a country.²¹² In other words, local governments can only take the initiative in dealing with local issues and providing public services when they are able to use local budget independently. Hence, financial decentralization plays a dominant role in empowerment local government.

Vietnam has carried out fiscal decentralization through the form of de-concentration. This form requires local government to obey the policy and implement program designed by central; as a result, local authorities cannot determine the local's expenditures independently.²¹³ In addition, central authorities still remain the "application-approval" mechanism (*co che xin-cho*) in the financial system. Therefore, central government distributed the budget for local government based on the local's request without concerning to the real demands of local. Hence, local government in Vietnam still faces with many challenges in financial aspect due to the limited results in promoting fiscal decentralization. This section examines the legal frameworks for central-local relationships in financial aspects in order to identify the main issues of fiscal decentralization in Vietnam.

2.2.1 Fiscal decentralization under the first law on state budget (1996)

Vietnam introduced the Law on State Budget (LSB) in 1996 as the starting point of fiscal decentralization. The 1996 LSB determined the central and local budget in very general (Article 4). This article set out the principles for using state budget as follows:

- 1) Central budget and local budget is determined according to revenue and expenditure tasks;
- 2) Central's supplement is a source of local revenue for ensuring equitability and balanced development;
- 3) Central budget will transfer to local government in the case of fulfilling the duties or tasks that assigned by central;

²¹⁰ World Bank, *East Asia Decentralizes: Making Local Government Work* (World Bank Publications, 2005), 14.

²¹¹ Richard Miller Bird, *Public finance in developing and transitional countries: essays in honor of Richard Bird* (Edward Elgar Publishing, 2003), 9.

²¹² Richard Miller Bird, Robert D. Ebel, and Christine Wallich, *Decentralization of the socialist state: intergovernmental finance in transition economies* (World Bank Publications, 1995), 2.

²¹³ Bird, *Public finance in developing and transitional countries*, 51.

- 4) Local authorities cannot use budget of other local levels for implementing duties of their local.²¹⁴

In brief, local government depended on central's supplement because this law defined the central's subsidy was revenue resources of local government. In addition, the 1996 LSB also regulated revenue and expenditure sources for the three local administrative levels (Article 30-38). The revenue sources of the local administrative unit's budget included: 1) wholly collected resources; 2) divided sources by percentage among different levels of administrative units. Significantly, the central authorities held powers to decide the sharing percentage between central and local government (Article 39). However, the law did not fix the percentage of sharing revenue between central and local government. This mechanism retained the central's dominant role in financial aspect. In other words, local governments did not have independent revenue sources. In addition, the 1996 LSB was revised by the 1998 LSB after only two years of implementation. However, the 1998 LSB did not change the central-local relationships in financial aspects significantly.

Significantly, central authorities faced with challenges in ensuring the equal development and supplementing for local government. Central government was hard to define what kind of taxes that should be transferred to local government. In brief, tax collection and subsidy of central government were two main revenue resources of local government. Consequently, central government faced with challenges raised by local authorities such as illegal spending (corruption); wrong purpose of using; and wasting state budget. For example, local authorities tried to spend all the subsidy of central government in fiscal year because local authorities could not get the subsidy from central in the next years. In brief, the 1998 LSB brought some improvements such as determining principles of spending state budget, regulating revenues and expenditures of central and local governments. However, Richard Bird pointed out that the 'negotiated system' remains as a critical feature of the financial system in Vietnam. For example, central government often distributed subsidy to the local government based on the negotiation skill of local government without considering the equality and efficiency.²¹⁵ Consequently, central authorities could take advantages in distribution the subsidy to local government. In other words, the 1998 LSB did not define the conditions of distribution the subsidy, therefore,

²¹⁴ Quốc Hội (National Assembly) Luật Ngân Sách Nhà Nước 1996 (Law on State Budget in 1996)

²¹⁵ Bird, *Public finance in developing and transitional countries*, 51.

central authorities exercised the fiscal powers for their own benefits whereas local authorities made effort in increasing local revenue by various ways. These regulations did not prevent corruption as one of the serious challenges of Vietnam government in process of building up effective, transparent public administration system.

2.2.2 Fiscal decentralization under the 2002 LSB

In 2002, The National Assembly promulgated the Law on State Budget replaced for the 1998 LSB.²¹⁶ The 2002 LSB focuses on fiscal decentralization for creating more initiative, accountable, responsible local governments. A number of changes related to fiscal decentralization are summarized as follows:

1) The 2002 LSB provides the powers and duties of the National Assembly to decide budget drafting, to decide the allocation from central budget (Article 15, section 3,4). At local level, PCL holds power to decide the estimated budget plan on allocation and expenditures of local at all levels based on tasks of budget collection and spending as assigned by the upper-level agency.(Article 25). The 2002 LSB grants the province the key role in allocating the budget to districts and communes. For example, Article 34 provides that:

“Based on sources of revenue and tasks of spending of the local budgets as stipulated in Articles 32 and 33 of this Law, the provincial People’s Council shall *decide concrete decentralization of sources of revenue and tasks of spending* at each level of budget of the local authorities on the following principles.”²¹⁷

Thus, this law grants local government more discretionary power budgetary spending.

2) The law provides incentives for local government units to balance their budgets. For example, article 35 provides that PCE at district and commune level shall be entitled to mobilize contributions from organizations or individuals for investment in the construction of infrastructure of the communes, townships, and cities of the province on a voluntary basis.

3) The law also calls for the implementation of public administration reform in the area of budgetary management with an emphasis going to budgetary transparency. It tightens disciplinary actions and emphasizes the need for anti-corruption and anti-waste practices (Article 35).

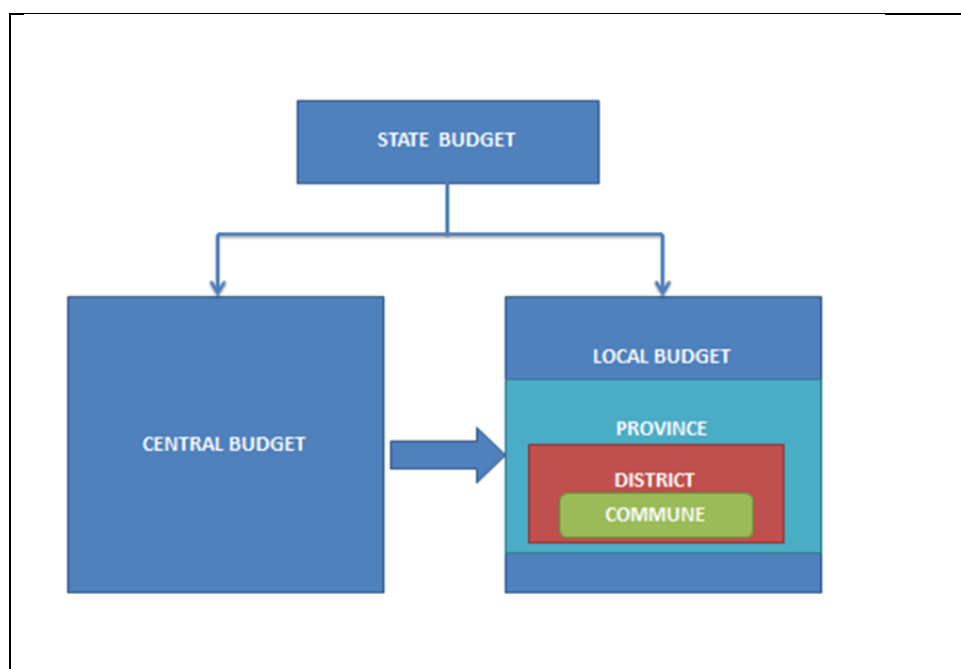
²¹⁶ come to enforcement in 2004

²¹⁷ Quốc Hội (National Assembly), *Luật Ngân Sách Nhà Nước Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam 2002 (Law on State Budget 2002)*, 2002.

However, the local government cannot have discretion in exercising the fiscal powers because the 2002 LSB did not abolish the application-approval mechanism and the central's subsidy. In addition, the 2002 LSB did not focus on transparency and equality in process of distribution the subsidy and spending state budget; therefore, corruption and wrong purpose of spending are the main issues of public financial system in Vietnam. In general, Vietnam has carried out the fiscal decentralization based on the 2002 LSB with specific particularities and limitation as below;

First, the state budget system includes central budget and local budget which is considered as a combined model. The table 6 shows the combined model of state budget system as below.

Table 6 – The combined model of state budget system

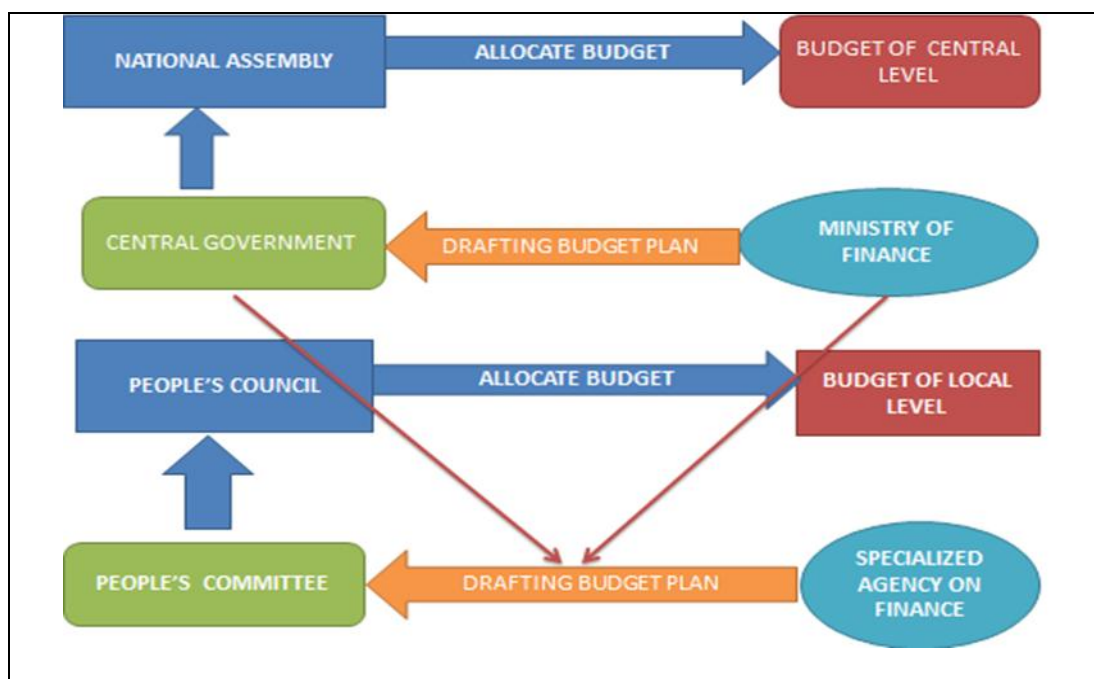


Source: Báo đại biểu nhân dân (Delegate of People Journal) October 12, 2009

In general, the National Assembly holds power to allocate estimated budget annually for central government, ministries and local governments at the provincial level as well as determine budget for each area such as healthcare, education, science and technology (Article 15, section 3). And, the Provincial People's Council similarly holds powers to allocate estimated budget for each aspect such as education, healthcare as well as for local governments at lower levels (Article 25, section 3). However, the National Assembly and PCI exercise the

power in approving the state and local budget based on the drafting budget plan of the executive organs. However, the Ministry of Finance plays important role in process of drafting budget plan of local government because the 2002 LSB requires the PCE at provincial level to consult with the Ministry of Finance on drafting budget plan. Similarly, the People’s committee at district and commune level must be in cooperation with the financial officials at provincial levels for approving local estimated budget plans.²¹⁸ Consequently, this mechanism retain the ‘application – approval’ mechanism that remained from centrally planned economy. The table 7 describes the procedures for making decision on allocating budget for central and local as follows:²¹⁹

Table 7 – The procedures for making decision on allocating budget



Source: Summarized by author based on the 2002 LSB

Significantly, Vietnamese authorities indicated the limitation of the 2002 LSB after five years of implementation as follows: The 2002 LSB limits the independence and powers of local authorities due to retaining the in-

²¹⁸ For example, Article 41 provides that: “[During the process of consolidating on and drafting the budgets, the financial agencies of various levels shall have the responsibility to work with budget drafting agencies and units of the same level to readjust necessary points in the draft budgets”. (Law on State Budget 2002)

²¹⁹ “Cần Sớm Nghiên Cứu, Sửa Đổi Luật Ngân Sách Nhà Nước (The Urgent Needs for Studying and Amending the Law on State Budget),” *Báo Đại Biểu Nhân Dân (Delegate of People Journal)*, n.d., <http://daibieunhandan.vn/default.aspx?tabid=76&NewsId=86705>.

tegration of the state budget system and the overlapping jurisdiction. This law could not promote accountability of local authorities to spend the budget, especially the central's subsidy effectively. Significantly, the 2002 LSB did not enhance the transparency in process of making decisions for allocation budget, budget spending, and settlement of state budget. On the other hand, the integrated system causes time consumption in drafting and approving estimated budget plans of local governments; therefore, this system did not ensure for effectiveness of state budget management.²²⁰

Second, local government cannot take initiative action in deciding its own expenditures because local authorities have to follow the estimated budget plan approved by the authorized organs. For example, Article 5 (section 2) provides conditions for spending state budget as follows:

- 1) Expenditures must be listed in the estimated budget plan excluding the expenditures that are regulated in article 52, and 59 of this law;
- 2) The amount of expenditures must be complied with cost norms which regulated by authority organs;
- 3) Local authorities need to get approval by authorized person for deciding the spending tasks.²²¹

Third, local government lacks of revenue to implement the expenditure tasks; therefore, central government has to distribute grants for the local governments. Therefore, central's subsidy is also a revenue source of local government.²²² Considerably, each local government did not get the same of an amount subsidy because the amount of subsidy depends on the needs of local. However, in reality, the central authorities often distribute the subsidy based on the request of local government as the "negotiation skills". For example, Litvack mentioned that:

"The central government also has the power to redistribute revenues to certain provinces by approving expenditures in excess of revenues for some provinces at the expense of the others. Richer cities and provinces still receive greater per capital expenditures than poorer ones, but not proportionately to greater revenues raised in the richer areas."²²³

²²⁰ Ibid.

²²¹ Quốc Hội (National Assembly), *Luật Ngân Sách Nhà Nước Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam 2002 (Law on State Budget 2002)*.

²²² budget<http://www.chinhphu.vn/cttdtcp/vi/cpchxhcnvn/solieungansach/2011/dutoan03.html>

²²³ Jennie Litvack and Dennis A. Rondinelli, eds., *Market Reform in Vietnam: Building Institutions for Development* (Praeger, 1999), 140.

In brief, central government still retains the dominant role in financial aspect through the subsidy and the application-approval mechanism. Therefore, Vietnam needs to revise the 2002 LSB because of many issues as follows:

- 1) The 2002 LSB reveals seven large gaps that need to be amended such as: the “combined model of the budget system”; unclear defined sources of the state budget revenues (taxes, fees and charges); percentage sharing for commune levels; and lack of regulations on adjusting revenue resource (etc).
- 2) The 2002 of LSB did not abide by international rules as LSB does not cover all revenues of state budget.²²⁴

Japan also had experiences in fiscal centrally in the Meiji era when the central government heavily involved in almost every aspect of local government spending because there was no clear separation of central and local government. As the consequence, local governments of Japan also faced with many problems that developing Asian countries are currently faced with.²²⁵ Hence, Japan has gradually reformed the fiscal decentralization in order to create more effective and efficient local governments like today. For example, the amended Law on Public Finance in 1952 introduced the ‘*cost-sharing grants*’ model which called for the national treasury obligatory shares. Cost-sharing grants determined that local government should borne by themselves all expenses for performing local functions and central government only partly shares the costs for some kinds of tasks.²²⁶ In addition, the LAT plays a key fiscal equalization role in the transfer system of Japan. Japan has promoted fiscal decentralization by introducing the Law on Promotion in 1995.²²⁷ Especially, Japan has carried out many reform with the aim at promoting the independence of local public entities through the increase of the local revenue, revise Law on Allocation Tax, especially the Trinity Reform package in 2004.²²⁸

In brief, the 2002 LSB transfers more power to local governments; however, the law does not abolish the ‘application-approval’ mechanism and central’s subsidy. Hence, the central government still controls the local authorities in process of exercising the fiscal power, especially in determining the local’s expenditure. In addi-

²²⁴ 5 năm thực hiện Luật Ngân sách Nhà nước - 7 bất cập lớn cần sửa đổi. (5-Years of implementation the Law on State Budget: Seven main obstacles are required to be revised) <http://www.taichinhdientu.vn/Home/5-nam-thuc-hien-Luat-Ngan-sach-Nha-nuoc--7--bat-cap-lon-can-sua-doi/20096/51158.dfis>

²²⁵ Nobuki Mochida, *Fiscal Decentralization and Local Public Finance in Japan* (Taylor & Francis, 2008), 4,13.

²²⁶ Ibid., 7.

²²⁷ Ibid., 17,18,21.

²²⁸ Shinichi Ichimura and Roy Bahl, *Decentralization policies in Asian development* (World Scientific, 2009), 29.

tion, the laws did not define the responsibility of central and local authorities in spending budget transparently. Evidently, Vietnam could not achieve success in fiscal decentralization. Therefore, Vietnam needs to revise the 2002 LSB in order to ensure local government have more discretion in exercising the fiscal powers and ensure local authorities to exercise the local budget transparently and accountability in order to achieve successful decentralization.

3. Unclear distribution of functions – A case study

Central government can control the works of local governments in many ways such as: guidance, instruction, commands or orders. If the central–local relationships in performing duties and functions are not clearly determined by laws, a country will face with issues of shirking responsibility. Shirking responsibility in Vietnam is a typical example of unclear distribution of functions between central and local government. This section examines the case of water pollution caused by the Vedan Company as the typical example of shirking of responsibility between the Ministry of Natural Resources and Environment and the Dong Nai province.

3.1 The Vedan case

3.1.1 Overview of the Vedan case

The Corporation Limited Vedan Vietnam (with 100% capital of the Group associated enterprises Taiwan Vedan) was established on August 1991, under the investment license by the Commission of 171A/GP State for Cooperation and Investment.²²⁹ In 1993, the Vedan Company built the plant for producing the monosodium glutamate, starch, sugar, soda, acids in the Go Dau Industrial Zone. This plant covers an area of 120ha in Phuoc Thai commune, Long Thanh district, Dong Nai. The Vedan Company has polluted the local environment, especially the river water resources since the company went into operation. According to the Youth Newspaper, Vedan has polluted environments for many years as follows:

- 1) On July 10, 1994, people in Nhon Trach and Long Thanh (Dong Nai) and Tan Thanh (Ba Ria - Vung Tau) claimed Vedan for compensation caused by water polluted Thi Vai river killing fish and shrimp, which caused damage of about 40 billion VND.
- 2) On July 12, 1994, the Prime Minister requested the Department of Science and Technology and Environment of Dong Nai province to investigate and handle Vedan as it polluted the Thi Vai River and the surrounding areas.

²²⁹ Now, it is the Ministry of Planning - Investment

- 3) On May 6, 1995, Vedan confessed to pollute the Thi Vai River and the area neighborhood in the meeting with the Department of Environment (Ministry of Science-Technology) and Department of Science and Technology and Environment of Dong Nai. Vedan company agreed to compensate people in Nhon Trach district more than 7 billion, Long Thanh district nearly 4.5 billion, Tan Thanh district more than 7 billion and Can Gio (Ho Chi Minh City) than 2.7 billion (total around 21 billion VND).
- 4) On November 8, 1995, at the meeting between Vedan and the other representatives of local people held by the Department of Science and Technology of Dongnai, Vedan has finalized the compensation amount only 15 billion VND. However, this amount was considered as the financial support for “the development of fisheries” instead of compensation.
- 5) On September 16, 2002, The MPI approved the 11th revised license for transferring of all rights and obligations of the Group's associated firms in Taiwan Vedan for Industry Burghley Enterprises Co. Pte Ltd (based in Singapore) according to the contract signed on 5-8-2002.
- 6) On May 6, 2006, the Environmental Protection Department (Ministry of Natural Resources – Environmental) conducted irregularly five examinations on the samples of pollution indicators in wastewater. As the results, all samples are analyzed parameters of organic pollution, nutrients, suspended matter and bacteria exceed standards. In addition, the direct discharge of wastewater into the river without disposal was also reported.
- 7) On September 8, 2008, the Environmental Police Agency (Ministry of Public Security and the inspection teams of the Ministry of Natural Resources – Environment) caught Vedan discharging untreated waste water in the Thi Vai River.²³⁰

The authorities have dealt with the violations of Vedan since its establishment as follows:

First, the authorities defined that Vedan violated the Law on Environmental Protection and punished for an amount of 216,500 million VND for the 12 actions of violation (among 15 actions of environmental violation activities).²³¹

Second, the competent agencies decide to suspend Vedan's operation activities relating to discharging of wastewater without disposal to Thivai River for handling water pollution damages as well as to improve discharge of wastewater system in accordance with Article 82 of the Law on Environmental Protection in 2005.

Third, the Ministry of Natural Resources and Environment (MNRE) recommend the PCE of Dongnai Province to suspend temporarily some manufactures of Vedan. In addition, the MNRE also considered to retrospective collect the amount of 127 billion VND as Vedan has evaded environmental protection fees for waste water.²³²

²³⁰ Vedan “giết” sông Thị Vải. (Vedan “kills” the Thivai river) <http://tuoitre.vn/Chinh-tri-Xa-hoi/278294/Vedan-%E2%80%9Cgiết% E2%80%9D-song-Thi-Vai.html>

²³¹ The authorities sanctioned Vedan based on the Decree No. 81/2006/ND-CP dated 09/8/2006 of the Government on sanctioning administrative violations in environmental protection and Decree No. 34/2005/ND-CP dated 03/17/2005 of the Government on sanctioning administrative violations in the field of water resources, namely: maximum fine of the penalty.

²³² based on the Decree No.106/2003/ND-CP dated 09/23/2003 on sanctioning administrative violations of the fees and charges and Decree No. 67/2003/ND-CP dated 06/13/2003 on environmental protection charges for waste water (cited source: Vụ án Vedan Việt Nam, (The Vedan Case in Vietnam)

In brief, Vedan has committed on pollution of water recoures for a long time. The authorities have carried out administrative jurisdiction on dealing with Vedan's violation. However, the central authorities and local authorities could not prevent the violation of Vedan Company productively. Consequently, Vedan Company caused serious damages to local residents, especial the fish farmers at Dongnai, Hochiminh and Vungtau provinces. Vietnamese authorities faced with difficulties in examining responsibility of each state organs concerned to the Vedan's violation (hereafter Vedan case). This section illustrates the unclear distribution of functions among state agencies as the typical issue of decentralization in Vietnam.

3.1.2 Unclear distribution of functions among state organs in the Vedan case.

The following state agencies hold power to supervise the operation of the Vedan Company:

- 1) The Ministry of Planning and Investmen holds powerd to lissensing for establishment of Vedan Company in Dong Nai province.²³³
- 2) The MNRE authorized the license of discharge of the waste water system;²³⁴
- 3) The PCE of Dongnai province hold powers to supervise manufactures of Vedan;
- 4) The other line departments such as Department of Natural Resources and Environment.

Concerning to Vedan's violation, each state organ exercise the public administration functions as follows:

First, The Ministry of Natural Resources and Environment (MNRE): MNRE hold powers to supervise the discharge of waste water of the Vedan. On April 23, 2008 the MNRE licensed Vedan to discharge waste water to the Thivai River according to Decree No 149/2004/ND-CP on the licensing authority of exploration, exploitation and use of water resources, discharge of wastewater into water sources. Article 22 provides procedures for permission of discharging the waste-water into water sources. According to this article, in order to apply for permission of discharging the waste-water into water sources, Vedan has to submit its dossier set including two important reports ratified by the competent authority such as analysis of quality of water sources that receive

http://www.nea.gov.vn/Sukien_Noibat/Tinkhac/Thang%2010-2008/monre_1-10.htm

²³³ Vedan established according to the Investment License No.171/GP 171/GP issued by the State Commission of Cooperation and Investment dated 8 March 1991 (Ministry of Planning and Investment).

²³⁴ Vedan submitted the report on environmental impact assessment in 1995. The Ministry of Science and Environmental Technology examined this assessment report on 04 May 1995. The Ministry of Natural Resource Environment issued the license on discharge waste-water based on proposal of the DNRE in 2008.

wastewater at the time of application, and report on environmental impact assessment. The MNRE considered that the DNRE of Dong nai province bears responsibility of examining the sample of waste-water because MNRE is not able to conduct this action. Therefore, MNRE abided by Decree 149 when licensing Vedan to discharge the waste-water.²³⁵

Second, the PCE of Dong Nai hold powers to supervise Vedan as it is located in Dong Nai province according to Law on organization of PCI and PCE. Article 91²³⁶ provides that PCE hold authority to supervise and implement measures of environmental protection and identify responsibility of organizations and individuals in the case of environment pollution accordance with the laws. Therefore, the PCE shall exercise its powers in dealing with the water pollution caused by Vedan.

Third, the DNRE of Dong Nai is responsible for supervise activities of the Vedan because it is in charge of field management. The DNRE implements inspection and supervision regularly and is required to submit the report of the violation case to the PCE. The function of DNRE of Dong Nai in environment aspect is regulated by the Decision 1746/QĐ-UB dated 17 June 2003.²³⁷ In addition, the MNRE also holds powers to regulate the functions of DNRE in environmental aspects. For example, Circular No 01/2003/BTNMT-BNV dated 15 July 2003 provides guidance of functions, tasks and powers of DNRE. According to Article 2 (paragraph 2.8.3), the DRNE holds authority to evaluate the report on environmental impact assessment of projects and shall propose the provincial People's Committee to grant, extend, and revoke certification of environmental standards for manufacturing facilities, sales and service in the area as assigned.

In brief, Vedan has discharged the waste-water to the Thivai River under the supervision and inspection of the three state organs as MNRE, PCE of Dong Nai and DNRE of Dong Nai. Nevertheless, Vedan has polluted water resources of Thivai River for more than 14 years and has been sanctioned by PCE. However, the

²³⁵ Sai phạm liên tiếp, Vedan vẫn được cấp phép xả nước thải (Vedan was still licensed to discharge the waste-water though continuously violations) <http://www.baomoi.com/Sai-pham-lien-tiep-Vedan-van-duoc-cap-phep-xa-nuoc-thai/58/2003691.epi>

²³⁶ Law on organization and operation of the People's Council and People's Committee, 2003

²³⁷ The Decision 1746/QĐ-UB determines the responsibility of the DNRE as a specialized agency that responsible for carrying out the environmental impact assessment of investment projects as well as implementing the pollution and waste control at local area. The DNRE coordinates with the relevant agencies participating in the settlement, handle the pollution situation happening at the province as prescribed by law and assigned by the Director of the Department.

competent agencies faced with difficulties in determining responsibility of the case of Vedan. Authorities raised question such as: which state organs such as MNRE or the PCE of Dong Nai should be accused for lacking of responsibilities and conducting their authority ineffectively. Which state organ holds power to suspend operation of Vedan? And, how governmental organs can handle with the Vedan's violation? These question have not yet answered clearly since the environmental polices discovered the Vedan's violation. For example, Danh Ut questioned to minister of MNRE-Pham Khoi Nguyen about Vedan's case at the meeting section of the National Assembly such as:

How to handle the Vedan case and why Vedan is not temporary suspended after causing seriously damages to Thivai river? Why do MNRE and PCE Dong Nai shirk responsibility to each other?" Answering to these questions, Minister Pham Khoi Nguyen said that: "The MNRE did not shirk the responsibility to local authority because the MNRE only hold power to sanction Vedan. The authority of suspension belongs to PCE of Dong Nai". Thus, MNRE thinks that the local authorities are responsible for resolving the problems in the locality.²³⁸

On contrary, The Dong Nai provincial Peoples Committee indicated that the jurisdiction of dealing with the case belongs to MNRE because Vedan is foreign direct investment project and licensed by Ministry of Planning and Investment (MPI), and therefore Vedan Company falls under the management of the central government. Hence, PCE Dong Nai does not have authority to suspend temporarily the Vedan's operation.

Concerning to discussion on shirking of responsibility between MNRE and PCE Dong Nai, Minister Ha Hung Cuong (Ministry of Justice) commented that:

The MNRE has powers to deal with the Vedan case because its violations were discovered and under the management of the MNRE. Although Vedan is located in Dong Nai province; however, it is a Taiwanese-invested company, and Vietnam and Taiwan have signed an investment protection agreement. Therefore, The Dong Nai Peoples Committee has a point when interpreting that it does not have sufficient authority to release a decision to shut down a joint venture in the locality. It will be able to release such a decision only if it gets authorization from the Prime Minister.²³⁹

The Vedan case is a typical example of unclear distribution of function between central and local government; as the result, shirking of responsibilities among state agencies has happened often in Vietnam. Evidently, the laws has not yet defined clearly the distribution of functions and duties between central and the provincial local

²³⁸Chuyện Vedan, xả thải (Story on Vedan, discharging waste- Presented at the session questions and answers of National Assembly, 11 November 2008) <http://daibieuquochoi.vietnamnet.vn/content.aspx?id=570>

²³⁹Complications and quarrels continuing in Vedan case. http://www.vietnamnews.biz/Complications-and-quarrels-continuing-in-Vedan-case_407.html

public entities. Therefore, both central and local governments face with many difficulties in carrying out their duties and functions. Consequently, Vietnam faces with pollution issue because that kind of Vedan case happened throughout Vietnam.

In order to prevent shirking of responsibility from central to local as the Vedan case as well as to identify which level lack of responsibility in implementing their duties and functions, the Ministry and ministerial-level agencies should hold powers to determine fundamental standards and conditions in general, and then local government should be transferred more authority to deal with local issues in accordance with local conditions. For example, MNRE should only hold power to determine standards of discharging waste water, and the licensing power should be transferred to PCE of DongNai. Then, PCE DongNai must be responsible if illegal actions of organizations as well as individuals are happened at local area which causes damages seriously to local residents.

3.2 Do state organs bear responsibility of state compensation in the Vedan case?

Vedan case is a typical example of unclear distribution of functions between central and local governments of Vietnam. The Thivai River was extremely polluted by vedan's violation in discharge of wastewater. Therefore, the fish farmers of HCM city, Ba Ria-Vung Tau and Dong Nai province were caused damages by Vedan's pollution. Although, the fish farmers were compensated by Vedan Company as the civil cases; however, the question was raised such as: Do the state organs bear responsibility of state compensation? This section examines the current legal frameworks for duties and responsibilities of officials concerning Vedan's violation in order to state the shortcomings of current legal system in promoting accountability of government officials.

First, Law No 35/2009/QH 12 on state compensation liability, article 1 provides that:

“This Law provides for the State's liability to pay compensation to individuals and organizations suffering from damage caused by official-duty performers in administrative management, legal proceedings and judgment enforcement activities; compensation procedures; the rights and obligations of individuals and organizations suffering from damage; compensation funds and the reimbursement liability of official-duty performers who have caused the damage.”²⁴⁰

²⁴⁰ Quốc Hội (National Assembly), *Luật Bồi Thường Nhà Nước Số 35/2009/QH 12 (Law on State Compensation Liability)*, n.d.

According to this regulation, the question is raised that which organ among the MNRE, the PCE of Dong Nai and the DNRE of Dong Nai shall bear state compensation liability? If yes, what are criteria for determining the amount of compensation? According to Article 1, the people can claim for damages caused by duty persons who are responsible for management of Vedan's operation because it is considered as one of administrative management activities. However, Article 13 of this Law limits the administrative management activities as follows:

The State is liable to compensate for damage caused by illegal acts of official-duty performers in the following cases:

- 1) Issuing decisions on sanctioning administrative violations;
- 2) Applying measures to ward off administrative violations and secure the handling of administrative violations;
- 3) Applying measures to force the dismantlement of houses, constructions, architectural objects and measures for coercive enforcement of other decisions on sanctioning administrative violations;
- 4) Applying administrative measures of confining people to a reformatory, rehabilitation establishment or medical establishment;
- 5) Granting, revoking business registration certificates, investment certificates, permits and papers of permit validity;
- 6) Imposing taxes, charges and fees; collecting taxes, charges and fees; collecting tax arrears; collecting land use levies;
- 7) Applying customs procedures;
- 8) Allocating land, leasing land or recovering land, permitting land use purpose change, compensating for and supporting ground clearance and resettlement; granting or revoking certificates of rights to use land and own houses and other assets attached to land;
- 9) Issuing decisions on handling of competition-related matters and cases;
- 10) Issuing protection titles to ineligible persons; issuing protection titles to ineligible industrial property objects; issuing decisions on termination of the validity of protection titles;
- 11) Refusing to grant business registration certificates, investment certificates, permits and papers of permit validity, protection titles to eligible subjects;
- 12) Other compensation-eligible cases prescribed by law. (Article 13)²⁴¹

Article 13 does not provide the case of lacking responsibility in management among the 12 cases listed; therefore, there is no legal framework ensuring interests of local people in the Vedan case. In practice of Vietnam, there are many damages that caused by the reasons such as the lack of responsibilities of the officials or the unfeasible and ineffective decisions.

Second, Vietnam also lacks legal regulations for determining the Vedan's violation and the official committed the crime in the Vedan's case. For example, the criminal code provides that the official-duty performers will be

²⁴¹ Quốc Hội (National Assembly), *Luật Bồi Thường Nhà Nước Số 35/2009/QH 12 (Law on State Compensation Liability)*, n.d.

under the jurisdiction of the court when they caused the serious damage for the society, organizations or individuals (Article 285). Article 285 illustrates the case of negligence of responsibility, causing serious consequences:

- 1) Those who, due to negligence of their responsibility, fail to perform or improperly perform their assigned tasks, causing serious consequences in cases other than those stipulated in Articles 144, 235 and 301 of this Code, shall be sentenced to non-custodial reform for up to three years or between six months and five years of imprisonment.
- 2) Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between three years and twelve years of imprisonment.
- 3) The offenders shall also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

Concerning to the Vedan case, Minister of MOJ, Ha Hung Cuong stated that Vedan as well as official-duties performers are not prosecuted for criminal responsibility.

“In fact, competent agencies have been considering initiating criminal proceedings, but we still have legal problems. Violators are considered criminals only if they do not repair the damage after competent agencies release administrative punishment one year prior.”²⁴²

Third, the Law on cadre and civil servant (2010) provides the disciplinary forms which apply for the duty- official performers. Officials shall be handled by the disciplinary forms such as: reprimand, caution; demotion; removal from office (apply for both cadre and civil servant); and salary reduction; dismissal (apply for civil servant only). These disciplinary forms will be applied to the cadres and civil servants violating this law or the other related laws (Article 78,79). Article 9 provides the obligations of cadres and civil servants such as: Civil servants shall perform tasks and exercise powers as assigned and take responsibility for their performance of public duties *duly and fully*. Thus, performing duties *duly and fully* is considered as the obligation of officials. Significantly, officials also can resign or relieve of duties if they do not fulfill their duties fully (Article 30, 54). Concerning to the negligence of responsibility of officials in the Vedan case, the competent agency can apply the disciplinary forms to the officials of the MNRE or the PCe Dong Nai, the DNRE of Dong Nai as they did not fulfill their duties *duly and fully*. Addition to that, these officials themselves can resign of duty according to articles as mentioned above. However, competent agencies have not applied any disciplinary forms in the Ve-

²⁴² Complications and quarrels continuing in Vedan case. http://www.vietnamnews.biz/Complications-and-quarrels-continuing-in-Vedan-case_407.html

dan case. This mater proves that Vietnam still faces with the problem of lacking transparency, democracy as well as conditions of rule of law state.

In practice of Vietnam, state compensation liability is quite new concept and almost cases related to violation of the criminal-proceeding aspect. After one year of implementation, the Law on state compensation liability (LSCL) revealed many weak points such as it does not provide the state compensation liability in the case of negligence of responsibility of duty-official performers. The LSCL does not define the case of inaction or untimely actions of officials in implementing public administration that caused the damages to citizens. As Thomas argues that although state organs operate under statutory authority but they shall be liable in damages caused by the negligent manner when they perform their duties.²⁴³ Therefore, negligence of responsibility of official-duty performers should be regulated in the LSCL, then it will protect effectively for benefits and interests of individuals and organizations that under the management of public bodies.

Why PCE of Dong Nai did not suspend operation of the Vedan since its polluted action has prolonged for 14 years is also a question without answers from competent agencies. In brief, the PCe does not want to suspend operation of any company located in the local area not only because of legal obstacles but also because of many challenges raised to local governments. For instance, they will be challenged by the problems that caused by suspension operation of manufactures in local such as reducing of local revenue, jobless of local residents, especially creation of chain affection of other production activities. Therefore, each local government has handled the violations of organizations in their own ways because of remaining the local interests. This mater also indicates the legal framework on decentralization is not comprehensive and efficient. It is similar to Japan in the late 1960s when the local public authorities were also hesitated to delay speed of development when urban and environmental crises happened as the result of economic development and urbanization.²⁴⁴ Therefore, local government should take initiative action in the area of pollution control as it is the most dramatic and influential issue.

²⁴³ Thomas William Saunders, *A treatise upon the law applicable to negligence* (Butterworths, 1871), 91.

²⁴⁴ Michio Muramatsu, Farrukh Iqbal, and Ikuo Kume, *Local government development in post-war Japan* (Oxford University Press, 2001), 50.

Concerning to liability of state compensation liability of Japan, the case 2001(Ju) No.1760²⁴⁵ in which stated the failure of the Minister of International Trade and Industry to exercise the authority to enforce safety regulations under the Mine Safety Law in order to prevent the outbreak of pneumoconiosis in coal mines was judged to be illegal under Article 1, para. 1 of the Law State Compensation Liability is a good reference for determining which state organs shall be liable for compensation in the Vedan case. The MNRE of Viet Nam is responsible for licensing discharge of the waste-water to the Thivai River; therefore, it has to compensate to local residents. The MNRE could not blame for the DNRE of Dong Nai due to the lack of its responsibility in implementing field management at local area.

In brief, unclear distribution of function is the major reason for the ineffectiveness and inefficiency of the public administration of Vietnam. Central government plays the dominant role in all areas of state management whereas local governments are not able to make their decision independently. As the laws do not specify responsibility of each level in implementing its functions and duties then it is easy for them to evade the duties. As the result, they are able to shirk responsibility because the mechanism for legal enforcement has not yet been strict enough; on that ground, the officials squeeze through loopholes of law simply. Therefore, Japan's decentralization reform in 1999 is a useful example of dealing with shirking of responsibilities between central and local governments. According to this reform, functions of local government were divided into legally commissioned functions and autonomous functions, as well as the delegation function system was abolished. By doing so, local government is empowered in making final decision as well as taking more responsibility in many areas of managing the new system.²⁴⁶

4. Conclusion

This chapter identified the current issues that remain in the central-local relations by examining the current legal framework of the local government. Central-local relation is an important element in process of implementing decentralization. According to the theory of decentralization, decision-making and fiscal powers ensure the

²⁴⁵ Supreme Court of Japan <http://www.courts.go.jp/english/judgments/text/2004.04.27-2001-Ju-No..1760.html>

²⁴⁶ *Government Decentralization Reforms in Developing Countries* (Institute for International Cooperation Japan International Cooperation Agency, 2001), 183.

capacity of local government in performing the delegated duties and functions. Therefore; this chapter examined the current legal framework on the organization and operation of the local government in analyzing the reasons why there is intervention of the central government into the works of local units. As a result, this chapter indicated the main issues of the central-local relationships in Vietnam as follows:

First, although the local government holds the decision-making powers as the requirement of decentralization, the central government holds power to control the performance of local government in decision-making and fiscal powers. The local government has no discretion in performing decision-making powers due to the democratic centralism principle which requires that the decisions of the lower-level must be consistent with the decisions that made by the organs at the higher-level.

Second, the “application-approval” mechanism still remains in the process of determining the local budget; as a result, the distribution of local revenue depends on the negotiation skills of the local leaders. Although the local government has a power to collect some types of taxes as the revenue resources; however, local units still depends on the subsidy of central government. In addition, local government could not take initiative actions in determining their expenditures as they have to follow the annual drafting budget plan that approved by competent organs (MOF).

Third, competent agencies faces with difficulties in accuse the responsibly of individual and specific organ concerning to the damages caused by the unclear distribution of functions among state organs. In addition, unclear distribution of function is a reason for shirking of responsibility between state organs in Vietnam. Consequently, citizens could not hold accountable government because the law did not provide comprehensive regulations for protecting the interests of residents.

Fourth, the current legal framework of central-local does not limit the case of central’s intervention as Japan’s law regulates on the type of central’s involvement; therefore, central government can intervene freely into the works of local governments. According to the theory of decentralization in Chapter One, determining a clear central-local relationship is a vital condition for promoting effectiveness of decentralization. Hence, the analysis of this chapter suggested that the central’s intervention should be limited by laws in order to ensure the discretion of local government in performing the delegated functions and duties.

In brief, this chapter illustrated the reason why Vietnam could not promote effectiveness of the PAR and decentralization. This chapter answered questions such as why local governments could not perform their duties and functions effectively and efficiently, and why the local government could not exercise the decision-making and fiscal power independently. If the central government still retains the control power over the works of local government, the local government does not have discretion in dealing with local issues. In addition, the successful of decentralization depends on how the local government performs the delegated functions. Therefore, the next chapter examines the weak performance of local government in order to identify the issues of decentralization in Vietnam comprehensively.

Chapter 4

The weakness of local government

Local governments play an important role in providing public services such as education, police, fire protection, welfare, medical services, public health, garbage disposal, and public finance, which directly affect the quality of life for local residents.²⁴⁷ Hence, local government's performance in providing public services and performing the delegated powers and functions are a major factor in promoting democracy as well as improving quality of life of local residents, especially at the grassroots level. Local governments in Vietnam faces with many issues such as: bulky system, and unclear distribution of affairs and responsibilities, lack of the high-qualified staffs, facilities and revenue. The successful decentralization depends on the ability of local government in performing the duties and functions; therefore, this chapter examines the weaknesses of local governments in Vietnam in order to find out the possible reforming solutions in the next chapter.

1. The bulky system

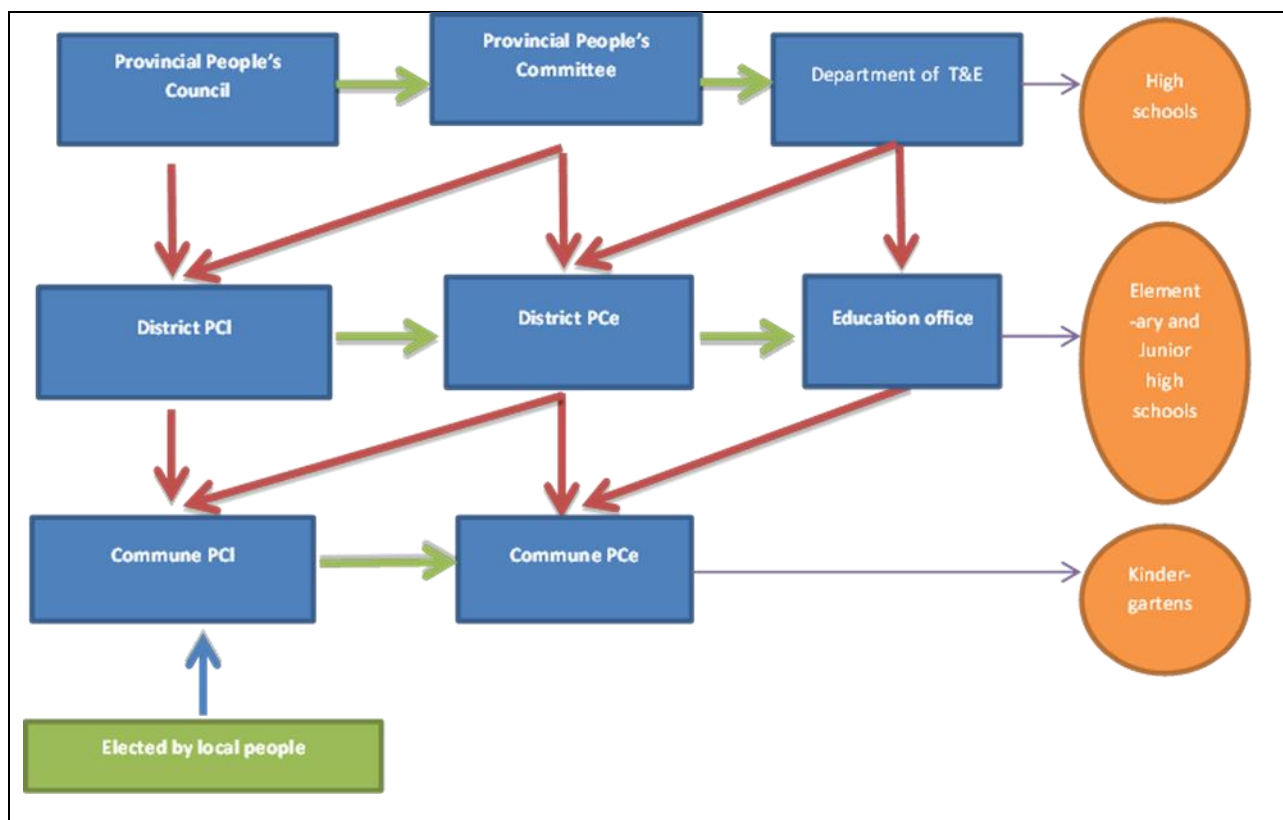
1.1 Three-tier structure

Vietnam's administrative system is comprised of four levels of government: the central authority, the provincial/municipal (hereafter called provincial), the district/precinct/city under provincial authority (hereafter called district) and the commune/ward/township (hereafter called commune). Vietnam has organized the four-tier structure of the government system since its foundation in 1945. The public administration system has organized and operated on the democratic centralism principle; therefore, the government system refers to the hierarchical model in which central government is the highest organ of the administrative system while the local governments are divided into three levels. Local governments at each level consist of the People's Council (representative for local residents), People's Committee (executive organ), and specialized agencies (established by PCe for implementing line management at local area and under the control of line Ministries).

²⁴⁷ Shinichi Ichimura and Roy Bahl, *Decentralization Policies in Asian Development* (World Scientific, 2009), 30.

Concerning to the legal status of local government in Vietnam, the Law on Organization of People’s Councils and People’s Committee in 2003 (hereinafter refers as LGL) provides the fundamental powers and duties of PCI and PCe at three levels.²⁴⁸ The table 8 shows the structure of local government system in Vietnam according to the 2003 as below.

Table 8- the three-tier structure of local government



Source: Summarized by author according to the 2003 LGL

In general, the 2003 LGL determines powers and duties of local government at each level. For example, Chapter 2 of this law provides powers and duties of the PCI in which stipulates powers and duties of the PCI at province, district, and commune separately. Similarly, Chapter 4 provides powers and duties of the PCe at three levels. In brief, the PCI holds powers in determining local development strategy, planning for sustainable development target and the PCe exercises the powers in implementing regulations of PCI as well as decisions of

²⁴⁸ Law on organization of the People’s Council and the People’s Committee was promulgated in 1994 and revised by the Law No11/2003 dated 26 November 2003.

higher state organs (executive functions). According to this law, the PCI and PCE hold the decision-making powers as the important requirement of implementing decentralization in Vietnam. In addition, the LSB 2002 provides the powers of local government in determining the local expenditures and drafting local budget.

However, local governments could not take any initiative actions in dealing with the local issues because of the legal frameworks for central-local relationships did not minimize the central's control in exercising the decision-making and fiscal powers of local government. In addition, unclear distribution of functions and duties also happens at local level because the law did not clarify in detail the functions and duties of each level and the relationship among local public entities themselves. This section examines the legal status of each local unit in order to discuss further the reason why local public entities could not operate effectively.

1.1.1 The People's Council (PCI)

The PCI operates through two meetings annually and through the Standing PCI (Article 54.). The number of deputies of PCI is set basing on the population as well as the geographic features is summarized as below (see table 1). The number of delegates at each level depends on the number of population and geographical conditions such as, the number of delegate of the PCI are from 15 to 35 at commune level, from 30-40 at district level; and from 50-95 at provincial level.²⁴⁹ The provincial PCI sets up the three boards including the economic – budget, social - culture, and legislation board (the ethnic board is set up at local area where the majority residents are ethnic minority).²⁵⁰

The number of delegates of the People's Council

Division of area		Population	Number of deputies
Provincial level	Delta Provinces and cities	Less than 1 million people	50 delegates
		From 1 million people	Maximum is 85 deputies. (1/50,000)
	Mountainous Provinces	Less than 500 thousand people	50 delegates
		From 500 thousand people	Maximum is 85 delegates (1/30,000)
	Hanoi capital	More than 3 millions	Maximum is 95 delegates.

²⁴⁹ Article 9, Law on election of PCI's deputies No12/2003 dated 26 November 2003.

²⁵⁰ Article 54 Law on organization of the People's Council and the People's Committee was promulgated in 1994 and revised by the Law No11/2003 dated 26 November 2003.

	and Provinces		
District level	Lowland district	Less than 80 thousand people	Elected 30 delegates
		More than 80 thousand people	Maximum is 40 delegates (1/10,000)
	Mountainous or island district	Less than 40 thousand people	Elected 30 delegates
		More than 40 thousand people	Maximum is 40 delegates (1/5000)
	Cities	Less than 100 thousand people	Elected 30 delegates
		More than 100 thousand people	Maximum is 40 delegates. (1/10,000)
Commune level	Lowland towns	Less than 4 thousand people	25 delegates
		More than 25 thousand people	Maximum is 35 delegates (1/2000)
	Mountainous or island area	Less than 1 thousand people	15 delegates
		Less than 2 thousand people	19 delegates
		From 2 thousand to 3 thousand people	25 delegates
		More than 3 thousand people	Maximum is 35 delegates (1/1000)
	Ward	Less than 8 thousand	25 delegates
		More than 8 thousand	Maximum is 35 delegates (1/4000)

Source: *Luật Bầu Cử Hội Đồng Nhân Dân năm 2003* (summarized by author)²⁵¹

The powers and duties of the PCI at each level are also regulated by the LGL. In general, the PCI holds powers and duties in determining long-term and annual plans for local development in all aspects such as economy, defense, security, and constantly improve their material and spiritual life of local people, and fulfills the local duties transferred by central. The 2003 LLG illustrates the differences in the distribution of the powers and duties among three-levels of the local government system. For example, the 2003 LGL defines the the duties and functions of the PCI at each level in the education aspect as follows: 1) at provincial level, the PCI holds powers to determine the strategy, measures for training and education development; to decide plans of education network for preschool education, general education, vocational training; and to ensure facilities and conditions for the education and training at the local level (Article 12, section 1); 2) at the district level, the PCI hold powers to determine the measures and essential conditions for developing preschool system, and

²⁵¹ Quốc Hội (National Assembly), *Luật Bầu Cử Hội Đồng Nhân Dân Các Cấp 12/2003/QH11 (Law on Election the People's Council at Local Levels)*, *Luật Sửa Đổi Luật Bầu Cử Quốc Hội Và Hội Đồng Nhân Dân Các Cấp 63/2010/QH12 (Law on Amendment of the Law on Election The National Assembly and People's Council 2009)*, 2003.

educational system in the local area according to general planning (Article 20, section 1); 3) at commune level, the PCI holds powers to decide the measures and essential conditions for children following education program of primary school at the age level, completing the universal primary education program, organizing kindergartens, and implementing complementary education and literacy for those aged (Article 30, section 1). In addition, the education system is organized from kindergartens to the high-school level; therefore, the PCI at each level holds the powers in determining measures and essential conditions for educational development at the local area.

In general, the PCI plays a vital role in determining the plans, programs, measures, and conditions for local development as well as supervising the performance of the PCE, and officials at the same level. However, the power of the PCI is far reaching in terms of their supervising tasks, in performing the representative functions due to the reasons as follows:

First, the PCI could not contribute to the effectiveness of legislation at the local area because the democratic centralism principle does not allow the PCI to take initiate role in making the new policies which not yet regulated by the higher-level of state organs. For example, in education aspect, the Ministry of Education and Training (MoTE) holds the powers to determine the program of education; therefore, the education system of the local level must comply with all regulations of the MoET. Significantly, the MoET controls over the curriculum, teaching hours, content and textbooks of primary and secondary school because it is considered as national and compulsory program.²⁵² Therefore, the PCI only determines the measures for fulfill education targets at the local area in practice. In general, the PCI at the commune and district depend on the PCI at the provincial level. In reality, the PCI at district and commune level lack of revenue and discretion in dealing with local issues such as the poor quality, lacking of facilities as well as incapacity of schools at local area.

Second, the PCI at district and commune could not carry out the supervising and representing functions effectively due to the operation mechanism. For example, the PCI operates through their meeting twice a year and communication with local residents. The PCI operates through by meeting twice a year and communicating with local residents. The communal PCI has not yet promoted the democratic mechanism for enhancing the

²⁵² Duncan McCargo, *Rethinking Vietnam* (Routledge, 2004), 146.

public participation in order to realize the slogan “the people know, the people discuss, the people do, and the people supervise”. In addition, the delegates hold duties in answering questions raised by the local people but they do not hold powers to handle the local issues directly because the competence of dealing with local issues belongs to the PCE. The PCI only holds powers to examine the reports of PCE at the same level; as a consequence, the PCI has no real powers in practice. Significantly, the 2003 LGL defines that the chairman of the PCE must be a member of the PCI at the same level; therefore, there is not clear separation of functions between the PCI and PCE in practice. This requirement weakens the supervision role of the People’s Council.

Third - Finally, the local council is ill-equipped to provide policies effectively because delegates generally have no training or experience in making policies and management skills. In addition, the mechanism of election does not enable local residents to hold accountability of the delegates, and the chief of executive organs, due to the upward responsibility to the state organs at higher-levels.

Recently, Vietnamese authorities and scholars raised questions concerning to the effectiveness of PCI at three levels such: how to restructure the local government system in order to ensure its effectiveness and efficiency? Can PCI at the commune or district level be abolished for creating the local system of the two-tier model? For example, Vo Van Sen, a delegate of PCI of Ho Chi Minh city criticized the weak performance of PCI in supervision aspect as follows: 1) There are too many meetings held by commune, district and province in which citizens also complain about only one issue to all delegates of the three tiers, as the result, all meetings discuss the same issue causing time and budget wasting; 2) Shirking of responsibility also happens due to the reason as such all tiers from central to the commune level hold the powers to supervise the same issue that occurred at a local area; therefore, all tiers do not take initiative action in dealing with that issue; 3) The delegation of powers among three tiers of the PCI is also overlapped; hence, they must spend a lot of time in making decision because of waiting for approval from other levels.²⁵³ In addition, World Bank points out the limitation of the

²⁵³ Bỏ HĐND cấp quận và phường, được gì? (Abolishing the People’s Council at the district and communal level, what are benefits?) <http://dantri.com.vn/c20/s20-227685/bo-hdnd-cap-quan-va-phuong-duoc-gi.htm>

capacity of the PCI because of the overlapping of the memberships between the PCI and PCe.²⁵⁴ Consequently, the supervision of PCI could not have the productive results in supervising the performance of the PCe.

In addition, the three-tier of the PCI also creates the fragment of the administration in some aspects such as environment, waste disposal, water resource, road as its affection is not limited by an administrative boundary.

In other words, there are some public administrative services that require the cooperation in performance as one local unit such as district or commune lacks of capacity and financial resources for handling with these issues.

In addition, competent agencies faces with difficulties in determine organ that is responsible for solving the issues that happened at the line borders of district or commune.

In order to deal with the weak performance of the PCI, especially at grassroots level, Vietnamese authorities introduced a pilot case of abolishment the PCI at the district and commune level.²⁵⁵ The pilot case has been carried out at 100 provinces including 99 districts and 483 communes. After one year of implementation the pilot case, Government's report summarized its achievements as follows: The pilot case of abolishment the PCI at the district and commune level reached its set target. For example, it created the breakthrough in the reorganization of the administrative system as one objective of the PAR 2001-10. The abolishment of the PCI at district and commune also contributed to streamline the local government in order to reach the aim at building a consistent, transparent, effective and efficient government system in accordance with the principle of democratic centralism as well as to promote the autonomy and responsibility of heads of administrative agencies.²⁵⁶

In brief, the organization of the PCI in the three-tier model has revealed the weaknesses in the process of implementation because of a bulky system. In addition, the delegates lack of responsibility and skills in fulfilling the functions and duties of a representative organs. Hence, Vietnam needs to restructure local

²⁵⁴ World Bank, *East Asia Decentralizes: Making Local Government Work* (World Bank Publications, 2005), 102.

²⁵⁵ Quốc Hội (National Assembly), *Nghị Quyết Số 26/2008/QH12 Về Áp Dụng Thí Điểm Không Tổ Chức Hội Đồng Nhân Dân Cấp Huyện Và Cấp Xã ở 10 Tỉnh, Thành Phố Trực Thuộc Trung ương* (Resolution No. 26/2008/QH12 on the Pilot Case of Abolishing the District and Commune PCI at 10 Province, 2008).

²⁵⁶ Tiếp tục thí điểm không tổ chức HĐND cấp huyện (Continue the pilot case of abolishing the People's Council at the district level) http://tintuc.xalo.vn/00-1986095440/Tiep_tuc_thi_diem_khong_to_chuc_HDND_cap_huyen.html

government system in order strengthening the ability of the PCI in performing the supervision functions of a representative organ at local area.

1.1.2 The People's Committee

The People's Council holds power to elect the PCe at the same level. In principle, PCe is the executive agency of the respective People's Council which has the responsibility to implement the Constitution, laws and texts adopted by the higher-level of the state authorities and resolutions of the People's Councils (Article 123)²⁵⁷.

The PCe includes chairman, vice-chairman and other members, and chairman must be a member of respective PCI. The chairman of PCe is responsible directly to the head of the next higher state organ and PCI at the same level. Similarly, in China, local governments are also primarily answerable to the higher levels of government and the local leadership of the Communist Party but not to local residents. With the aim at strengthening responsibility of local government to local residents, China is experimenting with direct elections of the executive body of township governments in selected jurisdictions.²⁵⁸

In Vietnam, the chairman is elected among members of PCI at the same level and under its supervision. The PCe is under supervision of the PCI at the same level (vertical relation) and also under the control of the next higher state organ (horizontal relation). In addition, the PCe also holds power to provide administrative and budgetary guidance to the PCI at the lower-level (district and commune level). For example, Article 97, section 3 of LLG provides that: PCe holds powers to implement the local budget, and guide and inspect the PCe at the commune level for drafting and implementing commune budget, and to inspect resolutions of the Council of People's communes on the implementation of local budgets prescribed by law; Article 127 (section 5) provides that the chairman of the PCe holds the powers to suspend the implementation of the illegal resolutions of the PCI at lower-level and requests the PCI at the same level to abolish. In addition, the number of PCe's member is also regulated in Article 122 as follows: PCe at the provincial level consists of 9 to 11 members (maximum is 13 members for Hanoi and HCM city); district includes 7 to 9 members; commune members are from 3 to 5.

²⁵⁷ Quốc Hội (National Assembly), *Hiến Pháp Năm 1992 Của Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam (The 1992 Constitution of Socialist Republic of Vietnam - As Amended in 25 December 2001)*, 2001, <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf>.

²⁵⁸ Anwar Shah, *Local Governance in Developing Countries* (World Bank Publications, 2006), 164.

The operation mechanism of the PCe is defined by the collective leadership. For example, Article 124 provides the *collective* decision making of PCe in all important aspects. The collective decision-making is considered as the major factors of democracy which ensures that all the members are able to contribute their ideas or participate in decision-making process. However, it also considered as ineffective mechanism because no one bear responsibility when that decisions are illegal or infeasible. In addition, it also affects the responsiveness of PCe in dealing with local issues timely because PCe holds meeting at least once a month and decision are made when more than a half of members voted for (Article 123).

In general, the laws need to define clearly the powers and duties of the PCe at three-tier in a consistent manner with the ability of each level as a primary condition of decentralization. However, the delegation of functions does not parallel with the transfer of power and financial resources; therefore, they are not able to provide public services effectively. For example, the commune level is not able to solve local issues effectively because of lacking financial and human resources. This section examines the powers and duties of the PCe at three levels for further understanding their role in implementing the executive function in education aspect. In general, the 2003 LLG defines the powers and duties of the PCe at three levels as follows:

- 1) At provincial level, the PCe holds powers: To carry out the public administration on the school system (from high school level to college level) and classes which are assigned in the local area; To retraining of teachers in the province who hold the college degree; To permit the establishment of non-public schools in accordance with law; To manage and supervise the implementation of the standards of teachers, the regulations on examination and certification as prescribed law; To inspect and examine the education and training in the province as prescribed by law (Article 88)
- 2) At district level, The PCe holds powers to examine the implementation of regulations on the universal primary education; to manage school system from primary to secondary level, vocational training schools; to carry on strategy on education socialization; to direct the literacy program; and to implement regulations on teacher standards and examinations. (Article 102, section 2);
- 3) At commune level, the PCe holds authority in organizing and managing the operation of child care schools such as kindergarten, nursery school located at commune area; to coordinate with the PCe at the district level for the management of primary schools, secondary schools in the area (Article 114, section 2).²⁵⁹

In addition, the specialized department of PCe such as Department of Training and Education also holds the powers in implementing public administration of education. According to these regulations, for example, a

²⁵⁹ Quốc Hội (National Assembly), *Luật Bầu Cử Hội Đồng Nhân Dân Các Cấp 12/2003/QH11 (Law on Election the People's Council at Local Levels)*, *Luật Sửa Đổi Luật Bầu Cử Quốc Hội Và Hội Đồng Nhân Dân Các Cấp 63/2010/QH12 (Law on Amendment of the Law on Election The National Assembly and People's Council 2009)*.

primary school is directly managed by education office, PCE as well as under supervision of PCI at the same level. Consequently, all local public entities hold powers to manage the education aspects. In reality, this mechanism causes overlap functions among three levels themselves.

In addition, the local government could not perform the delegated functions and duties due to the lack of ability and financial resources. For example, the PCE at commune level at Hanoi²⁶⁰ and Hochiminh city could not deal with the shortages of the kindergartens and nursery schools because of the lack of financial resources in building the new schools.²⁶¹

In brief, the LLG determines the role of PCI and PCE at each level; however, the distribution of function among the three-tier is not in a consistent manner with the ability of local units. Especially, the district and commune local public entities have carried out the functions of a grassroots. In addition, the district level also conducts the functions that delegated from the provincial level because the district level is an intermediary between the province and commune. Among the three levels, the provincial government plays a vital role in making the strategies, policies, and plans for development whereas the responsibility to delivery of the main public services belong to the district level instead of the commune level. As the consequence, this model causes the complicated administrative procedures and also weakens the role of grassroots level.

1.1.3 Departments

Specialized agencies are established at the local level for ensuring the unification of specialized and field management from central to the grassroots level. The number of specialized agencies varies from local to local because it depends on social -economical and geographical features of local. Article 129 of the LLG provides that the specialized agencies are set up at the local level for assisting the PCE to perform specialized management by carrying out tasks and duties which authorized by PCE at the same level as prescribed by law. The functions and duties of the specialized agencies at each level are defined by laws as follows:

²⁶⁰ Currently, there are 60 to 70 students in one class because Hanoi only has only around 833 kindergartens and nursery schools (both public and private) for 2,886 million children from 0 to 6-year olds. (source: Sổ trường học, lớp học, giáo viên và học sinh mẫu giáo tại thời điểm 30/9 phân theo địa phương. (The number of schools, classes, teachers and students on September 30 allocated by local).

<http://www.gso.gov.vn/default.aspx?tabid=395&idmid=3&ItemID=11425>

²⁶¹ Xếp hàng trắng đêm xin học mầm non.(Queuing through a night for applying to attend the kindergarten)
<http://vnexpress.net/gl/xa-hoi/giao-duc/2010/07/3ba1d8c9/>

1) *At the provincial level*, the specialized agencies include 17 such as the following departments: Planning and Investment, Construction; Transportation; Natural Resources and Environment; Health; Training and Education²⁶²; and other different departments are set up in accordance with local conditions. For example, the Department of Planning and Architecture is set up only in Hanoi and Hochiminh city, and the Department of Foreign Affairs is also established in some provinces as prescribed by the Decree 13/2008 (Article 9). Significantly, these agencies are directly under the control of the provincial PCe and also under control of line Ministries. For example, the chairman of the PCe at the provincial holds the power to appoint the director and deputy director of the specialized department in accordance with the standard title made by the Ministries. The Ministry of Home Affairs holds powers to supervise performance of the specialized agencies and annually the PCe is responsible for reporting their works to the Ministry of Home Affairs and the PCI at the same level (article 13). Consequently, these regulations create the independences of the local public entities to the central government.

2) *At the district level*, similarly to provincial level, PCe also establishes the specialized agencies which are considered as the offices of the PCe and carry out the functions and duties authorized by the PCe. According to this Decree No14 on organization and operation of the specialized agencies at the district level,²⁶³ there are 10 specialized agencies organized uniformly at all districts as district division (*phong*) such as Accounting and Finance; Training and Education, Natural Resources and Environment (Article 7), and some divisions are set up basing on the needs of local such as Urban Management Division, or Economic Division (article 8). In general, the mechanism on organization and operation of the district division is similar to the provincial department.

3) *At the commune level*, there are only specialized official who are responsible for carrying out some specific duties that assigned by PCe such as judicial officials, healthcare officials. Under the Law on civil servants 2010,

²⁶² Decree No 13/2008 dated 04 February 2008 on organization of specialized agencies of PCe at the provincial level, Article 8.

²⁶³ Decree No14/2008 dated 04, February 2008 and amended by the Decree No 12/2010 dated 26, February 2010.

the specialized officials at the commune level are also the civil servants who are employed, dismissed basing on that law.²⁶⁴

In brief, the specialized agencies and officials are responsible for assisting the PCE in implementing public administration at local area in order to ensure the operation of PCE abides by regulations of Ministries. These agencies do not hold powers to promulgate the legal normative decisions. The specialized agencies only carry out the administrative jurisdiction power to deal with individual cases. The quality of performance of the PCE depends on the ability of the specialized agencies. However, the specialized agencies are also under the control of the field management agencies (ministries) at the central level; therefore, the overlapping of functions and shirking of responsibility are the main issues of the public administration system in Vietnam.

1.2 The increase in numbers of the local entities

1.2.1 The re-division, merge and new setting up a local administrative unit

Vietnam covers an area of about 329,560 square kilometers, stretching over a distance of 1,650 kilometers with population around 87 million.²⁶⁵ Since 1945, the number of local units has changed from time to time in accordance with the political and social conditions. There were many reasons for reorganizing the local government system. However, this section only focuses on the number of local government from DOIMO (renovation) as the starting point of decentralization in Vietnam. Vietnam tended to merge small local units into the larger ones during the 1960s to 1980s. On contrast, since the 1990s, the number of local units has increased as a result of splitting these local units into smaller localities. This trend takes the form of re-establishment of province, district and commune also. In 1986, Vietnam had 40 provinces, 522 districts and 9,901 communes.²⁶⁶ In the 1990s, the local levels of administration consisted of 53 provinces and provincial cities, 467 districts, and 9,671 communes, which had some budgetary and administrative responsibilities granted by the central gov-

²⁶⁴ The specialized officials were not considered as the civil servants according to the Ordinance on civil servants and cadres in 1998, and revised in 2003. The Law on civil servants and cadres was promulgated in 2008 and went to enforcement in 2010.

²⁶⁵ Dân số và mật độ dân số năm 2010 phân theo địa phương (Vietnamese statistics on population and population density in 2010 by local) <http://www.gso.gov.vn/default.aspx?tabid=387&idmid=3&ItemID=11505>

²⁶⁶ Vietnam - 20 years of renovation and development 1986-2005
<http://www.gso.gov.vn/default.aspx?tabid=418&ItemID=4326>

ernment.²⁶⁷ In 2005 there were 64 provinces and cities, 671 districts and 10,876 communes. In 2008, National Assembly provided a resolution on merging Ha Tay province and other districts and communes from neighboring provinces into Hanoi. This made Hanoi the 17th biggest city in the world. However, authorities of Hanoi faced with many challenges in handling the differences in economical social and cultural conditions between Ha tay and Ha noi. As present, Vietnam includes 63 provinces and cities.

Concerning to the division of local units, the 1992 Constitution provides as follows: The administrative units of the Socialist Republic of Vietnam are delimited as follows:

“The country is divided into provinces and the cities directly under the central authority. Province is divided into districts, provincial cities and municipalities, cities directly under the central authority are divided into precincts or districts and municipalities. Districts are divided into communes and townships; provincial cities and municipalities are respectively divided into wards and communes; districts are divided into wards.”²⁶⁸

In general, the local government system is structured in three- tier model including provincial, district, and commune level. The National Assembly has the power for the creation, fusion, and division of provinces and cities directly under the central authority and modification of their boundaries, institution and dissolution of special administrative economic units (Article 88, section 8). In addition, the government holds power to decide the modification of the boundaries of administrative units below the provincial level (Article 112, section10). According to these articles, only the National Assembly and Government hold power to determine the boundaries of administrative units. However, the process of the re-division administrative boundary in Vietnam has been carried out only based on the requests of local officials. The National Assembly and Government have the power to determine administrative boundaries of provincial level as well as district and commune. The local government, especially at the provincial level, does not take a role in organizing local area, so they are only authorized to request the central government for approval. For example, the 2003 LLG regulates that the PCI holds power to ratify the proposal on new establishment, merge, division of administrative boundaries of the PCe before submitting to the next higher for decision (Article 17). Significantly, to the provincial level, the

²⁶⁷ Jennie Ilene Litvack, *Market Reform in Vietnam: Building Institutions for Development* (Greenwood Publishing Group, 1999), 135.

²⁶⁸ Article 118, 1992 Constitution of Vietnam.

merge or division is simply implemented without studies deeply in both theory and practice of public administration.

Significantly, re-establishment, merger or setting up a new local unit such as province, district or commune is primarily based on the request of the local officials. For instance, the procedure of the re-division administrative boundary of a commune is regulated as follows: (1) The district PCe will submit a document of merging or dividing a new administrative boundary to the Department of Home Affairs for approval of the PCe at the provincial level ; (2) The provincial PCe will submit a document with approval of the PCI at the same level to the Government (Chinh Phu) for approval; (3) Government will issue the decision (decree) on re-establishment, merger or setting up a new administrative boundary of the commune or district. Thus, there is no law which providing concrete standards and conditions for set up a local unit in Vietnam. As the result, the number of commune, district, and province has increased significantly without consideration of resident's willingness, or *social impact assessment*.

Truong Dac Linh stated that the 1992 Constitution has not yet identified clearly the role of local government at each level and there is a lack of the legal framework on determining conditions for the re-division of the administrative boundary as well as the functions of local government at each level.²⁶⁹ In addition, the LLG only provides the general procedures of the re-division, merger or new set up local units. It also does not regulate the criteria or conditions for re-establishment. Significantly, there is only Decree No15/2007 on the classification of administrative units at the provincial and district level dated 26 January 2007 that determines the types of province and district. For example, province or city under central government includes four types such as special type, and number 1, 2, 3. This classification aims at determining competence and duties of local units in some aspects such as investment, administrative sanction.

In brief, the number of local unit is not stable because it is an object to change from time to time basing on the request of local government. Although the 1992 Constitution defines the competent agencies that hold decision-making powers in determining the administrative boundary; however, the trend of increasing the number

²⁶⁹ Phân cấp mạnh cho chính quyền địa phương.(Promoting dramatically decentralization to local government)
<http://phapluattp.vn/20110407115136973p0c1013/phan-cap-manh-cho-chinh-quyen-dia-phuong.htm>

of local units by the unstable division of administrative boundary that is considered as one obstacle in reforming the local government system. The increasing in the number of local units raises many problems such as shortage of local revenue, increase of administration, and lack of skill staffs. In addition, this increase also caused many social problems when province is merged.

1.2. 2 Merging Hatay province into Hanoi city: A case study

Before merging, the population of Hanoi was 4 million, and it was challenged with many issues; for example, Ministry of Construction (MoC) argued that the infrastructure and social condition of Hanoi are overloaded by the increase rapidly in the number of population; therefore, local government faces with many difficulties in meeting demands of public services such as housing, schools, hospitals, parks, transportation, water supply, sewerage and sanitation, power supply, waste disposal because of the narrow area. In addition, Hanoi lacked of the land for development purpose. Hence, Hanoi needed to enlarge in order to carry out the national important projects for long-term development.²⁷⁰

In 2008, the National Assembly ratified the proposal of expanding the Hanoi capital by the Prime Minister by the Resolution No15/2008/NQ-QH12 on May 29, 2008.²⁷¹ However, the merging was a controversial case as because of the confliction existed in the discussions of the Vietnamese scholars, government officials, and local residents themselves. For example, Hatay and Hanoi are extremely different in almost aspects such as cultural, economic, political, and geographical conditions; therefore, the ability of Hanoi government in carrying out the public administration functions in a wider area was the most serious concern. For instance, Hanoi government could not able to manage in a large area whereas the province lacked of revenue, the skillful staffs. As Truong Duc Linh pointed out the division of administrative boundary in Vietnam has not been performed feasibly and reasonably in both theory and practice. For instance, there were many changes with the number of the provinces such as: the number of province reduced to 40 in 1980s, and increased again up to 63 at the present. The Vi-

²⁷⁰Ngoc Khánh, Toàn bộ Hà Tây sẽ sáp nhập vào Hà Nội (HaTay province will merged totally into Hanoi city) <http://www.anninhthudo.vn/Thoi-su/Toan-bo-Ha-Tay-se-sap-nhap-vao-Ha-Noi/320629.antd>

²⁷¹ Nghị Quyết số15/2008/NQ-QH12 về điều chỉnh địa giới hành chính thành phố Hà Nội và một số tỉnh có liên quan. (Resolution on adjustment the administrative boundary of Hanoi city and others related provinces)

etnamese authorities have carried out the merging, or new establishment the local units without examining clearly the specific conditions of each area.²⁷²

In brief, Vietnamese authorities has not yet recognized the cause and effect of the merging or dividing administrative boundaries. Consequently, the increase in the number of local units caused the dramatic increase in public administration costs. Therefore, the three-tier local government system addition with the increase in the number of local units in Vietnam was in contrary to the trend of restructuring the tight local government system in Japan.

The changes in the number of local government in Vietnam and Japan

VIETNAM			
Number of local units	1986	2005	2010
Provincial level	40	64	63*
District level	522	671	697
Commune level	9,901	10,876	11,111
JAPAN			
	1921	1953*	2006*
Prefectures	47	47	47
Municipalities	10,138	3,971	1,819

Sources: summarized by author

Japan has achieved the best success in reducing the number of municipalities. For example, in 1953 the number of municipalities was reduced one-third (from 10,138 to 3,971) by introducing the Law on Promoting Municipal Mergers. Addition to that, the Law on Promoting Municipal Mergers was revised in order to reduce the number of municipalities for empowering local government in dealing with the financial crisis; as the result, the number of municipalities was reduced to 1,819 in 2006.²⁷³ This figure illustrated that Japan's government

²⁷² Truong Dac Linh, "Chính Quyền địa Phương Ở Việt Nam: Quá Trình Hình Thành, Thay Đổi Và Vấn Đề Đổi Mới Hiện Nay (Local Government in Vietnam: The Process of Establishment, Changes and Reforming Issues)," *Sai Gon Luat* (n.d.): 10,11, http://www.saigonluat.vn/vnt_upload/File/PGS-TS%20Truong%20Dac%20Linh/Chinh%20quyen%20dia%20phuong%20o%20Viet%20Nam.pdf.

²⁷³ "The Changing Institutional Framework for Local Democracy in Japan", n.d., 4, http://www.fsjapan.uni-osnabrueck.de/media/Schmidt/Schmidt_Local_Democracy.pdf.

has focused on strengthening financial capacity of smaller local units by merged with the big one which has financial resources. In addition, Japan did not restructure the prefecture government because the re-organization of the prefecture would damage stability in local political structure and create many changes in the local area when the outcome of which is very unclear. Therefore, the number of the prefecture in Japan is stable since 1921.²⁷⁴ On contrary to Japan, the number of local units has increased significantly at three tiers, especially the provincial level (from 40 to 63 during 25 years). Therefore, Vietnam needs to reconsider carefully the case of merging, re-division, new establishment the local government units for saving the administration costs and dealing with the shortage of the high-qualified local staffs. Significantly, Vietnam should refer the experience of Japan in reducing the number of municipalities and encourages the cooperation among local units for providing effectively the public services such as waste disposal, fresh water-supplement, and electricity.

2. The unclear assignment of functions.

In most countries, the common issues of local government are the unclear distribution of responsibilities overlapping functions among the different levels of government.²⁷⁵ The hierarchical system causes the overlapping of functions of local government. In Vietnam, overlapping of functions happens at both central and local levels because the law has not yet defined clearly the functions of each organ. This section examines the unclear distribution of functions at the local government level with the aim at arguing for a new model of local government in the next chapter.

2.1 The unclear distribution of functions between the district and commune level

When the local government system is organized based on the hierarchical feature, then the higher level of local governments always hold powers in all aspects and only assigns some powers and duties to lower levels such as to the district or commune. The authorities face with more difficulties in distribution of functions among the three-tier local government system. For example, Ali Farazmand pointed out that in developing nations, the

²⁷⁴ “Local Government in Japan”, n.d., 3, <http://www.clair.or.jp/j/forum/series/pdf/j05-e.pdf>.

²⁷⁵ World Bank, *East Asia Decentralizes: Making Local Government Work* (World Bank Publications, 2005), 10.

sharing of administrative affairs has not been clarified properly due to the lack of detail criteria for distribution of functions.²⁷⁶

In Vietnam, the delegation of functions among three-level of the local government system is hardly to carry out properly because the district level plays a role as the intermediary unit between the provincial level and the commune level. In addition, the division within the district is normally considered as technical division of administrative boundary. Therefore, examining the role of local government at the district level is very difficult because the district government also carry out the functions of the grassroots level in providing the public services.

The district government often carries out the delegated functions that cannot be performed by the communal government or in the case of reducing the workload of provincial government. As a result from this model, the commune level is not empowered to carry out all the delegated functions because of its poor capacity. In general, the district and commune government carries out the functions as the grassroots level as they also provide public administrative services to local residents. For example, the PCe at commune level holds powers to issue the birth, death, marriage certificate while the PCe at district level holds power to issue the land-used right certificate²⁷⁷. Consequently, the citizens have faced with the difficulties in determining which local level that holds power to deal with their requests. Although the chapter 4 of LLG 2003 provides the list of powers and duties of PCe at each level but in practice of public administration, the overlapping of functions is always happened as the result of unclear criteria and inadequate delegation of functions.

As Kerkvliet illustrates that: in general, both commune and district are responsible for providing public services such as education, health care, and social welfare; however, the commune level often conducts the public administrative affairs such as citizen's registration of a birth, death, marriage or maintains kindergartens, primary

²⁷⁶ Ali Farazmand, *Administrative Reform in Developing Nations* (Greenwood Publishing Group, 2002), 24.

²⁷⁷ Quyết định số 23/2008/QĐ-UBND ngày 09 tháng 05 năm 2008 của Ủy Ban Nhân Dân Thành Phố Hà Nội về việc Ban hành Quy định về cấp Giấy chứng nhận quyền sử dụng đất cùng với quyền sở hữu tài sản gắn liền với đất cho hộ gia đình, cá nhân, cộng đồng dân cư, người Việt Nam định cư ở nước ngoài trên địa bàn Thành phố Hà Nội (Decision No 23/2008/QĐ-UBND dated 9 May 2008 of Hanoi People's Committee provides regulations on issuing land-used right certificates with property rights associated with land to households, individuals, communities, the Vietnam residing abroad in the area of Hanoi, Article 5 defines that the People's Committee at district level holds powers to issue land-used right certificate).

schools, health clinics whereas the district often runs hospitals, secondary and vocational schools. Therefore, other responsibilities such as maintaining and constructing roads, public buildings, allocating and managing land, collecting taxes are determined as cooperated functions between the province, district, and commune.²⁷⁸ Hence, cooperated function causes the problems of shirking responsibilities, overlapping function among the three tiers. For example, all levels hold powers to approve the road construction at the local area while it is very hard to determine responsibility of each local level as the case of unqualified with the standard requirement issued by competent state agency. In addition, it also causes complicated administrative procedures for organizations and individuals in getting approval of construction.

Due to cooperated function, the district level should be considered as the grass-roots level in providing public services such as health care, education, waste disposal because the commune level lack of financial resources and capacity for providing that services. However, the delegated function to district has not well designed in accordance with the fiscal powers; for instance, in 2005 only 25-30% of medical equipment in health facilities in the district is still useable while the rest has expired. So far, there is no district hospital in nationwide which has adequate types and quantities of equipment as standard requirements issued by the Ministry of Health.²⁷⁹

In general, the quality of public services providing by the district and commune, especially in healthcare and education remains very low.²⁸⁰ According to the Vietnam Development Report in 2010, the district level is not able to provide the qualified healthcare services because it lacks of the financial and human resources; therefore, the healthcare facilities at the provincial level are often over workload and capacity.²⁸¹ Obviously, the division of functions and powers among three-tier of the local government system is infeasible because the provincial

²⁷⁸ Institute of Southeast Asian Studies, *Beyond Hanoi: Local Government in Vietnam* (Institute of Southeast Asian Studies, 2004), 13.

²⁷⁹ “Bệnh Viện Huyện Chư Bảo Đam Khám Chữa Bệnh (the District Hospital Lacks of Capacity to Providing Healthcare Services)”, n.d., <http://vietbao.vn/Xa-hoi/Benh-vien-tuyen-huyen-chua-bao-dam-kham-chua-benh/40082358/157/>.

²⁸⁰ The Vietnam Provincial Governance and Public Administration Performance Index 2010 (PAPI) (by UNDP, VFF, CECODES) page 63-68.

²⁸¹ “Vietnam Development Report 2010”, n.d., 64,65, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/03/19/000333037_20100319004055/Rendored/PDF/535730WP0P11221ng0reduced0file0size.pdf.

level has been transferred more powers than district and commune level.²⁸² The public service delivery system is organized in two-tier as provincial and district level whereas the administrative system is constructed as the three-tier model. Hence, both the commune and district have to carry out cooperated functions. In addition, there is a lack of clarity in assigning responsibilities to each level of local government. As World Bank points out that overlapping functions is a common issue in both China and Vietnam because the administrative system operates as the nested hierarchical system, in which the central government only sets a rule for provinces, and the rule for district and commune set by province.²⁸³ The unclear assignment of the cooperated function in some aspects such as licensing of construction, transportation, the land-use right has raised many problems to local residents as follows:

First, The waste of time in handling public administration affairs: The distribution of functions among the three-tier is not clear causing waste of time of citizens in order to get certificates. For example, the PCe of the commune level, the Office of natural resource and environment as well as the PCe of the district holds powers in issuing the certificate of the land-use right. The commune is responsible for receiving the dossier from individuals and organizations in order to verify their accuracy and adequacy as well as the communal civil servants hold powers to handle with the dossier internally before submit to the NREO. Addition to that, the district holds power to issue the certificate of land-use rights basing on the recommendation of the natural resources and environment office, which is considered as internal processes on the district level to handle issues under its jurisdiction.²⁸⁴ In practice, the process of issuing the certificate of land-use rights is often prolonged more than 50 days (Article 12 of Decree 88); however, citizens are not able to complain when they do not get the certificate timely because the commune and district level often explains due to the burden of work and limited number officials. Therefore, the current legal framework does not promote accountability of the official-duty performers because they often delay the process of issuing the certificate in order to create obstacles for getting bribery from citizens.

²⁸² Ibid., 29.

²⁸³ Ibid., 96,97.

²⁸⁴ Article 11, Decree 88/2009 ND-CP dated 19 October 2009 on certificate of land use rights, house ownership and other assets attached to land

Second, the burden of workload: The distribution of functions is not in accordance with the capacity of local units, especially at the commune level; therefore, the local organs are not able to solve the local issues timely and effectively. Although Vietnam introduced the *one – stop - shop* (OSS) model²⁸⁵ at the three-level as one of the reforming measures in order to simplify the administrative procedures; however, the OSS could not have the productive results on the commune level while the number of communal officials remains unchanged. As a result, it causes the burden of work to the communal government.²⁸⁶ In addition, local government faces with challenges such as the lack of e-government, the shortage of the facilities and the high-qualified personnel.

Third, local authorities lack of accountability in performing the duties and powers. Regulations on accountability of the local government is not clear and strict enough; therefore, the local officials always refuse or neglect their duties in dealing with local issues and citizen’ needs. In other words, unclear assignments cause shirking of responsibility among local levels. In addition, the mechanism for public participation in the decision-making process does not create the favorable conditions for citizen to take part in. The up-ward accountability only assures responsibility of the local officials to the state organs at the higher-level; as the result, local residents could not hold accountability of the local government.

In brief, UNDP concluded the unclear distribution of functions and responsibilities as one of the current issues of decentralization in in Vietnam as follows:

“Within the current legal framework, it is unclear which administrative level will serve as the intermediary level to link bottom-up and top-down planning, plan implementation, and plan monitoring-the province or the district, and in which policy area. How much decentralization to the commune is needed, and what type of commune should be at the forefront of decentralization, are not explicitly discussed.”²⁸⁷

Thus, local government is not able to perform the delegated functions and duties effectively because the delegation of powers was not inconsistent with the ability of local public entities. In other words, local units are not

²⁸⁵ The concept of one-stop-shop (*một cửa liên thông*) is defined by the Decision 93/2007 refers to two types of internal administrative relationships, one between units at the same level and the other among different administrative levels.

²⁸⁶ “Public Administration and Economic Development in Vietnam: Remaking the Public Administration for the 21st Century”, n.d., 15, http://www.undp.org.vn/digitalAssets/25/25527_05_PARECONDEV_FINAL.pdf.

²⁸⁷ “Reforming Public Administration in Vietnam Current Situation and Ecommendations.pdf by UNDP”, n.d., 104, http://www.un.org.vn/en/publications/government-agency-publications/doc_download/138-reforming-public-administration-in-viet-nam-current-situation-and-recommendations.html.

strengthened to carry the delegated functions. Significantly, unclear distribution of functions among three levels causes the problems of shirking responsibility, lack of accountability, and abuse of state power at local area.

2.2 The overlapping of functions among specialized agencies.

Specialized agencies are set up at local levels for carrying out function as the line management agencies. The specialized agencies are under the control of the PCe at the same level follow the regulation of ministries. With the aim at building up a multi-sector and multi-functional model for ministries, Vietnam reduced the number of ministries and ministerial-level agencies from 26 in 2002 to 22 in 2007 through the merging the ministries.²⁸⁸

For example, the ministry of industry and trade was set up on July 31, 2007 by merging two ministries as the ministry of trade and ministry of industry together. Relatively, the number of specialized agencies at local levels also reduced. Therefore, reorganization of specialized agencies from central to local causes the overlapping functions in Vietnam. According to Vu Van Thai, the result in examining functions of ministries indicated that there were 28 overlapped issues, which caused by reasons such as unclear assignment, unreasonable, or not yet determined.²⁸⁹ Similarly, overlapping of functions is also the main issue of the specialized agencies. This section examines the case that happened in Hochiminh city as the significant example of overlapping functions among specialized agency, which is considered as a factor of ineffective management.

Currently, Hochiminh authorities faced with problem of shirking responsibility among the specialized agencies when many “pit-death”²⁹⁰ (*hố tử thần*) occurred on the roads. The authorities required to examine the reason why this “pit-death” happened and which state organs were responsible for this issue. However, concerning to this issue, several state organs are responsible for underground construction such as the Department of Transportation, Department of Construction, Department of Natural resources and environment, Department of Telecommunication, and other related local public entities that provide public service such as electric, water supply and discharge of waste water, telecommunication companies. At a meeting section of PCI of Hochiminh city,

²⁸⁸ “Public Administration and Economic Development in Vietnam: Remaking the Public Administration for the 21st Century”, n.d., 19, http://www.undp.org.vn/digitalAssets/25/25527_05_PARECONDEV_FINAL.pdf.

²⁸⁹ “Xử Lý Chông Chéo Chức Năng, Nhiệm Vụ Đáp Ứng Cơ Cấu Tổ Chức Chính Phủ Khóa XII, TS. Vũ Văn Thái”, n.d., <http://caicachanhchinh.gov.vn/Uploads/News/1833/attachs/vi.trang%2027.pdf>.

²⁹⁰ The road was broken by big sizes that caused damaged to the property and life of people

the director of the Transportation Department pointed out that there are more than eight local organs which hold power to manage the underground construction. Consequently, the authorities could not determine responsibility of each specialized agency concerned to the “pit-death” case.²⁹¹ As a result, the specialized agency such as the Department of Transportation concluded that he did not bear any responsibility when the road became full of pot holes because they were caused by many reasons such as exploitation of water resources, construction of electricity. Evidently, the “pit-death” happened seriously that caused accident or damaged to the property of residents; however, overlapping of functions between the specialized agencies raised challenges to chairman of PCE in Hochiminh city in holding accountability of the specialized agencies

There are many reasons that cause overlapping functions among specialized agencies at the local level. In general, as UNDP illustrated, the current legal framework of Vietnam has many issues such as impractical operation, lack of clarity, and overlapping procedures.²⁹² The 2003 LLG regulates the functions and duties of the PCE in each aspects of public administration such as education, healthcare, and environment. However, this law does not define the functions of specialized agencies. The PCE holds powers to define the functions of specialized agencies based on the legal regulations of the central government.²⁹³ Consequently, the PCE could not have discretion in redefining the functions of the specialized agencies (Article 128,129, 130).²⁹⁴ Therefore, the decisions of the PCE at all provincial and district levels define the functions of specialized bodies in education, health, transportation, construction similarly in order to ensure the uniformity throughout country.

In addition, the overlapping of functions among the specialized agencies was resulted from the reorganization of ministries at the central level. For instance, the PCE has carried out the merging the specialized agencies in accordance with the merging of ministries at central level. Consequently, the number of specialized agencies at

²⁹¹ “Giám Đốc Sở Giao Thông TP HCM Đã Né Trách Nhiệm Vụ Hồ Tử Thần (Director of Transportation Department in Hochiminh City Denied His Responsibility in the Pit-death Case.)”, n.d., <http://tintuctrongngay.net/giam-doc-so-giao-thong-tp-hcm-da-ne-trach-nhiem-vu-ho-tu-than>.

²⁹² “Public Administration and Economic Development in Vietnam: Remaking the Public Administration for the 21st Century,” 17.

²⁹³ Decree No 14/2008/ND-CP and Decree No13/2008/ND-CP dated 4 February 2008 on organization and operation of the specialized agencies at the district and provincial level..

²⁹⁴ Quốc Hội (National Assembly), *Luật Bầu Cử Hội Đồng Nhân Dân Các Cấp 12/2003/QH11 (Law on Election the People’s Council at Local Levels)*, *Luật Sửa Đổi Luật Bầu Cử Quốc Hội Và Hội Đồng Nhân Dân Các Cấp 63/2010/QH12 (Law on Amendment of the Law on Election The National Assembly and People’s Council 2009)*.

the provincial level reduced to 16 (provincial level) and 10 units (district level). However, the PCe did not determine clearly the functions and duties of each organ and also the responsibility of each organ in performing the cooperated functions.

Japanese experience in distribution of functions to local government often refers to the two types of tasks such as “proper tasks” and “agency-delegated tasks”. However, Japan abolished the agency delegated function system in order to promote the autonomous functions of local public entities. The autonomous tasks ensure the independence of the local governments in performing their tasks whereas the legally-consented tasks refer to uniformity through Japan. In addition, LAL interprets in detail the functions of governor/mayor as well as administrative boards at the prefecture or municipal level (Article 180 section 5 LAL). Significantly, the LAL defines clearly the functions of the administrative boards. For example, education board is established at both prefecture and municipal level for maintain education tasks of local governments. In addition, the LAL interprets the education tasks of each level.²⁹⁵ Japan introduced the “proper tasks” concept and identified the functions of administrative boards clearly as the effective ways for minimizing the central’s intervention and overlapping of functions among local levels.

3. The weak performance of commune level

Commune level is the grass-roots level of the local government system in Vietnam. The law needs to define clearly the role of the grass-roots level because the grassroots level is the closest level to the residents. As Nguyen Minh Doan described the role of the commune as follows: communal authorities implement directly the provisions and decisions of the State as well as address the requests, questions raised by local people; therefore, communal officials have to listen to the comments, complaints, suggestions, and proposals of the people; therefore, they are required to faithfully reflect the resident’s needs to the competent agencies.²⁹⁶

The commune level plays a vital role at a grassroots level in performing the civil registrations as well as delivering the public services such as healthcare, primary education (basic needs) for local residents. Therefore,

²⁹⁵ *Local Government in Japan, 2010* (Council of Local Authorities for International Relations, March 26, 2010), 13, <http://www.clair.or.jp/j/forum/series/pdf/j05-e.pdf>.

²⁹⁶ Nguyễn Minh Đoàn, *Cải cách tổ chức và hoạt động của chính quyền cấp xã trong giai đoạn hiện nay*. (Reforming organization and operation of the communal local government at present period). <http://www.vanphongluatsujvn.vn/PrintPreview.aspx?ID=1114>

accountability and transparency are considered as the fundamental requirements of grassroots level for guaranteeing interests of residents. Hence, local government needs to encourage citizens to participate in plans and decisions making process as well as monitoring activities of commune authorities.

However, the local organs at commune level could not fulfill the functions and duties effectively because of the shortages in human and financial resources. In other words, the central government has carried out decentralization without considering the ability of the commune level properly. For example, World Bank stated that:

“Most of the new mechanisms of downward accountability—responsiveness directly to citizens through participation and enhanced transparency—have taken place at the commune level, while much of the devolved power has gone to the provinces. One challenge, therefore, is the misalignment of accountability with new arrangements.”²⁹⁷

Hence, inadequate delegation of powers and functions among provincial, district and commune level has caused many weaknesses in performance of the local government system. In practice, commune authorities often break the laws and violate the interests of residents due to many reasons such as a lack of legal knowledge, corruption, and red-tape.

Significantly, the PCI and PCE at the commune level could not perform the functions and duties effectively. However, the quality of the normative legal resolutions of the PCI remains very poor because the delegates lack of legal knowledge or policy-making skills. For example, the resolutions of the PCI still reveal many mistakes such as: in terms of procedures as the lack of signs; date of issues; and in terms of legal contents as the providing the new regulations that not allowed by laws.²⁹⁸ Therefore, the weak performance in providing public services and administration affairs affected directly to the right and legitimate interest of local residents. Consequently, the complaint of local residents has increased significantly.

In addition, the PCI has not yet carried out function of supervision effectively. According to the principle of democratic centralism, PCE is the executive of PCI at the same level and have to follow all resolutions made by

²⁹⁷ “Vietnam Development Report 2010”, n.d., 18, http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/03/19/000333037_20100319004055/Rendered/PDF/535730WP0P11221ng0reduced0file0size.pdf.

²⁹⁸ “Khiêm Khuyết Trong Nghị Quyết HĐND Cấp Xã | QĐ Các Vấn Đề Của ĐP | Báo Điện Tử Đại Biểu Nhân Dân » Hội Đồng Nhân Dân”, n.d., <http://daibieunhandan.vn/default.aspx?tabid=128&NewsId=204681>. (The defects of the resolutions of the PCI at the commune level)

PCI, and the chairman of PCE must be a member of PCI at the same level. However, in reality, the PCE often dominates all aspects, because the distribution of functions of PCI and PCE at the commune level are blurred. The operation mechanism of the PCI as well as the PCE does not ensure a resident to participate in the decision-making process and to enhance accountability of local authorities. In other words, local officials will not bear the direct pressures from the people if the public participation is not promoted.

In addition, the current legal framework does not regulate strictly the downward accountability of local officials. Despite the LLG regulates the “*public hearing*” procedure as a responsibility of the chairman of the PCE (Article 127, section 1, paragraph d); however, it is not a compulsory procedure in some administrative procedures such as civil registration, permission or application.

In brief, the performance of the commune government remains very weak, especially in the aspects of providing public services and responding to the needs of residents. Besides the major challenges such as lacking financial and human resources as the district government, the commune government is not able to fulfill their duties and functions effectively due to many reasons as follows:

Firstly, organization of the PCE is very simple structure due to the limited number of officials at the commune level.²⁹⁹ The LGL defines the functions and duties of the commune PCE from article 111 to 117 which relates to all aspects such as economy, education, transportation, construction etc. However, the commune often lacks of capacity to fulfill the duties and functions. As UNDP pointed out that decentralization of responsibilities to district and commune level still limited while so far emphasized only the provincial level. The delegation of functions to communal government has not yet based on the capacity; therefore, they are not able to perform their functions properly. For example, on October 2009, 99% of department at the district level and 96% of commune level has introduced the one-stop shop (OSS) model; however, the OSS model could not work effectively at commune level because of the shortages of facilities and qualified professional officials.³⁰⁰ Therefore,

²⁹⁹ The PCE at commune level includes from 3 to 5 members – Article 122, section 3, Law on organization of the People’s Council and People’s Committee in 2003.

³⁰⁰ “Vietnam Development Report 2010,” 53, 54.

the UNDP included that: “How much decentralization to the commune is needed, and what type of commune should be at the forefront of decentralization, are not explicitly discussed.”³⁰¹

Secondly, the commune government is not able to recruit qualified staffs because of the poor salary. Although, Law on Cadres and Civil servants revised in 2008 (went to affect in 2010) determines the legal status of the specialized officials as the civil servants; however, the PCE at commune could not recruit the high-qualified staffs. For example, there were 30% of commune officials who were evaluated as effective performance and the untrained official also accounted for 30%.³⁰² As Benedict J illustrated that commune officials are not able to perform their duties because the majority only has primary education whereas the number of commune and district officials who received training in accounting, preparing and administering budgets, managing land and solving other technical matters of their work is very low.³⁰³ The National Institute for Administration conducted a survey in 2002, which found that 73-85 per cent of members of the communal PCI and PCE and four other types of local cadres did not have training relevant to their particular responsibilities. The current personnel system reveals many problems:

A study conducted by the Ho Chi Minh National Political Academy in 2001 found that after several years of implementing the reforms, “there has been no great change brought into these institutions (party apparatus, government agencies, and social organizations). The reform failed largely because cadres were not qualified, not adequately paid, undemocratically selected, and the division of power between the People’s Council, the People’s Committee and the party was ambiguous.”³⁰⁴

Thirdly, abuse of power by commune officials remains a serious issue, which is considered as a barrier in building up democratic value society, especially at the grassroots level. Commune government also holds powers to make decisions that directly affect to the rights and legitimate interests of citizens. However, the commune officials try to abuse of state powers in order to get “extra-benefits” from residents. For example, the official often cause the trouble to resident through prolong the time of issuing, providing unclear procedures or violation

³⁰¹ “Public Administration and Economic Development in Vietnam: Remaking the Public Administration for the 21st Century”, n.d., 28, http://www.undp.org.vn/digitalAssets/25/25527_05_PARECONDEV_FINAL.pdf.

³⁰² Xây dựng nền hành chính trong sạch, vững mạnh, chuyên nghiệp, hiện đại, hoạt động có hiệu lực, hiệu quả. (Building a transparent, strong, professional, modern, effective and efficient public administrative system) <http://www.tapchicongsan.org.vn/Home/Cai-cach-hanh-chinh/2011/12731/Xay-dung-nen-hanh-chinh-trong-sach-vung-manh-chuyen-nghiep-hien.aspx>

³⁰³ Institute of Southeast Asian Studies, *Beyond Hanoi: Local Government in Vietnam* (Institute of Southeast Asian Studies, 2004), 12.

³⁰⁴ *Ibid*, 141.

of the laws which required citizens to bribery. The number of decisions which violated the rights and interests of citizens is quite high. For example, the chairman of PCE of commune 6 in Da Lat province violated the law in civil registration by issuing a death registration certificate for a living person.³⁰⁵ In addition, the officials also issued the illegal documents or fake certificates concerning the birth, marriage in order to get more benefits from the applicant. Nevertheless, the commune government also holds powers in promulgating legal normative documents for mobilizing voluntary contributions from organizations and individuals to invest in the construction of the infrastructure of communes (Article 35 Law on State Budget); however, in practice they provided as an obligation which required resident to contribute. Significantly, the communal officials often spend the mobilized funds for the wrong purposes as a factor of corruption in Vietnam. As a result, the protests against the local authorities have occurred at rural area due to the reason of abusing of state power of the local officials; for example, the case happened in Thai Binh in 1997.³⁰⁶

Finally, A lack of accountability and transparency is a major problem at the grass-roots level. The corruption at the local level and the abuse of state power has occurred due to of the lack of accountability and transparency caused by the democratic centralism principle; hence, protests by local residents occurred since the mid-1990s.³⁰⁷ The PCE hold powers and duties to deal with administrative affairs at local area. However, the operation mechanism does not ensure the participation of a resident into local works. The Ordinance on Grassroots Democracy in 1998 aimed at improving accountability of local governments, but these regulations could not bring the productive outcomes after 10 years of implementation. For example, Article 2 (section 2) provides the principles...of?? in order to ensure the right of the residents for enhancing democracy at the commune level such as right to be informed, right to be consulted, right to inspect and supervise, and right to decide directly the local issues. However, there were many difficulties raised by both government and residents that prevent

³⁰⁵ Bị vợ cũ khai tử dù còn sống.(Alive husband was issued the death certificate according to the request of the ex-wife.)<http://vnexpress.net/gl/doi-song/2011/07/bi-vo-cu-khai-tu-du-con-song/>

³⁰⁶ Studies, *Beyond Hanoi*, 138.

³⁰⁷ Ibid., 141.

residents to exercise their rights effectively. For example, World Bank summarized the difficulties in implementing the “grassroots democracy” as follows:³⁰⁸

	Difficulties Related To Government	Difficulties Related To People
8 communes in Thai Binh Province	<ul style="list-style-type: none"> • Commune governments do not understand well the importance of democracy in discussions and decisions. • Most commune government leaders do not have enough professional qualifications, and lack the incentives to organize discussion meetings with people. • Officials are not active in facilitating and empowering people to participate in discussions and decisions. • Some contents are brought to discussion with people just formalistically to comply with the law, and some other contents are not brought to discussion. • The contents of the publicized information are not suitable for the locality, and the forms of publicity are rarely applied or applied insufficiently. • Some officials do not want people to know more, or to empower people to supervise them. • Sometimes people are not invited to supervise or the government does not let them participate in supervision. • Commune governments do not widely mobilize, trust and empower CSOs to participate in providing information to the people and exercising supervision. 	<ul style="list-style-type: none"> • People’s awareness on the contents of grassroots democracy regulations is not perfect. • People have little interest in the right to know and the right to discuss and decide. • People are busy “earning their bread” and they have more of their own issues to be paid attention than to community issues. • People concentrate on the regulations related to their economic benefits, and put no interest on regulations serving the general development of the locality • People have low educational qualifications, preventing them to understand well issues. • People are afraid that the meeting will be organized to ask them for their contributions in cash or in kind, and hence very few attend. • In meetings with few participants, people are hesitant to show their viewpoints.

³⁰⁸ Ibid., Table 3.3 The voices of citizens and commune-level officials: What are the difficulties with the implementation of “grassroots democracy”. Source: Survey on Grassroots Democracy Regulation – Implementation Situation and Organization Capacity of Social Organizations in Thai Binh Province (DOHA and VUSTA of Thai Binh Province, 2009); Mobilizing Rural Institutions for Sustainable Livelihoods and Equitable Development, Governance Institution - the case of the Grassroots Democracy Steering Committee (CAP, IPSARD, 2008).

<p>4 Communes in Son La, Thai Binh, Gia Lai and Tra Vinh Provinces</p>	<ul style="list-style-type: none"> • Commune authorities have a weak understanding of the strategic objective of grassroots democracy, and they perceive democracy as a sensitive issue. • Officials are afraid that by empowering people they will lose power and authority • Low dedication of officials to the grassroots democracy regulation • Lack of specific funding for the implementation of grassroots democracy • Salaries of officials are minimal, failing to attract capable candidates and motivate them to devote to public matters such as grassroots democracy. • Commune governments are subject to very low degree of upwards accountability on grassroots democracy activities. 	<ul style="list-style-type: none"> • In richer communes people are mostly interested in their personal economic matters and less interested in public matters. • In communes with lower sense of community, less people are attracted to the meetings. • In poorer communes and communes with few migrants, people are less active in the discussions and tend to agree with everything presented to them.
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Source: Survey on Grassroots Democracy Regulation – Implementation Situation and Organization Capacity of Social Organizations in Thai Binh Province (DOHA and VUSTA of Thai Binh Province, 2009)

In order to enhance transparency in operation of the commune level, the 2007 Ordinance requires the commune level to public the contents of works (Article 5)³⁰⁹; however, the number of residents who can access to information is limited due to the unsuitable method of providing information. As a result, residents rarely participate in public administration due to the lack of information, especially in the mountainous areas where the percentage of illiteracy is very high or the provided information does not meet the demands of residents. The PCE and PCI at commune level often provide information to residents through the very poor measures such as meetings or loudspeakers.³¹⁰ As a result, around half of the households in Vietnam could not access to the information on commune budgets and plans because the information did not meet their demands.³¹¹

In brief, commune level could not perform their functions effectively due to the lack of human resources, capacity in performing the delegated functions, and accountability. Decentralization has over focused on a

³⁰⁹ Ủy Ban Thường Vụ Quốc Hội (The Standing Committee of the National Assembly, *Pháp Lệnh Số 34/2007/PL-UBTVQH11 Về Thực Hiện Dân Chủ ở Xã, Phường, Thị Trấn. (Ordinance on Democracy at Grassroots Levels)*, 2007.

³¹⁰ Studies, *Beyond Hanoi*, 143.

³¹¹ “Vietnam Development Report 2010,” 18.

provincial level by delegating fiscal power and decision-making power whereas the commune governments have not yet empowered to fulfill the functions of grassroots level. Therefore, the weak performance of PCE at commune level affects directly to the right and interests of local residents. In addition, the legal regulations on grassroots democracy could not enable residents to hold more accountable government effectively. Therefore, restructuring local government in order to promote the ability and accountability of the grassroots level in providing public services is the urgent needs of Vietnam in building a democratic country.

4. Conclusion

Given the fact that local government system in Vietnam has many shortcomings that challenge the effectiveness of decentralization such as; the bulky system, the shortage of the financial and human resources, the poor-quality of public services, and the lack of effective mechanism for promoting public participation. This chapter examined the current issues of local government basing on the current legal framework and practical aspect in order to answer the question: what are the major problems of the current local government in Vietnam? The key points of this chapter were:

First, the three-tier model of the local government system was designed since 1945 indicate as a bulky system. Significantly, in the 21st century while the modern technology such as e-government, and the wider public administrative boundaries are applicable for saving administrative costs, and reducing the burden of workload, promoting quality of public registrations. However, local public entities could not promote the quality of public services as well as the ability of local staffs due to the lack of revenue. This study indicated that Vietnam needs to restructure the three-tier model in order to reduce the administrative costs and deal with the overlapping of functions.

Second, the overlapping functions among local units (specialized agencies) and the new establishment of the OSS model did not create changes in simplifying the administrative procedures The LLG did not define clearly the distributions of functions among the three levels and among local units. Therefore, overlapping of functions is the major issues of both central and local government. Corruption, red-tape, and abusing of state power are remained as the obstacles that preventing Vietnam from achieving the good governance. Although PAR has been implemented around for 20 years (since 1990s), especially since the government launched with the aim at

building up an effective, efficient, responsive, transparent, and accountable system; however, after 10 years of implementation PAR-MP is far from success. Local governments still reveal many weaknesses in performing their functions.

Third, local governments lack the capacity to perform the delegated functions and duties. Significantly, the commune level at the grassroots level could not provide good-quality public services due to the lack of facilities and the staffs who are not familiar with the legal knowledge or lack of basic skills of public administration. In addition, the People's Council at the grassroots level could not carry out the supervision function effectively because of unclear distinction between the role of representative and executive organs. The local resident could not take part in the decision-making process due to the lack of mechanism for ensuring that citizens can exercise the right to be informed, checked and consulted effectively.

In sum, this chapter illustrated that Vietnam could not achieve the successful decentralization due to the weak performance of the local public entities. The local government, especially at the commune level, lacks of capacity to perform the functions and duties effectively. In addition, the district and commune local government are also responsible for providing public services as the grassroots level; however, the delegation of powers and functions to the commune level was not consistent with the ability of the commune. The current legal frameworks of local government system did not promote accountability of local authorities and officials. Therefore, Vietnam should focus on enhancing accountability of local public entities as a key factor for promoting successful decentralization.

Chapter 5

Towards a Strong and Accountable Local Government System in Vietnam

Countries around the world have carried out the different aspects of the political, fiscal, and administrative decentralization during the past decade.³¹² Promoting decentralization is also a vital task for Vietnam since introducing the market-oriented economy by the Doimoi (renovation) policies. The impact of decentralization depends on how it is implemented. Vietnam could not achieve the successful decentralization due to the two main reasons such as: 1) the unclear distribution of functions between the central and local government; 2) the weak performance of local entities. Hence, Vietnam is still struggling for building up an effective, efficient, transparent, accountable, strong public administrative system in order to meet requirements of a democratic country and the globalization progress.

The successful decentralization depends on how it is implemented. A country needs to carry out decentralization in a consistent manner with the socio-political conditions in order to utilize the advantages of decentralization. For example, Mochida pointed out the needs to study the decentralization in Japan as follows: “Over the course of five decades Japan has developed of a robust system of decentralized governance with important lessons, both positive and negative for the rest of the world.”³¹³ Therefore, this study aims at exploring the experiences of Japan in promoting decentralization in order to withdraw the possible lessons for Vietnam towards a more accountable local government system.

1. Japan’s experiences in promoting decentralization

1.1 Overview of local government system in Japan

In the process of becoming a modern democratic country, Japan has gone through the two significant changes such as: (1) the “Meiji Restoration” that is referred to the conversion from the feudalistic into modern state in

³¹² “Decentralization Toolkit” (World Bank, n.d.), 3,
<http://www1.worldbank.org/publicsector/decentralization/toolkit9.pdf>.

³¹³ Nobuki Mochida, *Fiscal Decentralization and Local Public Finance in Japan* (Taylor & Francis, 2008), 1.

1868; (2) the reform towards a democratic government in 1945.³¹⁴ The turning point to the modern political system of Japan was the Meiji Ishin era (in 1868).³¹⁵ The formal local government system established based on the model of Germany that indicated the central government's control.³¹⁶ The Meiji was the highly centralization period. Nakamura described: "As is well known, Japan is a highly centralized country. Traditionally, administrative control has been extremely tight to the extent that it is often ranked equal to France."³¹⁷ Therefore, the local government in Japan also had characteristics of the hierarchical system. For example, the prefecture government carried out the works as the representative of the central entities.³¹⁸ As Ulmer explained the features of local government as follows:

"First, the actual powers of the local legislatures were exceedingly weak, those of the central government remarkably strong; Second, and closely related to the first, was the centralization of the local governmental powers in the office of the governor, a national officer appointed by and directly responsible to the national Ministry of Home Affairs."³¹⁹

In 1946, Japan introduced the principle of local autonomy as the starting point of building up a democratic country."³²⁰ The new democratic model of local government based on the American model. For example, the 1946 Constitution of Japan provides a principle of local autonomy (Chapter 8 with four Articles) as the essential principle of democratic nation with the aim at determining the legal status of local units as well as ensuring the autonomous functions of local public entities.³²¹ In 1947, Japan provided the Law on Local Autonomy

³¹⁴ Tatsuo Morito, "Educational Reform and Its Problems in Post-War Japan," *International Review of Education / Internationale Zeitschrift Für Erziehungswissenschaft / Revue Internationale De l'Education* 1, no. 3 (January 1, 1955): 338.

³¹⁵ Richard L. Sims, *Japanese Political History since the Meiji Renovation, 1868-2000* (Palgrave Macmillan, 2001), 5.

³¹⁶ Michio Muramatsu and Farrukh Iqbal, *Understanding Japanese Central-Local Government Relations: Perspectives, Models and Salient Characteristics*, 6 World Bank Institute and Oxford University Press, <http://info.worldbank.org/etools/docs/library/128820/Moramatsu%202001.pdf>

³¹⁷ Akira Nakamura, "Administrative Reform and Decentralization of Central Power: A Cross-National of Comparison with Japan", *Asian Review of Public Administration*, Vol. VIII, No. 2 (July-December 1996), 4.

³¹⁸ Kurt Steiner, *Local Government in Japan* (Stanford University Press, 1965), 165.

³¹⁹ S. Sidney Ulmer, "Local Autonomy in Japan Since the Occupation," *The Journal of Politics* 19, no. 1 (February 1, 1957): 49.

³²⁰ Kurt Steiner, "Local Government in Japan: Reform and Reaction," *Far Eastern Survey* 23, no. 7 (July 1, 1954): 97.

³²¹ Deil S. Wright and Yasuyoshi Sakurai, "Administrative Reform in Japan: Politics, Policy, and Public Administration in a Deliberative Society," *Public Administration Review* 47, no. 2 (March 1, 1987): 125.

(LAL) for defining the status of local authorities, the intergovernmental relations, local finance, and the important administration affairs.³²²

1.2 The local government system under local autonomy law

1.2.1 The two-tier structure

The Local Autonomy Law (1947) provided for the fundamental principle in organization and operation of local governments such as the types, powers, local assemblies, agencies, and especially the relationship between the central and local governments as well as among local governments. According to the LAL, the local government in Japan consists of prefectures and municipalities. The powers and functions of each tier are regulated clearly by the LAL. Significantly, the two-tier of local government under the LAL does not have the hierarchical relationships because of the independent legal status between the prefectural and municipal government.³²³ The prefectures are responsible for many matters of broad public interest, and the municipalities as basic local entities carry out basic needs related closely to the daily life of local residents.³²⁴ The local autonomy principle defines the main characteristics of local government system and is summarized briefly by Ulmer as follows:

“The temporary reforms in the direction of local autonomy forced on Japan by the military government in 1946 were consolidated and extended in 1947 by the new constitution and the Local Autonomy Law. Executives and legislative members of local public entities became elected by a direct vote of the people... Local assemblies now have the right to enact, repeal, or revise ordinances. The local budgets require assembly approval, as do certain appointments by the executives on all levels... The governor has become a prefectural rather than a national officer, but he remains subject to orders of the central government when executing national policy. The central government may no longer dissolve a local assembly or annul its acts, but the governor has the authority to dissolve an assembly within ten days after a vote of non-confidence against him. His failure to dissolve the assembly forces his resignation. The governor also has authority to remove a mayor, but this must be done through the courts. The governor himself is subject to removal by the Prime Minister if he fails to carry out the orders of a minister of the central government; but removal must be preceded by certain legal procedures. The governor has been deprived of his control over other national officers in the prefecture, but he has the authority to suspend any act of an administrative official under his jurisdiction if he considers the act *ultra vires*.”³²⁵

³²² *Local Government in Japan, 2005* (Council of Local Authorities for International Relations, March 31, 2005), 7, <http://www.clair.or.jp/e/forum/pdf/en2004.pdf>.

³²³ *Local Government in Japan, 2010*, 11.

³²⁴ Kiyotaka Yokomichi, “*The Development of Municipal Mergers in Japan*,” 1.

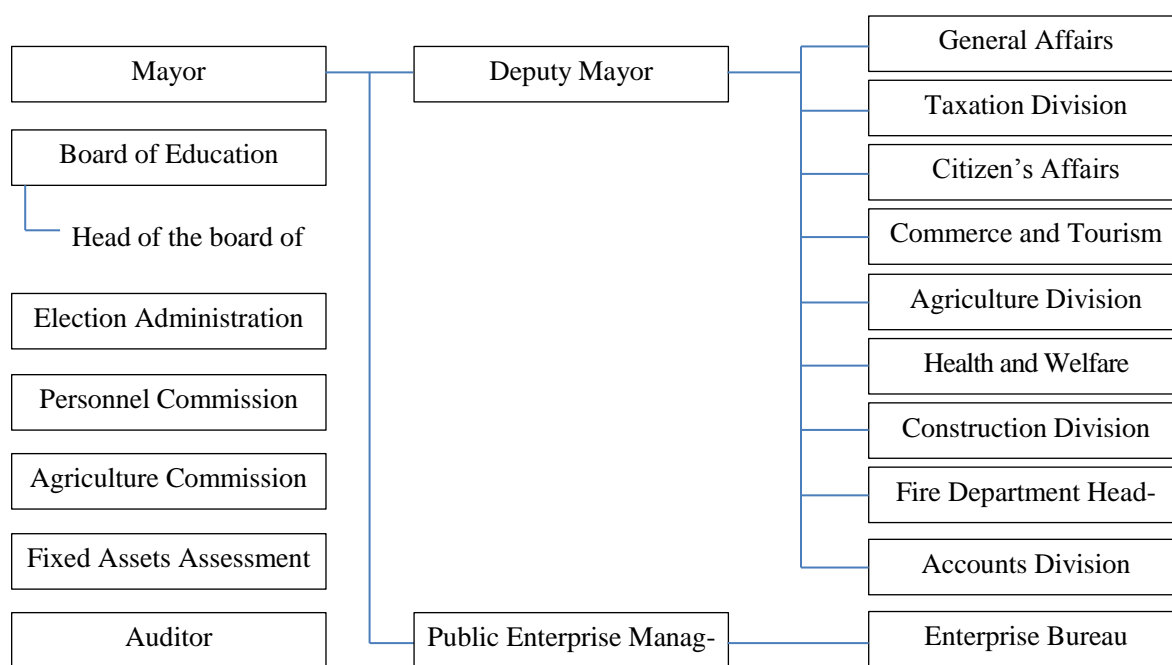
³²⁵ Ulmer, “*Local Autonomy in Japan Since the Occupation*,” 50,51.

In general, Japan reorganized the local government system with the main changes as follows: (1) the prefecture was operated as a self-government entity rather than an agent of central government; (2) the direct election of governor and mayor were applied; and (3) the role of Ministry of Interior in supervising the local government was changed.³²⁶ Japan introduced the two-tier model of the local system based on the local autonomy principle. In principle, the LAL assures the autonomous function of local government by redefinition clearly the central-local relationships and also the clear distribution of functions between the prefecture and municipal level.

1.2.2 The municipal government

According to the LAL, municipal government plays the functions of the grassroots level. The municipal public entities are responsible for providing the main public services that relate directly to the daily life of local residents. The table 8 below shows the structure of the typical municipal government in Japan.

Table 9- Organization of a Typical Municipality



Source: Council of Local Authorities for International Relations (CLAIR-Japan)³²⁷

³²⁶ “Administrative Reform Efforts in Japan: Current Experiences and Successes”, n.d., 10, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000230.pdf>.

³²⁷ *Local Government in Japan, 2010*, (Council of Local Authorities for International Relations, March 26, 2010), 11. in Japan, 2010, 13.

The number of municipalities has reduced dramatically since the Meiji period through the consolidation programs. As a result, the number of municipality in 2008 was 1,788 municipalities including 783 cities, 812 towns and 193 villages.³²⁸ In general, the municipal level includes three types such as city, town, and village due to the differences in the geographical and natural condition of local area. However, the city, town, and village authority organs carry out the same duties. Significantly, the LAL defines the functional uniformity in order to ensure that the local public entities provide the public services with the similar quality and level throughout Japan.³²⁹ However, Japan has designed the local government system based on the concrete conditions of each local area, and there are some significant types of local public entities such as the designated city, core city, special city, and special local public entities (special ward offices).³³⁰ For example, Tokyo Metropolitan Government city has special ward offices as follows:

The 23 wards of Tokyo (Chiyoda Ward, Shinjuku Ward, etc.) are currently the only special wards. The scope of affairs handled by special wards is slightly narrower than that of ordinary cities, but their function is almost identical. The difference from ordinary cities is that, for example, some services such as firefighting, fresh water supply and sewage are handled by the Tokyo Metropolitan Government. The mayor and members of ward councils in special wards are directly elected.³³¹

Significantly, local government at grassroots level has carried out the functions and duties effectively through utilizing the neighborhood local government (NLG). The NLG system interpreted as the chonaikai or jichikai in Japanese is one of the important aspects of civil society in Japan.³³² The NLG system is defined as the quasi-governmental organization or intra-decentralization in municipal organs. As Pekkanen explained about the member of the NLG as follows: “They are the ‘quasi-fundamental professional because they are formally appointed by ministries or municipalities, and also ‘voluntary’ because they are paid very little or nothing

³²⁸ *Local Government in Japan, 2010*, (Council of Local Authorities for International Relations, March 26, 2010), 11.

³²⁹ *Local Government in Japan, 2005*, 13.

³³⁰ *Local Government in Japan, 2010*, 12.

³³¹ *Ibid*, 8.

³³² Florian Coulmas and Annette Schad-Seifert, *The Demographic Challenge: A Handbook About Japan* (BRILL, 2008), 708.

considering the amount or quality of their works”.³³³ Therefore, this system does have legal status as a part of government body; however, this model plays important roles in daily life of local residents. For instance, Tawattana stated the functions of the quasi-governmental organs as follows: “Most chonaikai activities particularly emphasize on local community issues, ranging from cleaning up a local park, to arranging neighborhood-watch programs, organizing local athletic or children’s outings and facilitating local festivals.”³³⁴ The neighborhood organs has participated into various activities such as district planning, crime prevention, road safety, distribution of government notice, presenting the resident’s petition to the local government.³³⁵ The mechanism for organization and operation of the NLG system bases on the voluntary principle. Evidently, local government of Japan has gained the successful in promoting the role of civil society in performing the public administrative functions. The NLG model contributes to reduce the administration costs and also reduce the burden of workload of local government. Therefore, this model is also a suggestion for Vietnam in order to utilize the role of social organizations.

1.3 Reforming process

In principle, the LAL assures the autonomous function of local government, but in reality, the fiscal power did not transfer to local government accurately; for example, since the World War II, central government has assigned public administration functions and services to the local government as well as has controlled over fiscal revenues. Steiner explained that the LAL could not enable local government to carry out functions independently in practice, although it provided the list of affairs carried out without consideration to national laws and ordinances.³³⁶ For example, the police and education were decentralized; however, the other functions remained unchanged because local governments operated as the agencies of central government rather than *autonomous* institutions.³³⁷

³³³ Ibid., 711.

³³⁴ Tanwattana Puntita, “Significance of Institutionalization and Changes of Chonaikai (Neighborhood Association) in Japanese Society”, February 2012, 19, http://www.ps.ritsumei.ac.jp/assoc/policy_science/192/192_09_puntita.pdf.

³³⁵ Coulmas and Schad-Seifert, *The Demographic Challenge*, 710.

³³⁶ Steiner, “*Local Government in Japan; Reform and Reaction*,” 98.

³³⁷ Steiner, “*Local Government in Japan*,” 98.

Although Japan has carried out the extensive reforms after the war, but the characteristics of centralization still remain as a serious issue in local government of Japan.³³⁸ As the result, local government could not have discretion in implementing their functions due to the remnant of the centralization period. Therefore, Japan has carried out the public administration reform dramatically as the key solutions for building a more accountable and democratic government.

Japan introduced with various reforming programs and different tasks depending on its social-political and economic development of each period. In general, the development process of Japan was divided into three periods: (1) the late 1950s and early 1960s when economic growth was the highest priority; (2) from the mid-1960s to the mid-1970s when political changes in local election were the main focus; and (3) from the late 1970s to the present with the major focus on dealing with financial pressures and the influence of internationalization economy and polity.³³⁹ Significantly, Koike divided the historical of public administration reform into five periods according to the decentralization frameworks as follows:

Period	Phase descriptor	Major Problems	National Goal	IGR mechanisms	IRG reform
1945-1950	Commanded Devolution	Democratization	Equality	Local Autonomy Law	Political Decentralization
1950s-1960s	Centralized Consolidation	Rationalization	Efficiency And Economic Growth	Agency Delegated Functions National Planning	Political and Administrative Centralization
1960s-1970s	Challenging central control	Urbanization	Quality of life	Local by laws Public participation	Administrative Centralization
1980s-1990s	Collaborative Devolution	Globalization	Accountability and effectiveness	Deregulation	Administrative Decentralization
From 2000	Civic Devolution	Creativity	Diversity	Public-private partnerships	Political Decentralization

³³⁸ Hishiro Ikawa, *15 Years of Decentralization Reform in Japan*, Up-to-date Documents on Local Autonomy in Japan (Council of Local Authorities for International Relations (CLAIR) Institute for Comparative Studies in Local Governance (COSLOG), March 2008), 7, http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/up-to-date_en4.pdf.

³³⁹ Muramatsu Michio and Iqbal Farrukh, "Understanding Japanese Central-local Government Relations" (World Bank, 2001), 3, <http://info.worldbank.org/etools/docs/library/128820/Moramatsu%202001.pdf>.

Source: Local Governance and National Development: Evolution of Local Autonomy in Postwar Japan.³⁴⁰

Japan embarked on administration reform since introducing the local autonomy principle. Each program of administration reform related closely to the socio-political condition as well as economic development of Japan in each period. However, this section only focuses on the typical reform programs concerning to the intergovernmental relations and local government system as the two major aspects of decentralization in order to explore what are possible implications for Vietnam.

1.3.1 The Shoup Mission

In order to ensure the local autonomy principle, the Shoup Mission proposed the first reforming program for Japan in 1949. According to Osamu, According to Osamu, the Shoup Mission contributed to the shape of the local tax system as an element of fiscal decentralization that included: (1) separating the functions between central and local; (2) creating a more independent local government system by the Local Equalization Grants; and (3) introducing a new residential tax and an income tax in order to solidify the finance base for local government. Consequently, Japan introduced a new financial system as well as established the Local Administration Investigation Committee.³⁴¹ Significantly, Shoup indicated the important role of local government in providing services and facilities as follows:

“The functions of local government are peculiarly close to the people. These functions include such vital services and facilities as education, hospitals, prevention of disease, sanitation, relief, child and maternal welfare, police and fire protection, roads and streets, recreation, housing, and care of defective persons. They are designed specifically to provide opportunity for individuals, better living conditions, greater security, and protection from personal misfortune. The future progress and welfare of Japan, or of any country, depends as much on the quantity and quality of local government services available as upon any other factor”.³⁴²

In brief, the Shoup Mission’s recommendation indicated the requirement for clear cut central-local relations and adequate financial sources as the fundamental requirement for implementing the LAL. This reform program was the starting point of Japan in implementing decentralization. However, local government system of Japan still depended on the central government due to the lack of revenue and the subsidies of national treasury.

³⁴⁰ Osamu Koike, *Local Governance and National Development: Evolution of Local Autonomy in Postwar Japan*, 62. Published by EROPA Local Government Center, Tokyo, Japan, 1998.

³⁴¹ *Ibid*, 64.

³⁴² “Report on Japanese Taxation by the Shoup Mission Appendix A,” Section B, needs for stronger local government. <http://homepage1.nifty.com/kybs/shoup/shoupA.html#sectionAb>

In principle, local public entities are able to carry out the functions independently and effectively if the revenue sources are adequate as well as the central's intervention is limited. In addition, Japan has carried out the consolidation program in order to deal with the shortages of local revenue and promoting the ability of local government in providing public services.

1.3.2. The Consolidation process

Municipal level is the grassroots level within the local government system. Hence, municipalities play a vital role in dealing with local issues, promoting democracy and responsive to the needs of their residents. Therefore, Japan has carried out the merging of municipal units as the primary condition for cutting administration costs, strengthening the capacity of local entities in implementing the duties and functions in a wider administrative boundary. For instance, Shuop Mission illustrated the ways for increasing the effectiveness of administration and enhancing financial capacity of local government through a reduction in the number of municipalities.³⁴³

Therefore, Japan has carried out the consolidation program for dealing with the financial shortages of local government. Michio described the process of consolidation in Japan such as: "There is a strong ongoing movement to consummate mergers among municipalities. In Japan, municipalities merge when their fiscal condition is unfavorable or when a large-scale reform is taking place."³⁴⁴

In general, it is divided into three periods such as Great Meiji Consolidation (1889-1953), Great Showa Consolidation (1953-1961), and the Great Heisei Consolidation (1999-2006). The number of municipalities has reduced significantly as Yokomichi summarized as bellow:

The first of these was the Great Meiji Consolidation 1888-1889, when the number of municipalities was reduced from 71,314 to about one-fifth, 15,859. Then from 1953 to 1961 the Great Showa Consolidation took place, resulting in a decrease in the number of municipalities from 9,868 to about one-third, 3,472. Finally, the Great Heisei Consolidation has been in effect from 1999 to 2006, and has resulted in the decline of the numbers of municipalities from 3,229 to half, 1,821.³⁴⁵

³⁴³ "Local Governance and National Development: Evolution of Local Autonomy in Postwar Japan", 67.

³⁴⁴ Muramatsu Michio, "Government Decentralization Reforms in Developing Countries," 184.

³⁴⁵ Kiyotaka Yokomichi, *The Development of Municipal Mergers in Japan*, COSLOG Up-to-date Documents on Local Autonomy in Japan (Council of Local Authorities for International Relations (CLAIR) The Institute for Comparative Studies in Local Governance (COSLOG), n.d.), 2, http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/up-to-date_en1.pdf.

After the Meiji Consolidation, Japan has carried out the second program of merging the municipalities. The Great Showa Consolidation had carried out since 1953 by enacted the significant laws such as: Towns and Villages Consolidation Promotion Law in 1953 with the aim at emerging the municipalities with populations less than 8000, the Special Law on the Promotion of Local Financial Reconstruction in 1955, and the New Municipality Creation Promotion Law in 1956.³⁴⁶

Continuously, the Great Heisei Consolidation started in 1999 with the reduction in the number of municipalities to 1881 in 2006. The consolidation process in Japan indicates the trend of urbanization and also meets the demands of building capacity of local government. In addition, Hiroshi indicates that the municipal government is the closest to the daily life of residents while the prefecture government covers a wider area and carries out a large number of different tasks.³⁴⁷

In brief, the reduction in the number of the municipality has contributed to the successful decentralization in Japan. In other words, the success of Japan in building up an effective and efficient local government system is remarked by the reduction in the number of municipality. In contrary to Japan, the number of local units in Vietnam has increased significantly due to the merges, separation, and re-division of the administrative boundary at three-levels. However, the increasing in the number of local units as mentioned in the chapter 4 did not promote the quality of public administration. Given the fact that Vietnamese' local government still faces with the lack of financial and the high-qualified staffs. Therefore, restructuring the local government in direction of reducing the number of local public entities as well as promoting the ability to perform the delegated functions in a wider administrative boundary is the possible lesson for Vietnam.

1.3.3 The administrative reform from 1960s-1990s

Japan also has a long history of implementing administrative reform. For example, Hiromi divided the process of public administrative reform in the central government into three main periods: 1) the first period 1962-1964 focused on the lessons learned from American experts: 2) the second period 1981-1983 introduced the “medi-

³⁴⁶ “Local Governance and National Development: Evolution of Local Autonomy in Postwar Japan”, 67

³⁴⁷ Hishiro Ikawa, *15 Years of Decentralization Reform in Japan*, Up-to-date Documents on Local Autonomy in Japan (Council of Local Authorities for International Relations (CLAIR) Institute for Comparative Studies in Local Governance (COSLOG), March 2008), 1,2, http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/up-to-date_en4.pdf.

um sized –government” and privatization program; 3) and the third period (1996-1998) aimed at reorganizing the central government.³⁴⁸ In addition, the process of local government administrative reform was divided into three periods such as the 1908s; the 1990s; and the period since 2000.³⁴⁹ Hence, this section summarizes the process of the administrative reform period 1960-1990 in general as below.

Administrative system in Japan during the 1960s and 1970 indicated the new centralization due to the limitation of decentralization.³⁵⁰ The local government was under the control of central government due to the lack of revenue, and the existed of the Agency Delegated Function System (ADFS). Therefore, Japan has established the First Commission on Administrative Reform (FCAR) in 1961 that was responsible for proposing the reforming recommendations to government. FCAR aimed at rationalizing and modernizing the administrative system in Japan in order to ensure the administrative system can keep up with the rapidly development of economy. Therefore, FCAR recommended the reinforcement the functions of cabinet and introduction of a top management system of central ministries were the main reforming solutions. However, Japan could not utilize the proposal of the FCAR into practice due to the lack of proper method for implementation as well as the attention to the role and traditional characteristics of the administrative system.³⁵¹

In order to deal with difficulties in the economic sector, Japan carried out financial and administrative reforms in 1981.³⁵² The main objectives of administrative reform in the 1980s period included the five major issues such as expenditure and employment reduction, deregulation, devolution, privatization, and reorganization.³⁵³

Japan has embarked on the second period of administrative reform (the 1980s period) by the establishment of

³⁴⁸ Hiromi Yamamoto, “New Public Management - Japan’s Practice”, *Institution for International Policy Studies*, 293E, 2003 n.d., 11, <http://www.iips.org/bp293e.pdf>.

³⁴⁹ Tanaka Hiraki, *Administrative Reform in Japanese Local Governments*, No.18, Papers on the Local Governance System and Its Implementation in Selected Fields in Japan (Council of Local Authorities for International Relations (CLAIR) Institute for Comparative Studies in Local Governance (COSLOG) National Graduate Institute for Policy Studies (GRIPS), December 2010), 4, http://www3.grips.ac.jp/~coslog/activity/01/04/file/Bunyabetsu-18_en.pdf.

³⁵⁰ Tatsuro Niikawa, “The Decentralization Reform and the Local Government System in Japan”, n.d., 6, <http://www.juris.hokudai.ac.jp/global-g/paper/4-14.pdf>.

³⁵¹ Kumon Shempei, Japan faces its future: The political-economics of administrative reform, *Journal of Japanese Studies*, Vol. 10, No. 1 (Winter, 1984), 145-146.

³⁵² James Elliott, The 1981 Administrative Reform in Japan,” 765. *Asian Survey*, Vol. 23, No. 6 (Jun., 1983), pp. 765-779 Published by: University of California Press

³⁵³ Wright and Sakurai, “*Administrative Reform in Japan*”, 121.

the Provisional Commission on Administrative Reform (RINCHO) in 1981³⁵⁴ and the Promotion Administrative Reform Committee (GYOKAKUSHIN) in 1983.³⁵⁵ RINCHO included 9 members and 21 experts who carried out the investigation of issues of the administrative works, examined the fundamental issues related to administration system and reforming management.³⁵⁶ In general, the administrative reform during the 1980s focused on simplifying and rationalizing the central-local relations as one aspect of decentralization; however, the local government as a key factor for ensuring successful decentralization could not perform its functions independently due to the influence of the central government.³⁵⁷

In brief, Japan achieved the success through administration reform 1960-1980 in following aspects such as the privatization of three major public corporations, the abolishment of 45,388 positions in central government, public pension system reforming, strengthening the mechanism of coordination, and promulgating the Administrative Procedures Law.³⁵⁸ However, the administrative reform in this period lacked of commitment as well as the attention to general administrative reform because of over concentration on the expenditure's reduction.³⁵⁹

1.3.4 Decentralization process since 1990s

Since 1990, Japan has focused on reforming local government system in order to strengthening the autonomous functions as well as minimizing the central's intervention. Japan gained the high degree of decentralization through the significant program such as: 1) the abolishment of agency delegated functions in 1991; 2) the promulgation of Law on Promoting Decentralization in 1995; 3) the amendment of Law on Local Autonomy; 4) the 1999 Omnibus Law of Decentralization; and 5) the Trinity Reform program.

³⁵⁴ Wollmann, *Evaluation in Public-sector Reform*, 170–171. The PACR in 1981 was determined as the Second PCAR because the First PCAR was established in 1962.

³⁵⁵ Wright and Sakurai, “*Administrative Reform in Japan*”, 123.

³⁵⁶ Kumon Shempei, *Japan faces its future: The political-economics of administrative reform*, 143-145.

³⁵⁷ Hiraki Tanaka, “Administrative Reform in Japanese Local Government”, n.d., 6, *Council of Local authorities for International Relations*, 2010. <http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/BunyabetsuNo18en.pdf>.

³⁵⁸ Administrative reform in Japan: current experiences and successes. 1,2. <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000230.pdf>

³⁵⁹ James Elliott, “The 1981 Administrative Reform in Japan”, n.d., 774, *Asian Survey*, Vol. 23, No. 6 (Jun., 1983), pp.765-779 Published by: University of California Press, <http://www.jstor.org/stable/pdfplus/2644390.pdf>.

First, the abolishment of the Agency Delegated Functions System was the ways for minimizing the central's intervention. ADFS raised the challenges for local government in performing their functions due to the lack of discretion as well as financial resources. In other words, the local government was the subordinate organ because the central government retained control through the ADFS. Therefore, abolishment of the ADFS was defined as a key factor for promoting decentralization in Japan. For example, the Association of Governors proposed to abolish the system of delegated functions as well as increasing the financial resources for promoting decentralization.³⁶⁰

Japanese scholars argued the ADFS as an element that inconsistent with the local autonomy principle.³⁶¹ As Osamu explained, the LAL in 1947 allowed the central government to enact the laws for national development purpose whereas the local government could provide the regulations for carrying out the nationally mandated functions. In addition, the LAL also determined the mechanism for ensuring direct control over the local government through the Agency Delegated Function System (ADFS); for example, the local officials who were delegated ADF could be dismissed when they did not perform the ADF tasks.³⁶² The laws determined the legal status of the ADFS as a way that allowed the central government to realize the central's goals in the whole country as follows:

“In the ADF system, the head of the local government acted as an agent of the national government. Article 15 of the National Government Organization Law prescribes that "with respect to affairs under his charge, each minister may direct and supervise the heads of local public entities in respect to national administrative affairs which they execute, as provided for in Article 150 of the Local Autonomy Law." Article 150 of the law provides that governors are subject to the direction and supervision of the competent minister, and that mayors are subject to the direction and supervision of the governor and the competent minister in regard to these national affairs.”³⁶³

In addition, Andre contended that the central government's intervention through the ADFS was as follows:

“Probably even more important in a long run was the system of “agency delegated functions” (kikan innin jumu), which allowed central ministries to delegate specific tasks, such as public health measure,

³⁶⁰ Michio, “Center-Local Political Relations in Japan,” 10.

³⁶¹ Ikuo Kume, “The Impact of Agency Delegated Functions: A Japanese Case Study”, n.d., 3, World Bank, <http://siteresources.worldbank.org/WBI/Resources/wbi37176.pdf>.

³⁶² Osamu, “*Local Governance and National Development: Evolution of Local Autonomy in Postwar Japan*”, 68.

³⁶³ “The Impact of Agency Delegated Functions: A Japanese Case Study”, n.d., 2

policing, and city planning, to prefecture and municipal governments, while retaining the exclusive authority to make policy decision.”³⁶⁴

Consequently, the local government could not initiate action in performing the delegated functions because it acted as an agent of central ministries. Therefore, the abolishment of the ADFS was one of the main tasks in promoting decentralization in Japan.

Second, promulgation of legal system for promoting decentralization in Japan enabled local public entities to perform the delegated functions independently as well as to deal with the shortage of revenue. Administrative reform has changed from time to time in accordance with social-political context; therefore, the objectives of reform are determined differently in each period. For example, the Hosokawa government focused on political reform and administrative reform towards more accountable government in which deregulation and decentralization as the key factor for ensuring the transparency and accountability of government whereas the Hashimoto government defined the “simple and effective government” as the objective of administrative reform.³⁶⁵ In order to utilize the impact of decentralization in realizing the administrative reform and political reform as well as in changing the social environment and economy, Japan needs to establish the legal framework on promoting decentralization.³⁶⁶ Hence, Japan enacted the Law on Promoting Decentralization (LPD) and established the Decentralization Promotion Committee (DPC) in 1995 as bellow:

“In June 1993, resolutions about the promotion of decentralization were made in the National Diet. As the first resolutions on the promotion of decentralization to be passed by both Houses of the Diet, this can be seen as having great significance for the subsequent First Stage of Decentralization Reform. In October 1993, the government council on administrative reform (the Provisional Council for the Promotion of Administrative Reform (the Third PCPAR) reported with suggestions concerning the promotion of decentralization. In December 1994, on the basis of this report, a cabinet decision endorsed the “Fundamental Principle for Promoting Decentralization”, setting the stage for the enactment of a law on the promotion of decentralization”.³⁶⁷

In addition, the Commission recommended for promoting decentralization as follows:

(1) Abolition of Agency Delegation,

³⁶⁴ Andre Soresen, chapter 5 "Centralization, Urban Planning Governance and Citizens Participation in Japan", "Cities, Autonomy, and Decentralization in Japan" (Routledge, n.d.), 104.

³⁶⁵ Koichi Nakano, "The Politics of Administrative Reform in Japan, 1993-1998: Toward a More Accountable Government?" *Asian Survey* 38, no. 3 (March 1, 1998): 293, 301.

³⁶⁶ "The Decentralization Reform and the Local Government System in Japan," 8.

³⁶⁷ Ibid,

- (2) Creation of new rules concerning central-local government relations;
- (3) Promotion of the transfer of authorities from central to local governments;
- (4) Re-examination of “Compulsory Organizations and Posts”;
- (5) Streamlining of central government disbursements and the amplifying of local revenues;
- (6) Restructuring of local governments’ administrative structures.³⁶⁸

In general, the LPD aimed at promoting decentralization through measures such as: clarifying the role sharing between the central and local government, and promoting the independence of local entities as well as realizing the diversified local community.³⁶⁹ Significantly, new clarification of the intergovernmental functions through the division between the ‘autonomous functions’ and ‘entrusted functions by law’ were recommended as the key factors for promoting decentralization.³⁷⁰ In addition, Japan has gained the successful degree of decentralization through the 1999 Omnibus Law of Decentralization.³⁷¹ This Law aims at clarifying the distribution of functions between the central and local entities as a fundamental condition to ensure that local government has discretion in performing its functions. In addition, Japan amended the Local Autonomy Law was amended in July, 1999, by the Omnibus Law of Decentralization with the main focuses: 1) a clarification of the division of responsibility between central and local government; 2) the abolition of the agency delegated function arrangement; 3) the result of redistribution of functions; 4) the review of participation.³⁷² In addition, Japan also revised around 500 related legal documents as the largest reform on local government in Japan.³⁷³

Significantly, Japan introduced the reform program “Trinity Reform” in November 2004 and the New Decentralization Promotion Law in 2006 (Omnibus Decentralization Law) that enabled local government to deal with the shortage of revenue.³⁷⁴ In brief, the period since 2000, Japan has carried out decentralization with focuses

³⁶⁸ Akio Kamino, “Recent Trends Toward Decentralization in Japan”, n.d., 194–195, *Asian Review of Public Administration*, Vol. VIX, No. 1 (January-June 1997)

<http://unpan1.un.org/intradoc/groups/public/documents/EROPA/UNPAN001425.pdf>.

³⁶⁹ Chun-Pin Su, “The Guarantee of Local Self-Government in the Japanese Constitution: The Theory and Practice”, n.d., 68, *National Taiwan University Law Review* 2006 Vol. 1: 2

[http://www.law.ntu.edu.tw/ntulawreview/articles/1-2/1-2\(3\).pdf](http://www.law.ntu.edu.tw/ntulawreview/articles/1-2/1-2(3).pdf).

³⁷⁰ Osamu Koike, *Local Government and National Development: Evolution of Local Autonomy in Postwar Japan*. 72

³⁷¹ Furukawa Shun’ichi et al., *Japan’s Road to Pluralism: Transforming Local Communities in the Global Era* (Japan Center for International Exchange, 2003), 21.

³⁷² *Local Government in Japan, 2005*, 12.

³⁷³ “Understanding Japanese Central-Local Government Relations: Perspectives, Models and Salient Characteristics”, n.d., 29,30, <http://info.worldbank.org/etools/docs/library/128820/Moramatsu%202001.pdf>.

³⁷⁴ Ikawa, *15 Years of Decentralization Reform in Japan*, 11.

on the following aspects such as: 1) the transfer of authority to local governments; 2) rationalization the local government's duties on taxes and the intervention of central government; 3) review of financial issues such as the national subsidy and obligatory share system, local allocation tax, and the distribution of tax revenue between central and local; and 4) promoting a local administrative system for empowering autonomy of citizens.³⁷⁵ Significantly, the LAL that was revised in 2004 regulates the type of involvement of central government in Article 245. This article prevents freely intervention of central government as well as enables the local government to perform the delegated functions more independently.

In general, the result of reform for local autonomy was indicated through three areas such as the strengthening local government's authority; liberalizing local autonomous functions; and reinforcing the local administration entities as summarized by Tasturo Niika as follows:

At first, on strengthening the authority of local autonomy, the authority of the local government was expanded through an authority transfer and the abolition of agency-delegated function.

Secondly, through the deregulation of the local autonomy, such as the making rule of the conflicts resolution between central and local governments and the arrangement and reduction of the state intervention, the liberalization of local government has been proceeding.

Thirdly, there was the strengthening of local administration organization. It expected to be activated not only by the revision of laws but also by the efforts of local government itself.³⁷⁶

In brief, the Japanese government had various successes after 15 years of promoting decentralization, especially, in reducing the number of municipality to around 1800 units. The central-local relationships were clarified clearly by laws. As a result, the local government has more discretion in implementing the functions because of the abolishment of the AFDS as well as national grants. In addition, Japan also focused on building the capacity of local entities through training local staff and reforming the mechanism. Therefore, examining the experiences of Japan in promoting decentralization enables Vietnam and other developing countries around the world to explore the possible implications.

2. Reorganizing local governmental system

2.1 Introducing the two- tiered local governmental system

³⁷⁵ Ibid., 24.

³⁷⁶ “The Decentralization Reform and the Local Government System in Japan”, n.d., 16,17, <http://www.juris.hokudai.ac.jp/global-g/paper/4-14.pdf>.

Vietnam has shown the great effort in progress of amending the 1992 constitution as well as making plans for the PAR period 2011-2020 in order to build up a democratic nation and achieve the MDGs in 2015. Building up an effective, transparent, accountable, and professional public administration system is the main objective of the PAR period 2011-2020. Therefore, Vietnam needs to focus on restructuring local government system as one of the key factors for promotion the successful decentralization.

The system of local government in Vietnam is organized into three-tiered model and with more than 10,000 communal units (a grassroots level). The population is around 87 million and the area is 331051.4 (square km). As mentioned in chapter 4, the number of provinces, districts, and commune in Vietnam has been increased due to the new establishment, merges of the local units and the re-division of administrative boundary. On contrary, Japan focused on reduction of the municipalities as the effective ways for dealing with the shortages of local budget. In general, the two-tier model of local government indicates the significant advantages as follows: 1) this model will enable Vietnam to deal with the issues such as: shortages of local budget, overlapping functions, the poor –quality of public service, the lack of high-qualified staffs; 2) The two-tier structure is the effective model for reducing the administration costs through the reducing in the number of local units; 3) This model allow the local public entities to retain the high-qualified staffs. Therefore, Vietnam should restructure local government system by the two-tier model.

In general, the district as well as the commune government provides the public services to local residents. However, the distribution of functions between district and commune is not in consistent with the ability of local entities. The commune organs could not perform the delegated functions and provide public services to the local residents effectively due to the lack of facilities, high-qualified staffs, and revenue. In addition, the district government plays the role as the immediate level between the provincial and commune level; therefore, local entities at this level also carry the delegated functions from the provincial government as well as delivery the public services as the grassroots level. Consequently, unclear assignment of functions among the three tier of local government system affects to the effectiveness of decentralization. In other words, local public entities at district and commune level could not perform the executive functions effectively. In addition, the 2003 LGL has not yet defined clearly the separation of functions between the PCI and PCE at the same level; consequently,

the People's Council at the commune level also faced with challenges in exercising the decision-making powers and the supervising functions.

The weak performance of local government at the commune level requires the central authority to look for the reforming solutions of the local government system as one of the key factors in progress of amending the 1992 constitution. On August 2, 2011, the Standing Committee of the National Assembly submitted a proposal on studying and planning for amending the 1992 Constitution. According to this proposal, the regulations on organization and operation of local governments should be amended with the aim at clarifying the legal status of local government, organization model, tasks, powers, decentralization mechanism, and delegation of powers between central and local governments.³⁷⁷ Thus, the authority organs recognized the needs to reforming the local government system towards a democratic government.

In order to determine the model of local government system that is the possible model for the case of Vietnam, the national government proposed for abolishing the People's Council at 10 provinces (around 100 districts and 483 communes in 2009). The National Assembly ratified this proposal and examined the results after two year of implementation the pilot case.³⁷⁸ In general, the national authorities confirmed the abolishment of People's Council at district or commune level is the effective solution for Vietnam to build up an effective local government system. However, the authority organs still face with challenges in determining which level should abolish the PCI, and how to restructure the PCe without the establishment of the PCI at the same level. In addition, Vietnamese authorities as well as scholars also raised question as such: whether the abolishment of the PCI can break the principle of democratic centralism defined as fundamental for organizations and operations of the state body in Vietnam.

In general, concerning to the abolishment of the PCI at district or commune level, the central and local authorities raised the questions such as: 1) which the PCI at district or commune should be abolished; and 2) how to

³⁷⁷ Ủy Ban Thường Vụ Quốc Hội (The Standing Committee of the National Assembly, *Tờ Trình Quốc Hội Về Việc Triển Khai Thực Hiện Chủ Trương Nghiên Cứu Sửa Đổi, Bổ Sung Hiến Pháp Năm 1992 (The Proposal for Implementing the Plan of Amendment the 1992 Constitution)*, 2011, , 5.

³⁷⁸ “Kiến Nghị Tiếp Tục Thí Điểm Bỏ HĐND Huyện, Quận, Phường (Proposal for Continue the Pilot Case of Abolishment the People's Council at District and Commune Level),” *VietNamNet Mobile* (June 6, 2012), <http://m.vietnamnet.vn/vn/chinh-tri/75414/kien-nghi-tiep-tuc-thi-diem-bo-hdnd-huyen--quan--phuong.html>.

determine the mechanism on organization and operation of the PCE at the same level. In order to answer these questions, there are three main solutions for restructuring the local government have been discussed so far as follows: 1) Vietnam should abolish the PCI at the commune due to the weak performance of representative functions, low-qualified delegates. The local residents need to vote directly the chairman of the PCE in order to promote the accountability of the chief executive. The main reason for abolishing the PCI at commune level is the weak performance of the representative and supervision functions. However, the abolishment of PCI at commune level will break the structure of local government at grassroots level and the value of democratic society; 2) Vietnam should abolish the PCI at district level because this level is the intermediate level between the provincial and commune level and remain the PCE at district. In this case, the PCE at the district level should carry out delegated functions from provincial level as an administrative organ only; 3) Vietnam should establish the PCI at the provincial level only in order to reduce the administration costs. In addition, the weak performance of the current PCI at district and commune level is the reason for Vietnam to abolish the PCI at these levels. For example, authorities of Hochiminh city suggested central government to abolish the PCI at the district and commune level.³⁷⁹ However, remaining the PCI at the provincial level may cause the difficulties for the PCI itself in performing the supervising functions in the wider area as well as to local residents in the case of reflecting their needs to the PCI at the provincial level merely. In brief, each solution indicates advantages as well as disadvantages; therefore, Vietnamese government still needs to examine carefully the successful of the pilot cases and determining the possible reforming solution of the local government system in order to revise the 1992 Constitution in 2014 as planned.

Significantly, the pilot case of abolishment the PCI at district and commune after two years of implementation was highly appreciated by the authority organs and local residents. For example, a survey on abolishing the PCI at the district and commune was carried out in HCM city found that 70% of interviewees agree with the abol-

³⁷⁹ “TP HCM Kiến Nghị Đổi UBND Thành Ủy Ban Hành Chính (Hochiminh City Proposes for Rename the People’s Committee into the Administrative Committee),” *Vnexpress*, December 25, 2011, <http://vnexpress.net/gl/xahoi/2011/12/tp-hcm-kien-nghi-doi-ubnd-thanh-uy-ban-hanh-chinh/>.

ishment of PCI at district and commune, only 6% want to remain the PCI, and 1% recommend for prolong the operation of current of PCI in order to have time for setting up new local government system.³⁸⁰

This dissertation proposed for introducing the two-tier model of the local government system in Vietnam because this model ensures the central entities to save the administration cost, to deal with the issues of financial shortages at local area. For example, Ali Farazmand stated that a two-tier local government unit which consists of a province as a large unit and the ward, city, and the county as the small unit would limit overlapping of functions caused by multi-hierarchical system model.³⁸¹ In addition, branch offices can be set up at small local unit for preventing problems caused by wider area of public administration.³⁸² A two-tier local governmental model could be applicable in the case of Vietnam by reconstructing the district level as the grassroots-level instead of the commune level as present. This proposal based on the main reasons as follows: *First*, the commune level reveals many weaknesses as mentioned in chapter 4 as it lacks of capacity such as financial and human resources for fulfilling their duties. Especially, at urban area where the division of commune boundaries is simply as technical management, it did not create any differences among commune as they often obey all decisions made by higher state organs. In addition, the wide –area administration should be applied while the speed of development is inconsistent with the division of the smaller communal administrative boundaries.

Second, the district governments are also responsible for providing public services (education, healthcare) as well as the important administrative affairs such as issuing the license for construction, land-used right certification whereas the PCe at commune level only performs the simple administration works such as birth registration or marriage certification.³⁸³ In addition, the smallest number of population at commune level is less than 1000 (at the mountainous area) while the highest number is around 25,000 people (in big city like

³⁸⁰Thí điểm bỏ HĐND quận, huyện, phường: Tiết kiệm 85 tỷ đồng. (Pilot abolishing the People's Council at district and commune level: Save 85 billion Vietnam Dong), <http://vneconomy.vn/20100911124433593p0c9920/thi-diem-bo-hdnd-quan-huyen-phuong-tiet-kiem-85-ty-dong.htm>.

³⁸¹ Ali Farazmand, *Handbook of Comparative and Development Public Administration* (CRC Press, 2001), 518

³⁸² Ibid.

³⁸³ Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No11/2003/QH 11 Dated 26 November 2003)*, 2003.

Hanoi, Hochiminh);³⁸⁴ therefore, the number of local residents at the commune level reflects the small government system. Moreover, local public entities at commune also lack of facilities and high-qualified human resources for ensuring the good quality of public services.

Third, the Commune People's Council could not carry out the functions of representative and supervision due to the limited qualified delegates as mentioned in chapter 4. In general, the delegates lack of policy formulation skills as well as legal knowledge for examining the works of the PCE at the same level. In addition, mechanism for ensuring effectiveness of the PCI's supervision has not yet improved. In reality, the relationship between the PCI and PCE is blurred because the majority members of PCI are also the members of or under the control directly of the PCE. As the result, the supervision function of the PCI could not be carried out effectively. Hence, the PCI could not represent for the wills and needs of residents.

Fourth, expanding the administrative boundary is an applicable method for saving the costs because of the development of transportation system and model technology can support for wider area managements. For example, the amount of 85 billion VND of public administrative costs was saved by abolishing the PCI at district and commune in 10 provinces in a year. Therefore, the district level will be reorganized as local government units, which carry out functions and powers as municipal level in Japan. Moreover, the district local units where are considered as a large area or densely populated area can establish their branch office as a ward office. The ward office shall organize as the one-stop-shop model which ensures residents are served comprehensively all resident's needs such as civil registration, permission, as well as delivering public services.

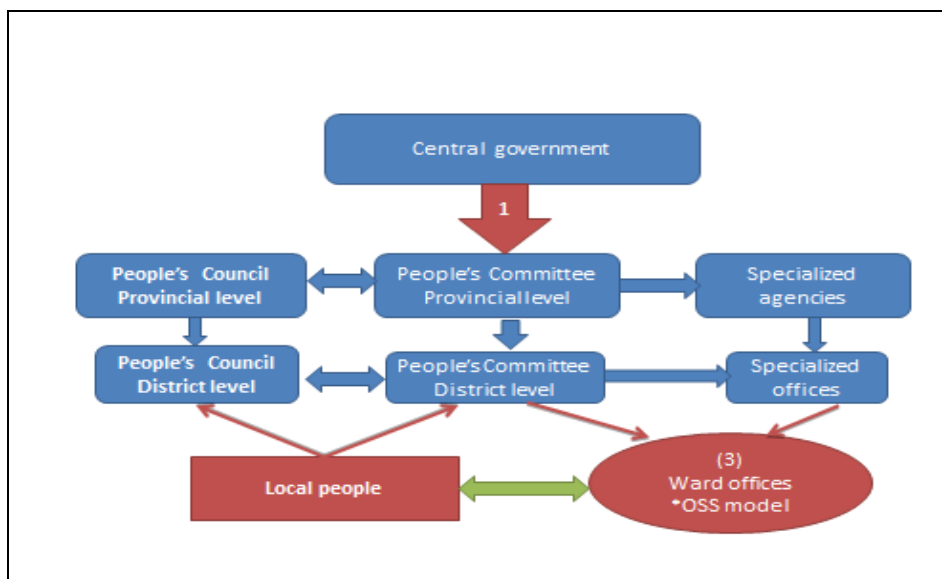
Last, the abolishment of commune government can prevent "cuc bo dia phuong" (for local benefits) due to village culture. Local residents only want the person who belongs to their village or who are their family members become the commune officials, especially the chairman of the PCE. Hence, they have tried by different ways to support their relative to win at the election

In sum, Vietnam should adopt the two-tiered model of local government unit as the productive model for overcoming the shortcomings of current local public entities as well as for promoting the effectiveness of decentral-

³⁸⁴ Quốc Hội (National Assembly), *Luật Bầu Cử Hội Đồng Nhân Dân Các Cấp 12/2003/QH11 (Law on Election the People's Council at Local Levels)*, *Luật Sửa Đổi Luật Bầu Cử Quốc Hội Và Hội Đồng Nhân Dân Các Cấp 63/2010/QH12 (Law on Amendment of the Law on Election The National Assembly and People's Council 2009)*.

ization. The legal frameworks of local government system should be revised in order to determine clearly the functions and duties of each tier. However, Vietnam needs to examine carefully the social impacts of the two tier model for designing the effective implementation plan. The table 7 indicates the possible model for reorganizing the local government system in Vietnam as below.

Table 10- Recommendation of a new model local government system in Vietnam



The process of changing from three-tier model to the two-tier was described briefly by Ali as below:

The traditional grass-roots governments, the towns, and townships would no longer be recognized as local self-government units in this new system. In place of town and township governments, county government branch offices would be instituted so that they could deal locally with the policy and administrative affairs with the boundary of the county. The county branch offices would not be hierarchical subdivisions of the county government. Rather, they would carry out the same functional duties as the county government. The services provided by the county branch offices would get rid of any inconveniences that the county residents might have in getting services from the remotely located county government office. The administrative affairs of the town and township would be properly executed by the county branch offices without referring mater to the county government offices. They would function only on a broader jurisdictional basis.³⁸⁵

In order to restructure the three –tier local government system into the two-tier model, Vietnam should to redefine the legal status of the district government as the grassroots level as well as abolish the PCI at the commune level. In addition, because the two main reasons as follows; (1) the local government at district level are re-

³⁸⁵ Ali Farazmand, Handbook of Comparative and Development Public Administration, 518.

sponsible for providing main the public services to local residents (Article 97-110);³⁸⁶ 2) The PCe and PCI at commune level could not perform the functions of the grassroots level due to the lack of facilities and human resources. However, Vietnam needs to examine carefully the socio-political, economic, geographical, cultural conditions of each local area as well as the number of population at one administration units for designing the possible model for each local unit. The number of tiers of a local government system is related closely to the geographical conditions, the number of population, the nature of local administration and the consistence with the central level.³⁸⁷

The district government needs to establish the ward offices (OSS model) to provide the public administration affairs as well as the public services to local residents. Significantly, the district local government will decide the number of branch basing on the local's needs and local conditions. However, Vietnam needs to restructure the local government system step by step in order to ensure the model is suitable with geographical and natural conditions of local area. The district that has the big number of population like Hochiminh or Hanoi should introduce the special ward offices (like Tokyo) and the neighborhood local governments (the quasi-governmental organizations). For example, the population of Hochiminh city is the biggest number (around 8 million), especially the biggest number of population at one district is around 572.132 people whereas the smallest is around 68.846.³⁸⁸ If the number of population in a district is big, the district government is impossible to perform the administration functions effectively.

Briefly, Vietnam should abolish the PCI at the commune government and redefinition the legal status of the PCe at commune level. In other words, the district government will carry out the functions of the grassroots level through the branch offices. In addition, the district government will hold power to decide the number of branch offices depend on the population and geographic conditions. The two-tier model enables the local gov-

³⁸⁶ Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No 11/2003/QH 11 Dated 26 November 2003)*.

³⁸⁷ *Local Government in Japan, 2005, 8.*

³⁸⁸ "Dân Số Tại Thành Phố Hồ Chí Minh," *Câu Lạc Bộ Công Dân Trẻ (Youth Citizen Club)*, February 11, 2012, <http://congdatretphcm.com/cdt/news/Hoi-dap-ve-lich-su-truyen-thong-cua-TpHCM/Dan-so-tai-thanh-pho-Ho-Chi-Minh-610/>.

ernment to have more discretion in implementing the administrative functions, especially in the aspect of determining the expenditures and local personnel system.

2.2 The direct election of governor and mayor

In general, local government system includes the executive and council system as a governing body of an area defined by administrative boundary. Local public entities play important role not only making policy for development targets but also in providing public services to local residents. A democratic local government system requires to setting up a mechanism for ensuring the local residents to hold more accountable government. Therefore, direct election the chief of executive organs contributes to democratic values because it creates downward accountability of local units as well as enhances the independence of the mayor or governor. Since 1990s, direct election was adopted by almost former socialist countries because this model enabled the mayors to orient themselves towards the interests and opinions of individual or organization of citizens.³⁸⁹ Thus, Vietnam should introduce the direct election the chief of the executive organs in order to separate more clearly the functions between the PCI and PCE at the same level as well as to enhance more accountability of the chief executive organs to the local residents. In other words, this mechanism also creates more accountable governments as they are responsible directly to voters.

Among advanced democratic countries, Japan adopted a “dual representative system” which indicates that both assembly and chief executive are elected directly in public elections as representative organs by the local people.³⁹⁰ On contrary, Vietnam has followed a “single representative system” in which the council is directly elected by residents and holds powers to elect the PCE at the same level, Therefore, determining clearly the relationship between the council and chief executive is a major factor of democracy and effective management in Vietnam.

Vietnamese authorities also recognized the important role of a direct election in promoting democracy because citizens are able to vote directly for a chairman. For example, Resolution 17-NQ/TW of the 10th Communist

³⁸⁹ Michal Illner, Harald Baldersheim, and Hellmut Wollmann, *Local Democracy in Post-communist Europe* (Leske + Budrich, 2003), 279.

³⁹⁰ Osugi Satoru, *Local Assembly In Japan*, Papers on the Local Governance System and Its Implementation in Selected Fields in Japan (Council of Local Authorities for International Relations (CLAIR), March 2008), 22, http://www3.grips.ac.jp/~coslog/activity/01/04/file/Bunyabetsu-5_en.pdf.

Party on promoting administrative reform also mentioned about the introduction of the direct election of the chairman of PCE at the commune level as a pilot case. Therefore, this mechanism requires Vietnam to amend the 1992 constitution because the current legal regulations regulate the PCI to hold powers to elect the chief of the PCE.³⁹¹

Direct election of the chairman of the PCE will introduce Vietnam into a new state of democracy as well as the limit the current issues of local governments due to its values as follows:

First, the direct election will set clearly line in relationship between the PCI and PCE. The mechanism of indirect election the PCE creates dependent relations and unclear distribution of functions between the PCI and PCE in Vietnam as a cause of ineffectiveness of the public administration at local area. In addition, the 2003 LGL defines that the chairman of PCE must be a member of PCI and elected by the PCI at the same level; therefore, the chairman of PCE is only responsible to the PCI and upward responsibility to higher state organs. Hence, the indirect election also cannot create the downward accountability.

Second, direct election the chief of local administration organs is a way for enhancing more accountable executive organs. Direct election the governor or mayor also requires the executive organ to be responsible directly to residents and enhances democracy at local area. The direct election creates the trust of citizens in local government units because local residents are able to know more clearly about the people they vote for.

Third, direct election the chairman of PCE will revitalize the local democracy. The direct election enables local residents to know better about the candidates and to promote the competition of the candidates transparently. The current legal system does not give local resident more opportunities to know who will be a chairman of the executive organs. For instance, local resident cannot exercise the right to access to information effectively is one of the reasons for limiting the enforcement of slogan “people know, people discuss, people check” raised by Vietnamese government. Therefore, direct election will ensure the chief executive to speak on behalf of local communities and represent for the legitimate interests of local residents, especially in the process of

³⁹¹ “Ủy Ban Thường Vụ QH Kiến Nghị Sửa Đổi Hiến Pháp (Standing Committee of National Assembly Proposed for Amending the 1992 Constitution)”, n.d., <http://vietbao.vn/Chinh-Tri/Uy-ban-thuong-vu-QH-kien-nghi-sua-doi-Hien-phap/20745675/96/>.

dealing with aspects that affect directly to the daily life of residents such as exploitation of the natural resources, the waste disposal or the development projects.

Fourth, direct election the chief of executive organs is also applicable in the case of introducing the two-tier model of local government because it does not break the ‘democratic centralism’ principle. Although the chief executive is not a member of the PCI at the same level, but the law should provide the right of PCI to pass the vote of no confidence in the chief executive officer like Japan’ case.³⁹² By doing so, chief executive is responsible directly to the PCI at the same level as well as to residents. It also sets clearly a line between the PCI and PCE because the chief of the PCE does not carry the function of the PCI’s member and is not able to dominate the activities of the PCI.

In brief, direct election of chief executive makes executive organ more independent in implementing their duties and functions because it can determine clearly the role of chief executive and the role of the council’s member. Hence, the Law on local government should abolish the article 119 which requires the PCE to be a member of PCI at the same level and regulates the direct election the governor and mayor as significant element of promoting democratic and accountable local government in Vietnam.

3. Strengthening local government

3.1 Tightening central’s intervention

Intergovernmental relation is one of the most important aspects for determining whether a system is decentralization or not. In theory, central government is not able to carry out all functions if it does not transfer to local governments. In reality, the central government often keeps the enormous amount of powers whereas duties are carried out by local government; therefore, the intervention and control of the central government are retained as a major measure of management.³⁹³ As Chin-Peng argued that the power of autonomous local government will be weakened by central’s intervention if the laws only determine the functions of the central government.³⁹⁴ In addition, World Bank concluded that Vietnam and China have top-down mechanisms to

³⁹² Satoru, *Local Assembly In Japan*, 22.

³⁹³ Ikawa, *15 Years of Decentralization Reform in Japan*, 5.

³⁹⁴ Chinpeng Chu, Alexander Grasse, and SangChul Park, *Local Governance in the Global Context: Theory and Practice* (Lit Verlag, 2011), 233.

hold accountability of local government; therefore, the role of central government in managing decentralization is very important. Hence, effective decentralization requires central government to have strong capacity in supervising and appraising decentralization as well as ensuring local governments in fulfilling their responsibilities.³⁹⁵ Central government has to limit its intervention in local governments for revitalizing and innovating local self-government; therefore, central government should follow the requirements of local self-government such as: (1) the central government and other related agencies should transfer their powers to local self-government without any intervention and control in order to maintain autonomy; (2) central government should assure the balance development among regions and speed up local economies by relocating industrial network; (3) participation in local policies should be promoted.³⁹⁶ Hence, central's intervention is required to eliminate for promoting effective performance of local governments.

In order to create more independent local government system and prevent central's intervention, Japan has shown its success in promoting decentralization by abolishing "Agency Delegated Function System" as well as regulating the types of central's involvement by revised the LAL 2004, Article 245. The Agency Delegated Function System was abolished in 1991 because it referred to the system in which the chief executive of a local government unit played a role as the branch of the central government. As Hiroshi Ikawa described the system:

A central government minister or prefectural governor had comprehensive supervisory authority over the governor of a prefecture or the mayor of a municipality respectively, and b) the authority of local government was limited in that, for example, local governments were unable to establish their own bylaws, and local government assemblies had insufficient investigative authority. Furthermore, it was also pointed out that between 70% and 80% of the tasks carried out by prefectures, and between 30% and 40% of the tasks carried out by municipalities, fell within the purview of the Agency Delegated Function System.³⁹⁷

In addition, Nobuki Mochida described that in the ADFS, the ministers hold power to command governors to carry out assigned functions, and the ministries also hold powers to control, perform those functions or even remove the governor, if governors do not obey the order of ministries The ADFS illustrated the dependence of

³⁹⁵ World Bank, *East Asia Decentralizes: Making Local Government Work* (World Bank Publications, 2005), 102.

³⁹⁶ Ali Farazmand, *Handbook of Comparative and Development Public Administration* (CRC Press, 2001), 520.

³⁹⁷ Hishiro Ikawa, *15 Years of Decentralization Reform in Japan*, Up-to-date Documents on Local Autonomy in Japan (Council of Local Authorities for International Relations (CLAIR) Institute for Comparative Studies in Local Governance (COSLOG), March 2008), 8, http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/up-to-date_en4.pdf.

the local government in implementing functions as well as the intervention by central government. In addition, Hiroshi stated the reason for abolishment of the ADFS as follows:

Within the above context, criticism of the Agency Delegated Function System was levied particularly in respect of the following points: a) because of it, relationships between central government and local governments were arranged in a hierarchical form; b) because of the detailed directions issued by central government, even if local residents had specific wishes, it was impossible to respond to these in a flexible manner; c) because each central government ministry and agency issued guidance and directions in its own special field, it was impossible to implement policy comprehensively; and d) policy could not be implemented on the basis of the actual situation of regions and localities.³⁹⁸

Obviously, local government cannot have total discretion because central government still controls the local government's activities through the guidance or direction. Nevertheless, a principle of local autonomy does not assure autonomous functions of local public entities if local authorities are required to follow the regulations made by central. Therefore, the LAL also interprets the principles and procedures of intervention by central government for promoting the independence of local units. These principles also prevent freely intervention of central government, shirking of responsibilities between central and local, as well as enhance accountability, capacity of local governments.

Significantly, the LAL stipulates the basic types of involvement such as: the advice, recommendations, demands for submission of materials, consultation; and the demands for corrective measures should be followed by central as far as possible. In addition, the agreements, permission, instructions and execution by proxy are also regulated for the legally-approved tasks.³⁹⁹ Thus, the list of involvement measures as well as the criteria preventing freely intervention of central is a great example to other countries, especially Vietnam to refer to.

In practice of Japan, around 80 per cent of administrative actions are carried out under administrative guidance as it is a preferred means used by Japanese bureaucrats to achieve their policy goals.⁴⁰⁰ Administrative

³⁹⁸ "15 Years of Decentralization in Japan" 8.

³⁹⁹ "Local Government System in Japan", n.d., 61,

<http://warp.ndl.go.jp/info:ndljp/pid/286922/www.soumu.go.jp/english/pdf/lgsij.pdf>.

⁴⁰⁰ See Michael K. Young, *Judicial Review of Administrative Guidance*, cited by *The rule of law in Japan: a comparative analysis* By Carl F. Goodman, page 336).

guidance indicates that is no legal enforcement in case the local public entities do not follow the guidance.⁴⁰¹ Administrative guidance is popular in Japan because the guidance did not violate the local autonomy principle. On the contrary, Vietnamese bureaucrats often use commands as the major measure for achieving an administrative aim, and the local governmental units have no rights to decide to refuse the commands of central's government without legal reasons. In addition, the 2003 LGL does not provide comprehensively the division of functions between central and local. Therefore, central government can exercise its powers and control the works of local governments without any legal restriction. Moreover, Vietnam faces with issues such as shirking of responsibility between central and local, weak performance of local governments, freely interventions by central governments due to ineffective decentralization implementation. Hence, central government faces with difficulties in determining which functions should be transferred to local government. In order to cope with freely intervention by central government, Vietnam should revise the LGL with the main focuses points as below:

Firstly, Vietnam should revise the regulations that enable central government to intervene freely into the works of local governments. For example, article 7 (paragraph 2) provides: the PCe at the lower level is under direction of the PCe at higher level and the provincial level is under direction of the central government.⁴⁰² This regulation indicates the dependence of the local government because local units have to follow the guidance and direction of central. This regulation does not enable local government to have discretion and allow the central or higher level to control over the works of local government.

Secondly, the revised law should abolish the regulations concerning the appointment or approval of local officials such as chief executive and director of field management agencies. For example, Article 119 regulates that the election of members of the PCe must be ratified by the chairman of PCe at next higher level and by the prime minister for the provincial level. Similarly, Article 127, section 3 provides that: the chairman of PCe holds powers and duties in ratifying the results of election of members of lower-level PCe, making decisions

⁴⁰¹ Organization For Economic Cooperate OECD, *Regulatory Reform in Japan* (Organization for Economic, 2002), 56.

⁴⁰² Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No11/2003/QH 11 Dated 26 November 2003)*.

for direct transfer, work suspension, dismissal or demotion of president, vice president of the PCE of the next lower level; approve the exemption and dismiss members of the People's Committee the next lower level; appointment, dismissal, transfer, demotion, reward and discipline staff, state employees as assigned. According to these regulations, the PCE's chairman is under the control and responsible directly to the state agencies at the higher-level. Hence, this regulation creates dependent relationship between the chairman of PCE and the state organs at higher –levels.

Thirdly, the revised LLG should define clearly the functions and duties of each level in order ensures that local government have more discretion in dealing with local issues as well as minimizing the central's intervention. In addition, Vietnam needs to set up independent mechanism in handling with the illegal normative decision of local government. For example, the new law should abolish the Article 127 (section 4,5) for preventing central's control over decision-making power of local government.⁴⁰³ If the higher state organ holds power of administrative jurisdiction, the local governments will not take initiative actions in fulfill their duties and functions. Consequently, central government can control over decision-making power of local unties. Therefore, Vietnam should introduce the mechanism for handling with the illegal normative documents that ensures the independence of local government effectively.

Fourthly, the new law needs to redefine the functions and duties of each level in accordance with the powers and ability of each level. Local government can only perform the delegated effectively if local units have enough revenue resources and the high-qualified staffs. In addition, the new law should enable local government to decide the expenditures independently basing on the specific conditions of local area. The law also need to define the duties of local government in providing information to local residents for ensure transparency of spending the public financial. In other words, the law needs to set a mechanism for promoting public participation in planning making, especially in financial aspect.

⁴⁰³ Article 127 provides that: the chairman of the PCE who holds powers to suspend or annul the unlawful documents of professional agencies under the PCE, of the PCE, and the PCE's chairman of the next lower-level; to suspend the implementation of unlawful resolutions of the Council of lower level and request the PCI at the same level to abolish.

Finally, the new law needs to regulate the type of involvement into the works of local government units as the LAL of Japan does. By doing so, central government cannot interfere freely into the works of local government. Hence, local government has more discretion in performing the duties and functions.

In brief, Vietnam needs to revise the legal framework for local government comprehensively. This law should focus on determining clearly the functions and duties of each level. The law also needs to define the type of central's involvement as key condition for promoting local's discretion and minimizing central's intervention. If successful, the local governments can carry out their duties and functions independently and responsively.

3.2 The building capacity of local governments

If local governments cannot to fulfill their duties and functions, the result of decentralization will be affected; therefore, promoting decentralization requires to building capacity of local governments in performing functions and duties. Countries are under decentralization needs to focus on training and governance mechanism as the two factors of building capacity of local governments.⁴⁰⁴ Vietnam also needs to focus on reforming legal regulations as well as the mechanism for reinforcing the financial powers of local government as well as for retaining the high-qualified local staffs.

3.2.1 Reinforcing the financial power of local government

Countries in the transition period need to reform intergovernmental fiscal relations because local government itself cannot promote its financial powers.⁴⁰⁵ A country needs to reform fiscal mechanism in order to ensure that local government can overcome the critical financial issue and regain the independent management.⁴⁰⁶ As Jennie Litvack pointed out "Strong fiscal arrangements include: (1) procedures for assigning expenditures; (2) methods of assigning revenues; (3) mechanism for balancing budgets; (4) processes for determining planned expenditures; (5) mechanisms for transferring recourses to lower levels of administration or government."⁴⁰⁷ Thus, central government should focus on carry out the distribution of responsibilities and revenue resource n

⁴⁰⁴ Bank, *East Asia Decentralizes*, 47.

⁴⁰⁵ Richard Miller Bird, Robert D. Ebel, and Christine I. Wallich, *Decentralization of the Socialist State: Intergovernmental Finance in Transition Economics* (Avebury, 1996), 6.

⁴⁰⁶ Shinichi Ichimura and Roy Bahl, *Decentralization Policies in Asian Development* (World Scientific, 2009), 35.

⁴⁰⁷ Jennie Ilene Litvack, *Market Reform in Vietnam: Building Institutions for Development* (Greenwood Publishing Group, 1999), 153.

properly because the procedure, method, process and mechanism for assigning revenue and expenditure among governmental system are the major elements for determining effectiveness of fiscal power distribution.

In Japan, despite local autonomy principle, fiscal intergovernmental relations remain some “centralized” features such as grants or financial control.⁴⁰⁸ Japan has carried reforms on the intergovernmental fiscal relations in order to achieve the ultimate purpose of decentralization as well as enable local government to deal with problems such as financial shortage, intervention as follows:

Firstly, Japanese government revoked the “approval” and introduced “prior consultation” and “local discretionary earmarked tax” in FY2000 in order to loosen the control of the central and to increase the revenue resources of the local government. For example, Takero introduced about financial decentralization as follows:

In FY2000, the Japanese government abolished the "approval" of the Minister of Public Management, Home Affairs, Posts and Telecommunications and introduced "prior consultation" with the minister as a requirement for local governments wishing to introduce new general tax that is not stipulated in the Local Tax Law ("local discretionary general tax"). In addition, the government also introduced "local discretionary earmarked tax." As a result, more and more local governments have started levying new and unique taxes all over Japan.⁴⁰⁹

Local government will has more discretion if local authorities hold powers to decide on levy new and unique of tax based on the local conditions. By doing so, local governments can increase their revenue resources. However, Takero also stated if local government have total discretion in levy tax, the tax policy of each local will be various from local to local, therefore, the central government should regulate a list of tax items that local government cannot levy.⁴¹⁰ Therefore, the law needs to provide the list of tax that local cannot levy as the way for promoting discretion of local government in exercising the fiscal powers.

Secondly, Japan introduced the fiscal reform package as “Trinity reform” in 2004 with the aim at improving administrative efficiency and autonomy for local governments. This reform was necessary because the local government tax revenue accounted for only 30% of total national tax revenue while local government played a

⁴⁰⁸ Doi Takero, *A Missing Link in Decentralization Reform in Japan: “Trinity Reform Package,”* PRI Discussion Paper Series (Policy Research Institute, Ministry of Finance, April 2004), 2, http://www.mof.go.jp/pri/research/discussion_paper/ron088.pdf.

⁴⁰⁹ Ibid., 6.

⁴¹⁰ Ibid.

vital role in delivering the major administrative services.⁴¹¹ This reform included three parts: 1) the transfer of tax revenue resources from central to local governments; 2) the reform of national treasure subsidies and obligatory shares; 3) a reform of local allocation tax.⁴¹² Reforming result was expected to increase local revenue, independent decision-making in expenditures (without heavily intervention by central) as well as to enable them to balance their expenditures and revenue.⁴¹³

Vietnam needs to reinforcing the fiscal power of local government as a key factor for ensure local government can deal with the shortages of revenue as well as for limiting the central's control over the expenditures plan of local government. Basing on study the Japan's experiences in promoting fiscal decentralization, this section indicates some suggestion for Vietnam as follows:

Firstly, Vietnam needs to abolish the “application-approval” mechanism in order to minimize the central's control. In addition, local government will have more discretion in exercising the fiscal powers, especially in determining local's expenditures based on the local's needs. For example, the 2002 LSB should enable local governments to hold powers in determining their draft budget without any approval from the Ministry of Finance.

Second, the LSB needs to define clearly the powers of local government to decide the fees and contributions of local residents with specific criteria for ensure that local authorities can utilize fees as the effective instrument for administration purpose. For example, currently Hanoi introduced a very expensive fee for the first time of registration the vehicle because the number of vehicle in Hanoi has increased rapidly. However, this new rate cannot prevent the increasing number because residents can use the vehicles which registered at another province where this fee is lower. Hence, the new fee could not limit the increase of vehicle. Therefore, central entities need to allow local government to levy some specific taxes that are suitable with local conditions as the

⁴¹¹ Ikawa Hiroshi, *Recent Local Financial System Reform (Trinity Reform)*, COSLOG Up-to-date Documents on Local Autonomy in Japan (Council of Local Authorities for International Relations (CLAIR) The Institute for Comparative Studies in Local Governance (COSLOG), n.d.), 2, http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/up-to-date_en2.pdf.

⁴¹² Ichimura and Bahl, *Decentralization Policies in Asian Development*, 29.

⁴¹³ “The Trinity Reform- Clair Fact Sheet”, n.d., 3, <http://www.clair.or.jp/j/forum/series/pdf/fs10-en.pdf>.

effective instrument for public administration purposes. Because, the 2002 LSB defines the tax list that local authority can levy 100% and other sharing taxes.⁴¹⁴

Third, central government should build up financial transparent requirements such as the annually publication of the revenues and expenditures, planning on distribution of financial resources in order to prevent corruption and wrong purpose of spending budget. In addition, the laws should provide rules for promoting participation of residents in the process of the fiscal planning-making process. As a result, local residents can access and evaluate the effectiveness of local government in using local budget.

In brief, Vietnam will achieve the strong fiscal arrangements, if central government makes a bold transfer of power to levy the unique tax, reduce its intervention, and promote public participation. Consequently, local government will have discretion in balancing their revenue and expenditures as well as be responsible for spending their budget effectively. Local government needs to draft budget plan basing on the local needs in order to use budget effectively. In addition, Vietnam needs to enhance transparency and accountability of local public entities in spending local budget.

3.2.2 Improving the quality of the local personnel system

Personnel system affects heavily on the cost of development impact of local governments; therefore, the policies and practices on training, promotion, compensation and retirement are required to ensure the aim at creating, promoting and holding the qualified staffs.⁴¹⁵ In other words, the development of local government results from the work performance of their staffs. Hence, local staffs should be provided with better training to be real service providers, efficient decision-makers and accountable for their works. Therefore, building capacity of the personnel system is another condition for reaching the successful decentralization.

In order to achieve ultimate value of decentralization, Japan also focused on the improving the quality of local government officials, many reforms concerning to staff reductions, salary and allowance, recruitments. The main reforming solutions of Japan in retaining the high-qualified local staffs were summarized briefly as

⁴¹⁴ LSB article 32 (section 1) indicates the tax items which local governments can collect 100%. Moreover, the central subsidy for dealing with the shortage of the local budget remains as one source of local revenue (article 32, section 3).

⁴¹⁵ Michio Muramatsu, Farrukh Iqbal, and Ikuo Kume, *Local Government Development in Post-war Japan* (Oxford University Press, 2001), 23.

follows: 1) Japan has carried out staff reductions as the best way for improving budgetary balance because it accounts for a large part of administrative costs. Since reaching the highest number at 3,280,000 of local government employees in 1994, as a result of 14 years reducing continuously, the number of local staffs dropped to 2,900,000 as of April 1, 2008.⁴¹⁶ In order to achieve staff reduction, local governments introduced programs such as early retirement schemes, retaining the number of the standard annual recruitment and hiring the number of those retiring, and restraining appointment of a replacement when a vacancy happens.⁴¹⁷ 2) Authorities of Japan defined salary as an important measure for encouraging as well as restraining the employees devote to works for governmental sectors. Significantly, Japan introduced a typical feature of salary system in which local government officials get the higher paid in comparison with central government officials.⁴¹⁸ In addition, Japan also established a system of mutual aid associations, which include the short-term and long-term benefits. Short-term benefits include such as the medical care expenses for their staffs and their family members, and long-term benefits refers to the payment of pensions after retirement or to the surviving family members or compensation in the case of implementing duties, which caused a death or damage.⁴¹⁹ Especially, Japan introduce a retirement allowance for preventing corruption as well as increasing spirit and morality of employees who do not want to lose their benefits such as up to 60 months of salary for retirement allowance.⁴²⁰ Therefore, Japan has gained successful in retaining the high-qualified local staffs through the well-paid career and stability of working environment.⁴²¹ 3) Japan has focused on mechanism of recruitment and training as the key measures for building capacity of local government. Japan defined "quality-at-entry" and "on-the-job-training" as major measures for promoting and maintaining the high-quality staffs. For example; prefectures conduct examination as merit based and establish in service-training sectors for

⁴¹⁶ *Local Government in Japan, 2010, 27.*

⁴¹⁷ Tanaka Hiraki, *Administrative Reform in Japanese Local Governments*, No.18, Papers on the Local Governance System and Its Implementation in Selected Fields in Japan (Council of Local Authorities for International Relations (CLAIR) Institute for Comparative Studies in Local Governance (COSLOG) National Graduate Institute for Policy Studies (GRIPS), December 2010), 11, http://www3.grips.ac.jp/~coslog/activity/01/04/file/Bunyabetsu-18_en.pdf.

⁴¹⁸ Muramatsu, Iqbal, and Kume, *Local Government Development in Post-war Japan*, 23,24.

⁴¹⁹ "Local Government in Japan," 29.

⁴²⁰ "Personnel System in Japanese Local Governments", n.d., 7, <http://siteresources.worldbank.org/WBI/Resources/wbi37174.pdf>.

⁴²¹ Muramatsu, Iqbal, and Kume, *Local Government Development in Post-war Japan*, 24.

building capacity of employees.⁴²² In addition, Japan has carried out training by introducing “off-job training”. The Local Autonomy College carries out training that offers employees the practical skills, systematic guidance on legislation and economics, public administration in order to enable them to obtain a better knowledge and training.⁴²³ In addition, Japan recognized that training legal capacity is very important for local staffs in process of formulation the ordinances as well as for improving the ability of local staffs to comprehend laws.⁴²⁴ Significantly, the Law on Local Public Service (LLPS) only determines principles of recruitment or promotion, and each local unit holds powers to make their internal rules for examination and promotion; therefore the local’s rules are applicable effectively. For example, the LLPS defines the local government set up the standards for promotion of local employees.⁴²⁵

In brief, Japan gained success in promoting a high-qualified personnel system because Japan has focused on ensuring benefits of local government employees; as a result, local officials devote to the work as well as try to train themselves to be skillful staffs. Especially, training has played important role in raising the abilities of local government officials to formulate the policies as well as to perform their duties coherently.

In Vietnam, local government needs to focus on promoting the ability of local officials in performing duties and providing public services as the main tasks. Although Vietnam has carried many reforms such as reduction of staffs, renewing salary system, examination for recruitment and promotion were introduced since 1990s; however, Vietnam still faces with challenges such as: 1) the number of local civil servants keeps increasing whereas the quality is not yet improved; 2) the moving of civil servants to the private sectors becomes the serious matter.⁴²⁶ Consequently, local governments face with the challenge in maintaining the high-qualified staffs.

⁴²² Ibid.

⁴²³ Ishikawa Yoshinori, *Training of Japanese Local Government Officials as a Policy of Human Resource Development*, No2, Papers on the Local Governance System and Its Implementation in Selected Fields in Japan (Council of Local Authorities for International Relations (CLAIR), July 2007), 2, <http://www.clair.or.jp/j/forum/honyaku/hikaku/pdf/BunyabetsuNo2en.pdf>.

⁴²⁴ Ibid., 11.

⁴²⁵ “Personnel System in Japanese Local Governments,” 3.

⁴²⁶ Công chức “lô cái khôn” hay nghỉ việc? (Civil servants use “wisdom” or quit the job?) <http://thethaovanhoa.vn/475N20111018070902653T0/cong-chuc-lo-cai-khon-hay-nghi-viec.htm>

Therefore, Vietnam needs to focus on retaining the high-qualified staffs, reforming the salary system, training legal capacity as the main tasks for promoting capacity in performing the administrative functions of civil servants. Vietnam needs to carry out the reform with the main focuses as follows:

First, Vietnam needs to reform the salary system because the current salary system reveals many obstacles in maintaining the high-quality staffs. For example, the payroll system bases on seniority, minimum wage which decided by Government. Significantly, the government recognized that the current salary of civil servant is not enough for them to cover the basic needs of daily life; therefore, central government has carried out the reforming on salary system since 1990s. However, the salary system of civil servant in Vietnam is still a poor-paid system in comparison with private sectors and other countries in region. Therefore, Ministry of Home Affairs recommended to reform the wage system during the period 2012-2020 which aims at covering at least 50 percent of the basic needs as well as ensuring civil servants are able to live by.⁴²⁷ However, Vietnam faces with difficulties in increasing the salary system because of financial shortages. Therefore, Vietnam needs to restructuring local government into two-tier model and reducing the staffs number as the possible way for dealing with financial shortages.

Second, Vietnam needs to redefine the concepts of government's employees in order to determine clearly the person who gets salary from state budget. The Law on Civil Servants and Cadres defines the government's employees including civil servants, carders, and officials of public sectors (schools, hospital) who receive the salary from state budget. Therefore, the term civil servant in Vietnamese context does not refer to the person who works for government, civil servant are also the person who works for socio-political organizations such as the Vietnam Fatherland Front, Women Union, Youth Union, and Labor Federation. Therefore, Vietnam needs to make distinction clearly and defines the specific policy for civil servants who work for government in order to retain the high-qualified of civil servants and control corruption. In other words, the laws should make a distinction in determining the salary, allowance to civil servants (special objects) to ensure the income can cover the basis needs of civil servants as well as the motivation for encouraging civil servant to devote to the works.

⁴²⁷ Ibid.

Third, Vietnamese authorities need to focus on training the legal capacity and management skills for local staffs as the primary conditions for promoting effectiveness of public administration. Local officials need to have basic legal knowledge and management skills because local officials play the vital roles in formulation policy, law implementation as well as law enforcement. However, Vietnam still faces with the increase in the number of administrative complains and disputes concerning to illegal decisions by local officials due to the lack of legal background or corruption.

In general, Vietnam cannot utilize the impact of decentralization if local government lacks of the high-qualified staffs. Local officials play important role in implementing the central's policies as well as in dealing with the needs of local residents directly. Therefore, Vietnam needs to revise the legal regulations on recruitment, training, promotion, salary, and allowance for civil servants in order to retain the high-qualified staffs, prevent corruption, and promote the legal capacity of civil servant for achieving the ultimate objective of PAR period 2011-2020.

4. Enhancing the accountability

Good governance and democracy require local governments to be accountable to its electorate as well as to the representative organ of the residents. In other words, accountability of local government affects directly to the democratic value and effectiveness of public administration. In general, decentralization refers to the discretion of local governments in exercising delegated powers but can cause an abuse powers. For example, World Bank mentioned about accountability as follows: "Public accountability mechanisms safeguard against misuse and abuse of local discretion, but they have imperfections. New forms of social accountability mechanisms, which enable direct engagement of citizens with government, emerge to complement public accountability mechanisms."⁴²⁸ Thus, promoting effectiveness of public accountability as well as enhancing social accountability is the key factors for ensuring effectiveness of decentralization. Based on the current situation of the local government system in Vietnam, enhancing the supervision role of the PCI and promoting the public participation will have a positive result in enhancing accountability of local governments.

⁴²⁸ "Local Government Discretion and Accountability: Application of a Local Governance Framework by World Bank", n.d., 1, http://www.k4health.org/system/files/Local_Government_Autonomy_Accountability.pdf.

4.1 Improving the supervision role of People's Council

As Takao indicated that the local assemblies that represent the resident's interests play a more important role in supervision since the central government transfers powers to local government.⁴²⁹ In Vietnam, the PCI holds powers to supervise the operation of the PCe at the same level as well as to abolish the illegal normative document made by PCe. For example, the 2003 LGL (Chapter 4) regulates the relationship between the PCI and PCe and their practices. However, PCI could not carry out supervising powers effectively due to the lack of qualified delegates and mechanisms for realizing the supervision powers of PCI in practice. Qualified delegates will have a great impact on the quality of supervision while the supervision functions will create more accountable executive organs. In order to enhance the PCI to exercising the supervising functions effectively, Vietnam should focus redefining the member's conditions and operating mechanism of PCI as the key factor for promoting accountability of PCe as follows:

1) The law should prohibit the person who works as a civil servant of the executive organs to be a member of the PCI. In practice of Vietnam, the members of PCI often work for other state agencies as the civil servants. In other words, civil servants who work at public administration system can become the member of the PCI as well as retain status of civil servants. For example, the PCI of Hanoi included the Chairman, Vice-chairman of the PCe at the same level, the Director of Training and Education Department, the Director of Police Department, Director of Transportation Department.⁴³⁰ In addition, the 2003 LLG defines that the chairman of the PCe is elected among the member of PCI at the same level. Therefore, local government could not divide the functions of the PCI and PCe clearly. Consequently, PCI could not exercise the supervision functions efficiently. In reality, PCI could not act as a representative organ of local residents because of dependent relationship between the PCI and PCe. Therefore, Vietnam should revise the law in order to ensure that the assembly members perform their duties fairly without the interest conflictions or intervention. Significantly, Japanese laws

⁴²⁹ Takao, "Participatory Democracy in Japan's Decentralization Drive," 957. *Asian Survey*, Vol. 38, No. 10 (Oct., 1998), pp. 950-967. Published by: University of California Press. Stable <http://www.jstor.org/stable/2645645>
Accessed: 14/05/2012 01:11

⁴³⁰ Danh sách người trúng cử đại biểu HĐND TP Hà Nội khóa XIV (nhiệm kỳ 2011-2016) (List of elected representatives of Hanoi People's Council section XIV (2011-2016)) <http://tuoitre.vn/Chinh-tri-Xa-hoi/439973/Danh-sach-nguoi-trung-cu-dai-bieu-HDND%C2%A0TP-Ha-Noi-khoa%C2%A0XIV-nhiem-ky-2011-2016.html>

prohibit the member of local assembly to hold other current posts such as a member of the National Diet, another local assembly or the head or full-time local staffs.⁴³¹ For example, Article 92 of LAL stipulates the list of posts in which local assembly members cannot hold synchronously as follows: (1) the Member of the National Diet; (2) the member of another local assembly; (3) full-time employee of local public units; (4) short-term or temporary re-employed staffs of the local governments; (5) other posts which prohibited by laws such as a judge according to article 52 of the Court Law; member of education boards basing on article 6, of the Local Education Law.⁴³²

2) Vietnam needs to determine clearly the authority of the administrative agencies at higher-levels and the PCI at the same level in supervising the performance of the chairman of the PCE. Current legal framework stipulates that the higher administrative organs as well as the PCI at the same level also holds powers in supervising the works of the PCE concurrently, and both of them hold powers to examine the legality of decisions made by the PCE. For instance, the PCE is responsible to report his/her performance to the higher administrative agency as well as the PCI at the same level and under their supervision (article 120, 126 of LLG), and the higher organs and PCI also hold powers to remove the chairman of PCE from the office. (article 17, 57, 58 of LLG 2003 and article 20 of Law on Organization of Government 2001). As the result, Vietnam could not enhance the accountability of the chief executive organs due to the unclear distinction in supervision functions between the higher administrative organs and the PCI.⁴³³ Therefore, the new law should regulate only the PCI holds power in dismissing the chairman of PCE for loosening the control of higher public administrative organ and strengthening the powers of the PCI.

3) Vietnam needs to promote the supervision role of the PCI through promoting the quality of the method of supervision. For example, the 2003 LLG provides the five types of supervision actions such as:

- 1) examining the reports of the standing committee of PCI, the PCE, the People's Court and the People's Procuracy;

⁴³¹ "Local Government in Japan," 10.

⁴³² Satoru, *Local Assembly In Japan*, 5.

⁴³³ Sửa đổi Hiến pháp: hướng tới đề cao trách nhiệm của chủ tịch ủy ban nhân dân cấp tỉnh. (Amending the 1992 Constitution towards enhancement of accountability of the chairman of the People's Committee at the provincial level) <http://www.nclp.org.vn/nghien-cuu-lap-phap/200-thang-8-2011/nha-nuoc-va-phap-luat/sua-11-loi-hien-phap-huong-toi-11-e-cao-trach-nhiem-cua-chu-tich-uy-ban-nhan-dan-cap-tinh>

- 2) Evaluating the answers of the chairman of the PCI and PCE, other members of PCE, and the directors of specialized departments of PCE in the question and answer section;
- 3) Reviewing the legal documents made by PCE and other local state organs;
- 4) Setting up monitoring group in an essential case;
- (5) Vote of confidence on the elected people by the PCI (Article 58).⁴³⁴

In reality, PCI often exercise the supervising function through examining the reports and evaluating of the answers. However, the PCI faces with difficulties in examining the accuracy of the reports and the answers due to the lacks of legal knowledge and management skills. Consequently, the PCI could not carry out supervision function effectively.

In brief, the PCI has not yet carried out the supervision functions effectively and efficiently for enhancing the accountability of the PCE. The PCI could not have the strong voice in criticizing and evaluating the works done by PCE as well as dealing with the needs of local residents timely. In addition, the laws do not define clearly the relationship between the PCI and PCE, therefore, the PCI could not represent for local resident in exercise the powers of the supervision independently. Therefore, Vietnam needs to improve the quality of supervision of the PCI in order to promote accountability of the PCE.

4.2 Promoting the participation of citizens

The current need of Japan is reforming toward a more accountable government system in which downward direction to residents and more tightly controlling the governmental official's performance.⁴³⁵ The Japanese Government promulgated a variety of laws and introduced other measures in order to promote transparency and accountability of its regulatory system as well as to create new opportunities for citizens to take part in its system.⁴³⁶ As Yasuo stated "To participate in political processes, local residents must be informed. In Japan, information disclosure had come to be recognized as a right of residents."⁴³⁷ As Taro Yasuo argues freedom of information is a key factor for promoting the transparency of local government and access to information is a

⁴³⁴ Quốc Hội (National Assembly), *Luật Tổ Chức Hội Đồng Nhân Dân Và Ủy Ban Nhân Dân Số 11/2003/QH11 Ngày 26 Tháng 11 Năm 2003 (Law on Organization and Operation of the People's Council and People's Committee No11/2003/QH 11 Dated 26 November 2003)*.

⁴³⁵ "Controlled Decentralization: Local Governments and the Ministry of Home Affairs in Japan by Kengo Akizuki", n.d., 19, <http://siteresources.worldbank.org/WBI/Resources/wbi37170.pdf>.

⁴³⁶ "New Tools for Public Participation in Japanese Regulatory System by Jean Heilman Grier", n.d., 1, <http://www.jiaponline.org/whatsnew/events/2001/april14/JIAP%20Grier%20apr20%20paper.pdf>.

⁴³⁷ Yasuo Takao, "Participatory Democracy in Japan's Decentralization Drive," *Asian Survey* 38, no. 10 (October 1, 1998): 954.

vital condition for local residents to pursue participatory autonomy.⁴³⁸ Therefore, Japan promulgated the Administrative Procedures Act and Information Disclosure Act in order to increase transparency and accountability of the government system in Japan.

In Vietnam, public administrative system follows the hierarchical control model, therefore, the legal system only focus on the upward accountability. In other words, Vietnam still lacks of legal regulations for promoting the downward accountability of local officials to residents. Despite the promulgation of the Ordinance on Grassroots Democracy, Vietnamese citizens could not exercise the rights to be informed and consulted, or rights to inspect, supervise or decide directly effectively due to many barriers caused by governmental agencies as well as citizens themselves.

Vietnam needs to set up the mechanisms which encourage citizens to take part in public administration productively. The legal mechanism needs to ensure that local governments' policies and decisions concerning tightly to the needs of residents. Therefore, Vietnam needs to reform mechanism for promoting public participation as follows:

Firstly, Vietnam needs to ensure that citizen can exercise the right to be informed effectively. Right to access to information is a key factor to ensure the transparency of local governments, and to enable citizens to take part in public administration. Citizens can participate in decision-making of government effectively only when government makes its information available to the public voluntarily and proactively.⁴³⁹ For example, Japan enacted the Local Information Disclosure Ordinance in 1999 that enables citizens to request government to disclose documents as a vital requirement for achieving the aim of promoting transparency and accountability.⁴⁴⁰ Information disclosure has the positive results in changing the way governments and official carry their works as well as changing the way of thinking of citizens as described as bellow:

Information disclosure is changing the way governments and officials conduct their business. Open government is viewed as intrinsic to democratic governance. Citizens are propelling Japan's quite transformation by exercising their new power to monitor government officials and hold them accountable. This surprisingly successful experience has fundamentally

⁴³⁸ Ibid, 959.

⁴³⁹ Daniel H. Foote, ed., *Law in Japan: A Turning Point*, 1st ed. (University of Washington Press, 2008), 301.

⁴⁴⁰ "New Tools for Public Particiaption in Japanese Regulatory System by Jean Heilman Grier," 2.

changed citizens' assumptions about the nature of political power and raised their expectations, forcing bureaucrats and politicians to scramble to keep pace.⁴⁴¹

Every country recognizes the information disclosure and participation of citizens as the major factors of democracy; however, the government faces with challenges in ensuring the government official to make information available to citizens as well as to improve the quality of public participation. Specially, Vietnam faces challenges not only raised by the lack legal mechanism for determining obligatory for government officials in information disclosure but also by the poor conditions for increasing public participant. Although Vietnam recognized the "right to be informed" or "right to access information" as the fundamental rights of citizens by the 1992 Constitution of Vietnam as well as regulated by the Grassroots Democracy Ordinance; however, citizens cannot exercise the right to access to information effectively.

Vietnam needs to make great effort to promulgate a comprehensive legal framework on access to information. The law should determine clearly responsibility of officials in providing documents. In addition, the laws need to regulate the sanctions for officials in case of violating the duty of disclosing information causing the damages to the citizens. For example, Japanese citizens can appeal to a local government review committee that established to deal with disclosure cases or appeal to the courts as the cases of legal enforcement of disclosure when their requests for information are denied.⁴⁴² The mechanism of Japan is also a suggestion for Vietnam to promote the responsibility of local officials in disclosing the information.

Secondly, Vietnam needs to promote the participation throughout the process of planning and decision-making in order to ensure that citizens can discuss with the decision-makers before making plans or decisions that affect citizen's lives. Public participation is a means for citizen to increase their influence as well as for governmental units to handle with the contention issues; as a result, all viewpoints will be considered comprehensively.⁴⁴³ The Law on Promulgation of Legal Normative Act of PCI and PCE regulates the consultation is the compulsory in process of providing the legal normative documents. For example, the drafting agencies shall spend

⁴⁴¹ Jeff Kingston, *Japan's Quiet Transformation: Social Change and Civil Society in 21st Century Japan* (Routledge, 2004), 66.

⁴⁴² Kingston, *Japan's Quiet Transformation*, 45.

⁴⁴³ James L. Creighton, *The Public Participation Handbook: Making Better Decisions Through Citizen Involvement*, 1st ed. (Jossey-Bass, 2005), 17.

7 days for getting consultation on the PCE's decision or PCI's resolution (Article 23, 37 Law on Promulgation Legal Normative Document of PCI and PCE). However, in reality, local residents could not play important role in the decision-making process due to the lack of information as well as the mechanism for defining responsibility of local officials in dealing with the recommendation of citizens. Significantly, decisions or plans made by local governments often reflect the idea of one small group that gets benefits from the decisions or plans which refer to advocacy of policy in Vietnam; for example, in the land-use planning aspect, local governments often make decisions for building industrial zones, factories or development projects without considering the needs of residents; therefore, the number of administrative dispute cases keeps raising gradually.

In order to improve the quality of public participation in the planning and decision-making process, the laws should determine clearly responsibility of drafting committee such as the drafting committee shall have written answers to citizens about their comments. For instance, Public comment procedure⁴⁴⁴ in Japan requires obligations of government entities such as to give public notice of drafting regulations in advance; to provide citizens an opportunity for comments; and to consider the comments when drafting the final regulations. In addition, they are also responsible for make public their views on the comments as well as pointing out the changes in accordance with the comments.⁴⁴⁵

Thirdly, Vietnam should determine the duty of local officials to answer directly to the request of residents. This duty ensures that local residents can hold more accountable government. In practice of Vietnam, local authorities hold powers to make decision for dealing with individual cases; therefore, disposition may damage to right and legitimate interests of local residents. Consequently, local residents have to claim for protect their interests. In order to promote responsibility of local officials and prevent the abuse of state powers, Vietnam should introduce the "public hearing" procedure as the compulsory requirement in the process of making disposition of local authorities. For example, the Administrative Procedure Act of Japan defines 'public hearing' procedure enables the citizens to consult with officials about their applications, and officials hold accountability to explain in detail about citizen's concerns about the process of making the Adverse Disposition. In addition, the Prior

⁴⁴⁴ Japan's Public Comment Procedure (Procedure), which became effective on April 1, 1999,

⁴⁴⁵ Jean Heilman Grier, "New Tools for Public Participation in Japanese Regulatory System", 2.

Confirmation Procedures on the Application of Laws and Regulations by Government Agencies defines the “No Action Letter” system. “No Action Letter” creates an opportunity for businesses to raise the question to the related agencies about their planning activities as well as determines responsibility of agency for answering the questions in public.⁴⁴⁶ Therefore, Vietnam needs to define the duties of local officials in implementing the ‘public hearing’ procedures in the case of making disposition in order to achieve the aim at building up a transparent, accountable government system.

In brief, Vietnam needs to promulgate the comprehensive legal frameworks for citizens to exercise the right to access to information effectively. In addition, local officials needs to bear responsibility in disclosing information, providing the essential measures for local residents to take part in the decision-making or planning making process effectively. In addition, Vietnam also needs to focus on law enforcement and supervising mechanism for ensure that local officials carry out the duty of disclose information efficiently.

4.3 Enhancing law enforcement on state compensation liability

State compensation for liability is a mechanism for protecting the legitimate interests of individuals or organizations in case their damages caused by government officials. State compensation liability indicates the duty of officials to compensate to individuals or organizations in case of causing damages. Government officials will change their way of conduct in duties in a more accountable manner since they bear a liability with possible compensation. Despite promulgation of Law on State Compensation in 2009, state compensation liability is still a new concept in legal theory and practice of Vietnam. In addition, this law did not cover all aspect of public administration and shown some practical issues as follows:

First, concerning to public administration aspects, the LSC only defines the scope of state compensation liability in only 12 cases such as making decisions in sanction, refusing to grant business registration certificates, imposing taxes, charges and fees.(see article 13). Hence, the list of the compensation cases creates the loopholes in practice; for example, the sufferers are caused damages by lack of responsibility of officials or untimely action cannot request for compensation from the state such as the case of Vedan mentioned in chapter three. In the process of implementing public administration, officials conduct many actions that affect directly to the

⁴⁴⁶Ibid,3.

legitimate interests of citizens; therefore, local officials may cause damages to citizens for various purposes. In general, if the law does not determine the liability of compensation in case when official-duty performer negligence their duties, citizens will not be able to claim for compensation. In order to ensure the officials carry out their duties in dedicated manner, the law should not make the list of state compensation cases as the Article 12. For example, the State Compensation Liability Act of Japan provides that: “When a public officer who exercises the public authority of the State or of a public entity has, in the course of his/her duties, unlawfully inflicted damage on another person intentionally or negligently, the State or public entity shall assume the responsibility to compensate therefor” (Article 1).⁴⁴⁷ Thus, the officials must bear responsibility to compensate when exercising their duties that caused damages to another person intentionally or negligently. Consequently, this law can cover all aspects of official-duties performance in practice of public administration; therefore, it is effective instrument for ensuring the officials carry out their duties more responsibly as well as protecting citizen’s interests effectively.

Second, the current regulations did not define effective mechanism for protect the interest of citizens due to the reasons as follows: 1) the LSC defines the duty of the sufferers to request persons competent to settle complaints to examine and conclude on illegal acts of official-duty performers basing on the procedures regulated by the Law on complaints (Article 15). However, the fundamental requirement for raising complaint is the illegal acts of official-duties performers; therefore, sufferers faces with difficulties in request the competent persons to determine the case in the case of inaction timely or negligence. In other words, the current law does not regulate the case such as the negligence of duty; untimely actions; and lack of responsibility as illegal acts in public administration because the law only makes the list of 12 cases; 2) This law also define the mechanism for settlement of compensation basing on the result of negotiation between those agencies and sufferers or other lawful representatives. (Article 19.20) In addition, sufferers also cannot appeal to the court because the Law on administrative proceedings does not determine the claim for state compensation as the administrative cases (article 6). Therefore, sufferers will face with difficulties in bring the compensation case to the Court in case two

⁴⁴⁷ Law Concerning State Liability for Compensation [Japan], 27 October 1947, <http://www.unhcr.org/refworld/docid/3fbc02764.html>

parties cannot reach agreement. Consequently, this law did not set up effective mechanism for dealing with the state compensation cases.

Third, Vietnam also faces with challenges in implementing this law due to the lack of local staffs who are specialized in this aspect.⁴⁴⁸ In general, the Ministry of Justice at central level and the Department of Justice at the local level are responsible for management of state compensation liability. This law did not provide concretely therefore authorities faces with difficulties in the process of implementation and enforcement. For example, government and ministries are responsible for providing the guideline for implementation of this law; however, after one year of implementation, the necessary guidance has not yet promulgated yet. Therefore, Vietnam needs to revise the legal framework on state compensation liability comprehensively in order to ensure that the official-duty performers exercise their authorities more responsibly and accountably.

In brief, state compensation liability is an effective measure for ensure that the official-duty performers will carry out their duties by an indicated manner as well as protect the legitimate interests of citizens. Although Vietnam introduced the Law on State Compensation Liability with the aim at promoting the responsibility of officials; however, this law still reveals many obstacles as mentioned above. Therefore, Vietnam needs to enhance law enforcement on state compensation liability as one of the key factors for promoting accountability of the government system.

5 Conclusion

This chapter indicated the solutions towards building a strong and accountable local government system in Vietnam by examining the problems of the current local governments as well as studying experiences of Japan in promoting decentralization. Significantly, local government is a key factor that affects directly to the democratic value because it plays a vital role in providing public services and responding to the needs of local residents effectively. In other words, citizens often exercise almost their fundamental citizen's rights by setting up the legal relations with the state organs. Therefore, this chapter examined the possible lessons for reforming to-

⁴⁴⁸ Công tác bồi thường nhà nước: Nâng cao trách nhiệm thực thi công vụ (The state compensation: Promoting the accountability in performing the official duty.)
http://moj.gov.vn/ct/tintuc/lists/nghin%20cu%20trao%20i/view_detail.aspx?ItemID=4416.

wards a strong and accountable local government in Vietnam from experiences of Japan. This chapter offers the possible solutions for reforming local government system in Vietnam as follows:

First, concerning the Japanese experience in promoting decentralization, the lessons that are applicable to Vietnam include: (1) introducing the two-tier model local government system; (2) providing the case of involvement of the central government; and (3) introducing direct election of the chief of the executive organs (mayor and governor). The two-tier model of local government system will enable Vietnam to deal with the issues such as overlapping functions, shortages of human and financial resources, weak performance of grassroots level in providing public services. The new structure of the local government system will save the administrative cost and help to maintain a high-quality staff. Significantly, the direct election of the chief of executive organs is the effective way for enhancing more accountable local government. In addition, minimizing central's intervention will allow local government to have more discretion in implementing the delegated functions and duties.

Second, Vietnam needs to build capacity in providing public services, performing the administration affairs in order to achieve the successful decentralization. Therefore, the authorities should focus on enhancing accountability of local government through the public participation, the supervision of the People's Council. Significantly, Vietnam needs to revise the current legal framework for organization and operation of local government as well as the other related documents such as the Law on state compensation liability, law on civil servants, law on administrative complains for determining clearly responsibility of each state organ.

Third, local government needs to have power to determine the local issues independently and responsively; therefore, legal regulations should specify clearly the functions and duties of each local level in order to prevent the overlapping of functions and shirking of responsibility among the various levels. The comprehensive legal system on decentralization is a primary condition for preventing central's intervention and building more accountable local government.

In brief, Vietnam needs to explore the reasons why the PAR and decentralization could not bring the productive outcomes as well as examine the experiences of Japan in promoting decentralization in order to design the possible reform solutions towards a strong and accountable public administration at both central and local levels. In practice, Vietnam has not yet dealt with the two main aspect of decentralization effectively. Therefore,

building the ability of local government in performing the delegated functions and determining clearly the distribution of function between central and local public entities are two key aspects for promoting decentralization in Vietnam as the pathway to the democratic nation.

Conclusion

Overview

Massod Ahmed pointed that: “Central governments around the world are decentralizing fiscal, political, and administrative responsibilities to lower-level governments and to the private sector.”⁴⁴⁹ Decentralization is different from country to country due to the forms and the ways of implementation. Vietnam entered into the socialist-oriented market economy by introducing Doimoi in 1986. This renovation marked the end of the centrally planning regime after more than 20 years of implementation as well as introduced Vietnam into a transitional period. Therefore, the public administrative organs have to change its role in order to adapt with the new period. With the help of PAR in the 1990s, Vietnam became a middle-income country in less than 20 years.⁴⁵⁰ However, PAR has not yet built up an effective, efficient, modern, professional, transparent, accountable, and strong public administrative system. Vietnam continues to face many challenges due to weak transparency, a poor-quality of public services, red-tape, and corruption. Therefore, Vietnam is struggling to build up the public administrative system towards democratic society value. Significantly, Vietnam needs to carry out PAR continuously, especially since it joined the WTO in 2007. On that ground, Vietnam introduced the PAR in period 2011-20 as well as planned to amend the 1992 Constitution in order to indicate its effort in reaching the MDGs.

While examining the experiences of Japan in promoting decentralization as well as the current issues of the public administration in Vietnam, the study recognized that the Vietnamese should focus on reforming the local government system as the key factor for promoting good governance and democracy. Despite PAR, the local government system has been unable to perform the functions and duties independently due to the lack of human and financial resources. In other words, decentralization has not yet strengthened the local units as well as replaced the remnant of the centrally planned economy. Thus, this dissertation attempts to identify solutions in reforming local government based on a study of the experiences of Japan.

⁴⁴⁹ Litvack, Ahmad, and Bird, *Rethinking Decentralization in Developing Countries*, 1.

⁴⁵⁰ “Vietnam Development Report 2012 Market Economy For A Middle-Income Vietnam,” 10.

Research's findings and recommendations

The study set out to explore the concepts of good governance, decentralization, local government and has identified the characteristics of decentralization in the Vietnam's context, and the reasons why decentralization failed to have positive results after a period of implementation. The study also sought to understand the experiences of Japan in promoting decentralization. In general, the study sought to answer three questions as part of the research objectives: (1) Why is there no local autonomy in Vietnam? (2) What are the major issues of the local government system in Vietnam from the legal aspect? (3) What are the possible lessons for reforming towards more accountable local government in Vietnam from the Japan? The three questions were answered through a comparative study.

1) Why is there no local autonomy in Vietnam?

The democratic centralism principle that creates a hierarchical public administration system as well as dependent central-local relationship is the reason why Vietnam could not follow a local autonomy model. Typically, the *commands* and *application-approval* are the key factors for ensure the dominant role of central government. On the other hand, the local autonomy principle refers to independence of local government in performing its duties and functions. In other words, local autonomy ensures that the local government has discretion in exercising the decision-making and financial powers. In addition, this principle requires central entities to minimize their intervention into the works of local organs. From conceptual point of view, the democratic centralism principle opposes with the local autonomy principle; therefore, Vietnam could not introduce the local autonomy principle as the fundamental principle for organization and operation of the public administration system. However, Vietnam can utilize decentralization as an alternative measure for removing the remnants of centralization.

2) What are the major issues of the local government system in Vietnam based on the legal aspect?

The main task of this study is to identify the problems of the local government system in Vietnam. Intergovernmental relation and capacity of local government to perform the duties and functions are the two key elements that affect directly the effectiveness of decentralization. Therefore, the study analyzed the two major issues that remain in central-local relations and in performance of local governments. Chapter 3 examined the

legal frameworks of central-local relationships for exploring the reason why local government lack of discretion in performing decision-making powers and fiscal powers. There are two main reasons as follows: 1) the legal regulations did not define clearly the distribution of functions between the central and local entities; 2) the central authorities still want to remain the dominant role in all aspects of public administration. Consequently, overlapping of functions, shirking of responsibility are common issues in Vietnam. Chapter 4 illustrated the weak performance of local public entities as the major obstacles for promoting effectiveness of decentralization in Vietnam. In addition, the three-tier model of the local government system with a hierarchical relationship does not allow the local authorities to take actions in dealing with issues. Significantly, corruption, red-tape, abusing state power caused by public sectors are the major challenges of Vietnam in progress towards a democratic society.

In addition, the study also explored the reasons why local government in Vietnam still faces many challenges by examining the history and the process of implementing the PAR in the Chapter 2. The study found that the mechanism on organization and operation of the local government system remain unchanged though the market-socialist oriented economy since 1986. Vietnam has carried out the PAR program without strict connection with the decentralization program so that the remnants of the centrally planned economy were not removed.

3) What are the possible lessons for reforming towards more accountable local government in Vietnam from the Japan?

The experiences of Japan in promoting decentralization provide an example for Vietnam because Japan has gained significant success in building up a transparent, accountable, effective, and democratic local government system. Since 1947, Japan introduced the two-tier model and local autonomy principle, this country entered into new stage of economic development. Japan recognized the important role of local public entities not only in developing economy but also in building up a democratic society. Therefore, Japan has carried out PAR as well as decentralization were the major factors for strengthening public administration system. Significantly, experiences of Japan in promoting decentralization through various programs such as: abolishment of the Agency Delegated Function System and the national treasury subsidies; consolidation of the municipalities;

regulations of involvement types of central government; and promulgation of the Decentralization Promotion Law are the possible lessons for Vietnam.

Basing on the identification the problems of decentralization in Vietnam as well as the experiences of Japan in promoting decentralization, Chapter 5 illustrated the possible implications for reforming towards a democratic local government in Vietnam as follows:

First, Vietnam should introduce the two-tier model as well as the direct election the chief of executive organs as the main measure for restructuring local government system. Restructuring two-tier local government system is essential condition for Vietnam in cutting the administration costs, reducing the number of local units as well as promoting capacity of the grassroots level in providing public services and performing delegated functions. Direct election the chief executive organs will enable citizens to hold accountable government as the key element of enhancement democratic value. This reforming solution will respond to the controversial needs of Vietnamese government in struggling to build up an effective, efficient, modern, professional, accountable, and transparent public administration system.

Second, the central government should revise the legal frameworks of organization and operation of the local government system with the aim at minimizing the central's intervention and enabling local units to perform the decision-making powers and fiscal powers more independently. Therefore, the laws need to define clearly the distribution of function between central and local entities. In other words, Vietnam needs to carry out decentralization in a consistent manner within the capacity of each local level.

Third, the successful decentralization depends on the ability of local organs as well as officials to perform the delegated functions. Therefore, the national government should focus on revising the mechanism for recruiting, promoting and maintaining the high-quality staffs.

Last, central entities should revise the legal frameworks for promoting public participation and the supervision of the People's Council in order to enhance the accountability of local government. Public participation is an essential condition for reaching democratic value society. The legal mechanism must enable the citizens to exercise the right to be informed, right to be consulted, right to be known, the right to check effectively. For example, Vietnam needs to promulgate the Law on Access to Information as the primary conditions for ensure

that citizens can hold accountable government as well as promote transparency in public administration. In addition, the central government should examine and revise the legal frameworks for determining responsibility of the official-duty performer more clearly, especially the regulations concerning to the state compensation liability.

In sum, Vietnam has not yet utilized decentralization for abolishing the remnants that remained from a centrally planned economy. The central entities have not yet recognized properly the role of local government in promoting democracy and good governance. In addition, Vietnam also lacks of the unified legal regulations for promoting decentralization. In other words, Vietnam has not achieved the ultimate result of PAR-MR 2001-2010 due to the lacks of a linkage with decentralization. Consequently, Vietnam still faces with issues of corruption, red-tape, poor quality of public services. Therefore, the research contributed a comprehensive study on decentralization theory as well as proposed the possible implications for Vietnam towards a democratic nation. The theme of the research focused on the urgent needs of Vietnam to amend the constitution by 2014 in order to achieve the commitment to the Millennium Development Goals in 2015.

Research's limitation

This study has offered an evaluate perspective model of the local government system in Vietnam by introducing the two-tier model and the direct election of the chief executive organs through examining experiences of Japan. Recently, the discussion on the model of local government has been controversial and debated among between Vietnamese scholars. However, this study also encountered some limitations as follows: 1) This study has carried out with the lack of a baseline survey on the new model of the local government system for determining better the needs to reform as well as the possibility of this model in Vietnam; 2) The study also faces with difficulties in finding the reference documents in Japanese and Vietnamese languages in order to contribute the various approaches of reforming proposals concerning to the research's topic.

Nevertheless, reforming local government in Vietnam is a crucial topic as it reflects the urgent needs of a country in the process of moving towards good governance and democracy. The successful decentralization depends on how decentralization is implemented in special socio-political and economic conditions of a country. Therefore, Vietnam needs to reform local government as a key factor for building up an effective, accountable, trans-

parent public administration system. In brief, Vietnam needs to reform towards a democratic local government system as the pathway for achieving the development targets as well as for satisfying with requirements of integration and globalization era./.

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IV. Legal documents

A. Legal document of Vietnam

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