

CURRENT SITUATION AND DIRECTION TO COMPLETE LEGAL REGULATIONS ON STATE MANAGEMENT FOR FOREIGN NON-GOVERNMENTAL ORGANIZATIONS IN VIETNAM

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Abstract

In recent years, the charity, humanitarian aid, and development assistance activities of foreign non-governmental organizations have become quite important factors contributing to the stability and socio-economic development of Vietnam. Although legal regulations governing these organizations have created the necessary legal framework for management, there are still several shortcomings that need to be carefully studied and evaluated. In this article, the author presents the practical situation, urgent problems and proposes solutions to improve the law in service of state management towards non-governmental organizations in Vietnam.

Keywords: *Legal regulation, State management, non-governmental organization, Vietnam.*

1. Introduction

- Rationale of the study

“Non-governmental organization” is a term used to refer to an organization, association, socio-cultural committee, charity commission, non-profit corporation or other legal entity that does not belong to the State sector and does not operate for profit.

According to Decree No. 12/2012/NĐ-CP dated March 1, 2012, of the Government on registration and management of activities of non governmental organizations in Vietnam, organizations under the governing of the Decree include non-governmental organizations, non-profit organizations, social funds, private funds or other social or non-profit organizations, which are established under foreign laws and carry out development assistance and humanitarian aid activities not for profit or other purposes in Vietnam [1].

NGOs in Vietnam have been implementing diverse programs and projects related to the fields of culture, health, education, environment, conservation, charity, relief, rehabilitation and reconciliation, etc. In particular, many programs, projects and aid of NGOs in Vietnam focus on operating in poor, remote and isolated areas and increasingly emphasized fields in accordance with priorities and directions of sustainable development of Vietnam. Therefore, in order for the activities of NGOs in Vietnam to be conducted under

the provisions of Vietnamese law, the State must perform well the role of state management over this type of organization, especially in the issue of building and promulgating legal regulations on state management for NGOs to ensure synchronization, consistency, and efficiency.

- In terms of theory: At present, domestic and foreign works have not mentioned the theory of perfecting the law on state management for NGOs in a systematic way; if so, it is only an introduction to aspects without a specific approach. The theoretical contents on state management for NGOs have not been mentioned or mentioned but have not been clarified. Theoretical issues of state management for NGOs in Vietnam have not been compared deeply with reality, and have not mentioned new-formed theoretical issues that need to be added in the current period.

- Literature reviews: Through statistical reports on Foreign Non-Governmental Aid in Vietnam (2011-2019), the author has analyzed and evaluated the achieved results limitations of state management for NGOs in Vietnam, as well as gave directions and solutions to improve the legal regulations on state management for NGOs in the future.

- Research objective: The goal of the article is to propose basic solutions to improve legal regulations on state management for NGOs in Vietnam.

2. Method

The article uses the methodology of Marxist - Leninist philosophy to study specific contents. The author exploits the positive values of historical materialism and dialectical materialism. Besides, methods of analysis, synthesis, statistics, and comparison are also used thoroughly. The above methods are applied synchronously with relative independence and combination. The methods are used suitably with each part of the research to ensure scientific and logical character.

The document research method is used thoroughly in the survey of relevant legal documents and Party documents.

Analytical and synthesis methods are employed throughout the article to synthesize data and knowledge for the purpose of assessing the current situation, giving explanations, comments and proposing solutions to complete legal regulations on state management for NGOs in Vietnam.

The author uses statistical and comparative methods in the part of actual situation to clarify data on the activities of NGOs and the state management of NGOs in Vietnam over the past years (data on organizational structure, staff, results of work handling, operating rules, rules on the management and use of NGOs' aid...).

3. Results

3.1. Current situation of legal regulations on state management for foreign non-governmental organizations in Vietnam

Implementing guidelines and policies of the Party and the State of Vietnam on expanding foreign relations in the direction of diversification and multilateralization, facilitating for NGOs to operate effectively and bring practical benefits. The State has issued legal documents to create a legal basis for individuals and organizations to participate in NGO's activities, as well as promulgated numerous policies to facilitate NGO's operation. Thereby, contribute to maintaining political stability and socio-economic development of the country. Specifically:

- Organizational apparatus

Decision No. 765/QĐ-TTg, dated May 22, 2013 of the Prime Minister on consolidating the Working Committee on NGOs (replacing Decision No. 59/2001/QĐ-TTg) has adjusted and added member of the Working Committee on NGOs. [2] The Ministry of Home Affairs appoints the Deputy Minister as a member; added the Vice President of the State Bank of Vietnam as a member.

Working Committee on NGOs has the task of cooperating with the Ministry of Foreign Affairs in building and submitting to competent agencies for the promulgation of legal documents on the operation of NGOs in Vietnam. Besides, there are still some limitations such as:

+ The cooperation among central ministries when introducing NGOs or implementing projects in localities is still loose. In many cases, ministries implement projects in the localities but do not communicate and coordinate with local authorities which cause difficulties for state management.

+ Lack of synchronization in the local management apparatus. Applying different models by localities is to suit the actual conditions in different localities, but in general, the inconsistency also leads to many difficulties for both manager and managed objects. For example, the same NGO operates in different provinces and cities, but they have to work with different agencies in terms of level, authority, and function. This will inevitably lead to complications in cooperation between the two sides. A document issued by the superiors covers the same management issue, but each locality does it differently, leading to warping in its application and implementation.

+ The specialized agencies of the localities are organized according to the inconsistent model, so the work of consulting and handling issues related to NGOs is still embarrassing. Leaders of provinces and cities have not been informed in time, leading to inadequacies in direction and administration. Some localities have not fully exploited the

potential of NGOs to serve the local socio-economic development. Many localities have only one or two officials in charge of NGO work. These people have to take responsibility for advisory and management duties towards NGOs, which causes obstacles for both state management and the operation of NGOs in the locality. In many localities, leaders of specialized units concurrently carry out the task of professional leadership and management of NGOs' operations. For example, in Dak Nong province, the specialized agency is the Department of Foreign Affairs, led by 01 Deputy Chief of the Office of the People's Committee and 03 assistants. In Ha Giang, this task is assigned to the Department of Planning and Investment, and is concurrently held by the Director and Deputy Director of the Department. In Ho Chi Minh City, the Union of Friendship Organizations was assigned this task [3].

- Operating rules

+ Decree No. 12/2012/NĐ-CP dated March 1, 2012, of the Government on Registration and Management of Activities of Non Governmental Organizations in Vietnam (annulling Decision No. 340/TTg).

+ Circular No. 05/2012/TT-BNG dated November 12, 2012, of the Ministry of Foreign Affairs, guiding the implementation of Decree No. 12/2012/NĐ-CP dated March 1, 2012, of the Government on registration and management of activities of non governmental organizations in Vietnam. After more than 9 years of implementation, Decree No. 12/2012/NĐ-CP has revealed certain limitations and is no longer appropriate, requiring timely amendments to catch up with actual requirements, and new guidelines or policies of the Party and State.

For example, the licensing procedures and processes for NGOs still have several unpractical regulations, the implementation process often takes more time than the rule, and the application of information technology in work handling is not much. Decree 12 and Circular 05 remain some overlap in functions, tasks, which increasing the intermediary stage and prolonging the time of receiving, appraising and approving applications for registration certificates to NGOs. The time of issuing registration certificates does not meet the regulations due to the time required for checking and processing at other relevant agencies and localities, which wasting time and causing troubles for organizations. The mechanism is not tight enough to monitor the implementation of NGOs' projects after being licensed. Inspection and supervision are not really close and intensive. Monitoring activities have not been carried out regularly and fully on all contents. Sanctions for violations are not actually strict, leading to the lack of serious implementation by legal entities.

Several ministries and localities have not strictly grasped and complied with legal documents on managing the operation of NGOs. Although operating regulations of NGOs have been built, some localities still welcome some organizations operate without license.

In some provinces, the People's Committee and their local specialized agencies are not even aware of the existence of Decree No. 12/2012/NĐ-CP and Circular No. 05/2012/TT-BNG. Therefore, they still accept projects from organizations that have not been licensed or have not been allowed to operate in the locality. Those local authorities have not yet instructed NGOs to carry out the procedures for receiving permit or have not checked the permits of NGOs when coming to operate in their localities.

- Regulations on management and use of aid from NGOs

+ Decision No. 1225/QĐ-TTg, dated September 17, 2019, of the Prime Minister on “promulgating the national program on strengthening cooperation and mobilizing aid from FNGOs in the period of 2019 - 2025”.

+ Decree No. 80/2020/NĐ-CP dated July 8, 2020, of the Government on management and use of grant aid not in the form of official development assistance of foreign agencies, organizations, and individuals for Vietnam. The Decree clearly states the principles of aid management and use; prohibited acts in using aid; approval procedures and authority for grant aid of different nature. Provisions of this Decree have overcome the shortcomings of Decree No. 93/2009/NĐ-CP and are more suitable to the actual requirements in managing and using grant aid today.

The new Decree has helped to closely and comprehensively manage, and effectively implement programs, projects from grant aid not in the form of official development assistance of foreign agencies, organizations, and individuals for Vietnam. At the same time, these projects contribute to conduct well purposes of economic, social development, non-profit and commercial humanitarian assistance.

Besides the achieved results, the practice still shows some limitations such as:

+ Firstly, we have not fully exploited the potential in attracting aid capital from NGOs. Although it has taken advantage of a large amount of aid from NGOs, compared to the total value of aid funds from NGOs in the world, aid to Vietnam is still low. For example, in 2011, the total value of non-governmental aid in the world was estimated at USD 32 billion (according to OECD statistics); however, the aid of NGOs in Vietnam was equivalent to 0.95%. In 2019, the aid of NGOs in Vietnam was nearly USD 400 million, accounting for 0.55% of the total aid of NGOs (including ODA disbursed through NGOs) [4]. In addition, if calculating the value of aid from NGO per capita, this value in Vietnam is only equivalent to 25% compared to Laos and 20% compared to Cambodia. Thus, the environment to attract and take advantage of NGOs' aid to support the socio-economic development of Vietnam is very large.

+ *Secondly*, contrary to the trend of previous years, aid from NGOs to Vietnam in the last 2 years has decreased slightly. In 2016, the value of aid disbursement by NGOs

reached USD 297 million (down over 2% compared to 2015). In 2019, the value of aid disbursement by NGOs was nearly USD 280 million (decreased over 5.7% compared to 2015, reduced 8.2% compared to 2011 and 2014 - the years with the highest aid value [5].

+ *Thirdly*, in some cases, the effectiveness of NGOs' aid is not truly high. Sources of aid from numerous NGOs (especially organizations with small budgets) are still spreading in many localities with large administrative costs. For example, some NGOs have aid budgets in Vietnam of less than USD 100,000, but have financed projects in dozens of provinces and centrally controlled cities of Vietnam. Aid budgets for each project and each locality are therefore very small, while the staff of these organizations has to travel many times to survey, test and evaluate, resulting in high rates of loss. This leads to a very high ratio of administrative expenditure to aid value.

+ *Fourthly*, the inspection and supervision of NGOs' aid budgets by functional agencies, ministries, localities and organizations of Vietnam are still limited and have not been able to make effective use of the aids. According to current regulations of Vietnam, functional agencies, ministries, localities and organizations of Vietnam that cooperate with or receive funding from NGOs must regularly inspect, monitor and evaluate aid budgets and use of NGOs' aids. However, the failure to inspect, monitor and evaluate NGOs' aid sources and the use of aid, along with the lack of a supporting system of monitoring and evaluation, makes it difficult to accurately and reliably determine the effectiveness of aids from NGOs.

+ *Fifthly*, the aid budgets of NGOs have not been properly coordinated. Some regions and localities are poor and troublesome but receive little aid from NGOs. For example, from 2001 to 2019, the aid of NGOs disbursed to the South Central provinces accounted for less than 10%, the Southwest region received over 7%, and the Central Highlands only constituted 3%. Meanwhile, the Red River Delta provinces accounted for nearly 18%, and the Southeast shared for nearly 13%. [6]

3.2. Direction to Complete Legal Regulations on State Management for Foreign Non-Government Organizations in Vietnam

The 12th Party Congress continued to affirm the motto and great orientation of foreign activities as “Diversification and multilateralization in foreign relations; proactively and actively integrate into the world; to be a friend, a reliable partner and a responsible member of the international community”[7]. Promote and deepen relations with partners, especially strategic partners and major countries that play an important role in the development and welfare of the country, and put the established relationship framework into practice. Actively participate in and promote the role in multilateral mechanisms, especially ASEAN and the United Nations. Actively participate in multilateral mechanisms of national defense and security, etc. Implement synchronously foreign affairs, including politics, security, national defense, economy, culture and society. Improve the quality of consulting

work on foreign affairs and international integration. Enhance the quality of consulting work on foreign affairs and international integration. Strengthen information work on foreign affairs, international integration, create domestic consensus and enlist the support of international friends to meet the requirements of national construction and defense.

On the basis of the guidelines and policies of the Party, the State has institutionalized them into legal regulations and gradually innovated and improved the effectiveness of state management of NGOs to bring about certain results. The objective of the state management of NGOs is to create a legal corridor to support and promote NGOs in making positive and effective contributions for the development of society and economy, as well as limit the negative matters in the operation of NGOs in Vietnam. From those goals, the basic perspective for the State to strengthen the state management of FNGOs is:

- *Firstly*, identify the important position of NGOs in the revolution led by the Party, the role of NGOs has been confirmed in practice; on the other hand, the Party and State also require NGOs to organize and operate within the legal framework.

- *Second*, the recruitment of participants in NGOs must be voluntary. Activities of individuals and NGOs must comply with laws and rules approved by competent state agencies and on the principle of self-management and self-responsibility before the law.

- *Thirdly*, the State also clearly defines the responsibility of the whole political system in creating all conditions for NGOs to operate within the legal framework.

The practice of management activities in recent years shows that the legal regulations on state management of NGOs in Vietnam have been paid attention in building, supplementing and amending, but still reveals many shortcomings and has not kept up with the current situation. Many new-formed complicated issues in the operation of NGOs have not yet been regulated. The functions and tasks of the management agencies have not been clearly defined. Sanctions for handling violations are not enough and lack of rigor. In the current situation, these shortcomings need to be promptly overcome to meet the increasing requirements of management.

In the coming time, relevant ministries should actively advise the Government and coordinate with competent agencies in building and completing institutions and laws on state management of NGOs in Vietnam. The improvement should adhere to the following orientations:

- *Firstly, completing relevant current legal documents, creating a favorable legal framework for the operation of NGOs.*

+ Supplement and amend regulations on registration and management of NGOs' operation:

Currently, Vietnam has a legal corridor for the registration and management of humanitarian and development assistance of NGOs. This legal corridor has basically created favorable conditions for NGOs to conduct humanitarian and development assistance, contributing to ensuring the effectiveness of aid. However, in order to encourage NGOs to expand humanitarian and development assistance, Vietnam needs to pay attention to addressing issues such as:

Simplify requirements for registration file, renewal, addition and amendment of all types of registration papers (including Operational Registration Certificate, Project Office Registration Certificate and Representative Office Registration Certificate). The new legal document should clearly state the required documents and provide the form (such as application form, application for renewal, supplementation, amendment of the registration certificate, and the sample of the designed operation plan in Vietnam, etc).

Simplify the way in which NGOs submit applications for grant, renewal, supplement and amendment of registration papers such as directly at the receiving agency, electronic registration, by post, or by an authorized person.

Stipulate procedures for dossier appraisal and responsibilities of ministries, localities in providing comments with specific and shorter time limits. At the same time, it is necessary to add the circumstance that within the stated time limit, if the ministries and localities do not have any reply shall be deemed to agree with the request for appraisal and comment. As this circumstance is supplemented, it can completely overcome the situation that some ministries and People's Committees of provinces and centrally run cities reply late or do not reply to the agency in charge of appraising application dossiers of registration, extension, supplementation and modification.

The State should stipulate a unique specialized agency to manage NGOs' operations and aid in each ministry and locality. This is especially necessary for provinces and centrally run cities. NGOs and Vietnamese agencies and organizations that cooperate with and receive aid from NGOs only need to contact a specialized agency to handle administrative procedures. This will be more convenient, clear and transparent. Similarly, each ministry and people's organization at the central level needs to identify especial agency to act as a clue in cooperation and receive aid from NGOs, as well as facilitate NGOs to contact for work, settle administrative procedures and seek cooperation opportunities.

+ Develop and promulgate a national program to promote aid mobilization from NGOs

The National Program to promote aid mobilization from NGOs for the period 2017-2019 has ended. Therefore, it is necessary to develop a new program for the next period to 2025 to match the time with the socio-economic development strategies and plans of Vietnam. In the current context, the program to promote aid mobilization from NGOs to 2025 should be developed and promulgated in the following direction:

The program must be associated with the contents and orientations of the national socio-economic development goals such as the Socio-Economic Development Strategy 2020-2025, Socio-Economic Development Plan 2020 -2025, Sustainable development strategy, etc. It is necessary to refer to the country's socio-economic development strategies and plans to encourage NGOs to contribute.

Consistent with the policies and priorities of NGOs in term of field (such as health, education, settlement of war consequences, environmental protection and climate change response, etc.), in term of locality (especially in mountainous, remote and ethnic minority areas, etc.), or beneficiaries (especially disadvantaged groups). Many NGOs are currently giving high attention and priority to environmental protection, natural resources, climate change response and sustainable development.

- Secondly, solutions to improve the initiative and capacity of ministries, localities, agencies and organizations of Vietnam in relation to NGOs

Enhancing the initiative and capacity of ministries, localities, agencies and organizations of Vietnam in cooperation with NGOs is decisive because these ministries, localities, agencies and organizations understand their advantages and disadvantages in cooperating with NGOs.

Accordingly, it is important to focus on the following key issues:

+ *Firstly*, proactively orienting priorities on fields, areas and contents of cooperation with FNGOs through building program to promote aid mobilization from NGOs based on the State's orientation. Such formal prioritization also helps NGOs to proactively plan funding and respond well to actual needs. Besides, it also helps to avoid duplication with the use of other resources, creates conditions to promote the efficiency of different resources in performing tasks.

+ *Secondly*, ministries, localities, agencies and organizations of Vietnam must strengthen to provide and share information on the needs and priorities of the ministries and localities with NGOs. Information sharing can be done through direct activities such as at working sessions with NGOs, conferences, or meetings; through the release of publications and documents. In particular, information can be posted on the internet for NGOs and individuals to search and study more. This measure will help NGOs grasp priorities, proactively plan cooperation and implement appropriate projects.

+ *Thirdly*, ministries and localities should pay attention to building capacity for specialized agencies and their subordinates about the work with NGOs. Training contents for officials include relevant State policies and laws; method to approach and mobilize funding from NGOs; monitor, supervise and evaluate projects funded by NGOs, etc.

+ *Fourthly*, ministries, localities, agencies and organizations of Vietnam must actively search for NGOs that have appropriate fields, locations and priorities for activities, establish relationships and propose specific cooperation programs and projects. Normally, NGOs welcome and appreciate the initiative of Vietnamese agencies and organizations.

- *Thirdly, solutions to improve the operational efficiency of the national specialized agencies in working with NGOs*

Specialized agency is the agency assigned by the Minister and the President of the People's Committee of provinces or centrally controlled cities to receive, consider, publish and manage information on the operational capacity of the organizations and individuals (hereinafter called specialized agency), including:

According to current regulations, the specialized agency for non-government aid relations and mobilization at the central level is the Vietnam Union of Friendship Organizations. Over the years, the Vietnam Union of Friendship Organizations has well performed its assigned tasks. However, in order to continue promoting the aid from NGOs for socio-economic development, the Vietnam Union of Friendship Organizations needs to emphasize the implementation of several core solutions:

+ Strengthening to disseminate information and guide ministries, people's organizations and localities on NGOs, priority fields for aid and the ability to establish cooperative relations, so that they can actively research, approach and establish relationships with potential NGOs. Specific measures include organizing conferences and seminars, publishing and disseminating guidance documents, providing information on official websites, etc. Authorities need to focus on providing information on websites because of its efficiency, quick, economical, and ability to approach the masses.

+ Promote dissemination and guidance to NGOs on legal regulations of Vietnam, including provisions on registration and operation management of NGOs, regulations on management and use of NGOs' aid, and other relevant rules. This activity is extremely significant in helping NGOs to operate smoothly and obey Vietnamese law. Forms of dissemination and guidance include directly instructing by officials; through conferences and seminars; publishing guidance documents, manuals, or handbooks; disseminating guiding documents on the internet (through the official website of the national specialized agency, website of ministries and localities' specialized agency).

+ Stepping up the mobilization of NGOs' aid sources in diverse forms such as providing information, organizing conferences and seminars, working directly, or even with their headquarters. Expanding the work of mobilizing enterprises, private funds, or

government agencies of other countries to strengthen financial support for NGOs that are operating in Vietnam.

+ Organizing regular, periodical and irregular meetings with NGOs to listen to their opinions and recommendations. At the same time, guiding and providing them the necessary information on the priorities and proposals of ministries, people's organizations and localities of Vietnam.

+ Researching and proposing suitable policies to stimulate NGOs to come and implement aid projects in Vietnam. These incentives may include tax concessionary (personal income tax for foreigners working for NGOs, value-added tax, the import tax on goods equipment under FNGO funded projects, exempt from import tax on equipment of representative offices).

+ Researching and suggesting the State in amending and supplementing legal documents related to FNGOs and aid from FNGOs to ensure transparency in procedures, promote aid effectiveness in socio-economic development, but also strictly manage the activities and aid of FNGOs.

+ Selecting and arranging qualified and capable staff to perform the tasks of the national specialized agency in working with NGOs. Vietnam should train and foster staff to improve working capacity so that they can mobilize and guide NGOs when implementing aid activities in Vietnam, as well as guide competent agencies and organizations of Vietnam to build and maintain relationships with NGOs.

+ Planing programs and organizing to train and improve the capacity of officials working with NGOs of ministries, localities, agencies and organizations of Vietnam. Training content may include the situation of NGOs in general; methods and priorities in the operation of NGOs; skills in negotiating, signing, designing, implementing, monitoring and evaluating projects from aid sources of NGOs.

4. Conclusion

Mobilizing aid from non-governmental organizations and managing their activities play an important role in solving socio-economic problems and promoting the sustainable development of the country. The article is a systematic study on the actual situation of state management for NGOs in Vietnam. It can be known that, in the current context of extensive international integration, the article will contribute to clarifying the situation of legal regulations on state management for NGOs in Vietnam. Furthermore, the author recommends key directions and solutions to improve the legal system in order to improve the effectiveness of state management for NGOs in Vietnam in the future.

5. References

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