

Vietnam: Basic Information for Legal Research - A Case Study of Vietnam

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VIETNAM

BASIC INFORMATION FOR LEGAL RESEARCH – A CASE STUDY OF VIETNAM

By

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INTRODUCTION

A. Overview of the Vietnamese legal system

Thanks to an early introduction of a writing system (i.e. *Nôm* scripts - demotic characters), written laws came into being in Vietnam long time ago. Before the 10th century, the ancient Vietnam, then named Au Lac was under a brutal rule of successive Chinese feudal dynasties. The laws of Au Lac kingdom were in fact also those introduced by the foreign rulers.

Since the 10th century, after the country has gained its independence from the Chinese rulers, Vietnamese feudal dynasties have managed to established their control through a centralised system of governments and a well-developed legal system marked by the famous Hong Duc Code that was enacted in 1483 under the rule of King Le Thanh Tong. This legal masterpiece was continuously revised and preserved by Kings Le under the name of “Quoc Trieu Hinh Luat” (Royal Criminal Code) consisting of 722 articles. Despite its name and apart from a substantial bulk of criminal provisions, the Code also, by its virtue, recognises and covers in many chapters and articles a variety of civil transactions such as inheritance, properties, marriage and family, international relation, sales and purchases, contract, taxation etc.

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The second key legislation that has so far been well preserved is the Gia Long Code enacted by King Nguyen Gia Long in 1815. (This Code may also be named “Hoang Trieu Luat Le” or “Royal Laws and Rules”). The Code is found to be extremely enormous by standards of that time including 22 volumes and 938 articles.

According to many researchers, this Code is different from the Hong Duc Code in that while the latter was featured by a greater degree of independence, national identity and traditional values of the Vietnamese in comparison with the contemporary laws of the Chinese, the 1815 Gia Long Code is said to be merely a copy of the Chinese feudal laws, especially those adopted under the Tsing dynasty. However, this is also a colossal set of law including fundamental institutions of the criminal law, civil law, marriage and family law and procedural law etc.

Of course, the generality of Vietnam’s feudal laws may be found in the prevalence and an overwhelming dominance of criminal law in the entire legal system.

During 1958-1945, Vietnam was a French colony. Together with the establishment of a colonial regime, the French rulers also introduced and applied a system of colonial laws to Indochina in general and Vietnam in particular. The country was then divided into three territories each of which was placed under a different ruling system and a different legal system. In Cochinchina (i.e. southern part), French laws were widely applied by the French rulers while in the Central part of the country - a protectorate territory, local laws were allowed to be introduced. In the North of Vietnam (Tonkin) that was nominally an autonomous territory, the French colonialists enacted in 1923 a separate act called the Civil Code of Tonkin. In parallel with this Civil Code, there were four other important acts namely the law on the organisation of the courts (including 37 articles), law on civil and commercial procedures (373 articles), law on criminal procedures (211 articles) and the criminal law (328 articles).

All these aforementioned acts were officially introduced in 1923 until 1945 after the victory of the August Revolution and eradication of the French colonialism in Vietnam.

The current legal system in Vietnam have been formulated and gradually improved since 1945 through the following main phases:

1. 1945-1954. This is a historical period marked by a gain of independence and the foundation of the Democratic Republic of Vietnam. During this period, the first constitution was adopted in 1946 paving the way for the enactment of a series of key legislation as well as the creation of new legal institutions. Outstanding pieces of legislation introduced in this period include the Law on the Organisation of the courts, Election Law, Law on Freedom of Media, right to associations and criminal laws. However, laws and regulations issued in this period were proven to be simple in legislative skills because of a historical lack of professional law-makers as well as low level of public education. In this context, laws were drafted in such a way that made them easy to understand and practical to introduce.

2. 1955-1975. In this period, Vietnam was historically divided into two parts with different political regimes. Therefore, while laws that were introduced since 1945 continued to be in effect in the North, the pro-American puppet regime in the South relied mainly on military laws. In 1959, an amended constitution was adopted in the North to replace the 1946 Constitution as a result of significant changes marked by the mass introduction of a public land ownership (including the State ownership and collective ownership). Numerous liberal and democratic rights were brought to a high level such as the right to education, right to a free residence and freedom of travel of citizens. As the time passed, especially with an expanding relation with the then socialist block and the former Soviet Union, a considerable number of jurists have been trained in these foreign jurisdictions. Consequently, laws introduced in these years were heavily influenced by the socialist-oriented legal system for example the Law on Media, Publishing Law, Law on Co-operatives, Law on Counter-Espionage, Anti-Corruption Law etc. As far as the drafting skills are concerned, this period was marked a new step forward and specific provisions have a greater universality.

3. 1975-1985. This period of time is marked by a national reunification, a unitary State, a single political regime, namely the socialist regime. In 1980, a new constitution was enacted to replace the 1959 constitution. The most salient feature of the legal system in this period is the existence of a centralised, bureaucratic, subsidised and non-market mechanism.

Apart from the 1980 Constitution, fundamental legislation were also promulgated including laws governing violations of public and private ownerships, the Law on the Organisation of the Courts, Law on the Organisation of the Procuracy Institutes, anti-speculation law and so on.

4. 1986 to now. The current legal system of Vietnam may be said to have been established since 1986 when the *Doimoi (Renovation)* policy was first introduced. This policy is characterised by the following elements:

- a. establishment of a market-driven economy;
- b. recognising the co-existence of various economic sectors and different forms of ownership including the State ownership, private ownership, co-operative ownership etc. All economic sectors and types of ownerships are treated equally by the law and are given the same business opportunities;
- c. Though the land continues to be public owned by the State, the land user is authorised to make a long-term and sustainable use of it, to transfer the right to use land to others, to bequest or take mortgage over the value of the right to use land etc.
- d. international economic relations are expanded with special emphasis on an unlimited attraction of foreign investment in Vietnam;
- e. Implementing democracy, freedom of press, respect for public opinions;
- f. maintaining national and religious unity and securing freedom of belief;
- g. ensuring social justice, taking care of the poor, ethnic minorities, disabled and war victims etc.

The 1992 Constitution that is currently in force has recognised these essential peculiarities of the modern Vietnam's society. Pursuant to the 1992 Constitution, a new legal system has taken shape to govern various areas of social relations and provide a relatively complete legal framework for the social transformation. In parallel with law-making efforts, the public administration reform and judiciary reform have also been initiated since mid-1990s and 2000 respectively.

The current legal system may be said to be constituted by the following components:

1. Constitutional law. In governing this area of social relations, apart from the 1992 constitution, there is also a number of other legislation including the Law on the Organisation of the National Assembly, the Law on the Election of the Deputies of the National Assembly, the Law on the Organisation of the Government, the Law on the Organisation of the Courts, the Law on the Organisation of the Procuracy Institutes, the Law on the Organisation of the Local People's Councils, the Law on the Elections of Deputies of the Local People's Council, the Law on Media, the Publishing Law, Law on Religions, Law on Complaints and Denunciations of the Citizens etc.
2. Administrative law including the Ordinance on Dealing with Administrative Breaches, Ordinance on Resolution of Administrative Proceedings, Law on Customs, Law on local administrative agencies etc.
3. Civil law. Including the 1995 Civil Code, Ordinance on Procedures for the Settlement of Civil Cases, Law on Marriage and Families.
4. Economic and commercial laws: including the Commercial Law, Law on Enterprises, Law on SOEs, Law on Foreign Investment in Vietnam, Ordinance on Procedures for Settlement of Economic Cases, Ordinance of Arbitration etc.
5. Criminal law and criminal procedural law: 1985 Criminal Code (as amended in 1999), the 1988 Criminal Procedural Code, Ordinance on Police, Ordinance on Investigation etc.
6. Land Law: including the 1993 Land Law as amended in 2001.
7. Other laws governing social affairs: including the 1994 Labour Code, Ordinance on Education amide healthcare for children, Ordinance on Elders etc.

Additionally, the Standing Committee of the National Assembly and the government also issued a series of legal documents.

B. Acquirement of Oriental and Western Legal Values with Regard to the development of Vietnam's Legal Ideologies

Throughout its long history, the development of Vietnam legal ideologies was influenced and governed by Oriental and Western law ideologies. Generations of Vietnamese, braving the ups and downs of history, knew how to win over the ideological and cultural values in general and legal ideologies in particular - from the nations having their historical relations with Vietnam with the purpose of building their own national character for the sake of survival and development.

The interaction between Vietnam traditional values and Oriental and Western values in the sphere of law took place in history as result of really paradoxical reasons. *First*, it was the imposition' of legal viewpoints and ideologies by an invading country upon an enslaved one. Throughout a millennium of northern [Chinese] dependence, various feudal dynasties of ancient China imposed on Vietnam their legal ideologies as well as their system of law and practices. In the century of domination, the French colonialists also imposed on Vietnam the ideologies of the French legal system. *Secondly*, the acquirement of values from nations having their relations with Vietnam, these values were propagated in Vietnam to create an important ideological basis for the formation of Vietnamese legal values in each specific stage of history.

When studying Vietnamese law, researchers often come to the conclusion that Vietnam's feudal laws were deeply influenced by those from China. As a matter of fact, the influence of Chinese feudal laws on feudal Vietnam in the past took place on two aspects: Ideology itself and the system of law regulations by various dynasties, and legal ideologies and the consciousness of the Vietnam feudal dynasties, governed by Confucian ideology. Since the 12th century, Confucianism was received by the contemporary feudal class as ideological basis for the building of State and laws. Confucian values strongly governed the orientation in law building and content of the Le dynasty. In the 15th century, the penal laws of Le dynasty expressed a Confucian-oriented legal system. By regulations of the law, the kings of Le dynasty wanted to transform the society along the Confucian lines. 'Loyalty-to-the-king' viewpoints such as "Right name decides on the Fate", "Three mainstays of social order", and "Five basic virtues" were clearly expressed in the

formulation of Vietnam feudal laws about social relations.

Among the five sorts of relations: King to subject, husband to wife, father to son, brother to brother, and friend to friend, the first three relations were the most basic ones defined by Confucianism as “Three mainstays of social order”. There were three major components for any other relationship: “The King to use civility in issuing his orders to subjects; the subject to preach loyalty in worshipping the King” (*Ana/ects, Eight Seclusions* 19); “The King must behave like King, subject like subject, father like father, and son like son” (*Ana/eels, Nhan Uyen* 11). The “Three mainstays of social order” relationship was institutionalised into rules to be defended by the law. To defend the King Subject relationship, Vietnam feudal laws elevated the King's position to supreme power and reverence. Any infringement on the interest of the State with the King as head might be seen as disloyalty and could be severely punished by the law. Among the ten big crimes considered as the most dangerous, 5 of them (betrayal, high treason, lack of respect, rebellion, disloyalty) were seen as infringement on the King-Subject relations, conspiring against the dynasty's security. In the “Royal court penal laws,” a whole chapter containing 47 articles was reserved to the “Royal guards” whose purpose was the absolute defence of the King's life, body and ownership. Any illegal action such as trespassing in the Royal ancestors' temple, Royal citadel or palaces (articles 50-56) is punishable by death in the guillotine.

Besides the law regulations adjusting the King-Subject relationship in the spirit of Confucianism, Vietnam's feudal laws had many other statutes and regulating family relations between husband and wife, father and son, all of which was deeply influenced by Confucian spirit regarding family governance. The laws institutionalised the position of women to depend on men: In the family, the daughter must obey her father; the wife must obey her husband; and the widow must obey her son. Article 360 of the Royal court penal laws compelled the husband to divorce his wife should the woman commit what was called “the end of righteousness” (including seven points: Not giving birth to a child, being lustful, not worshipping the husband's parents, being garrulous, thieving, being jealous, having an infirmity). A wife who beats her husband might be punished of detention (Article 481), but a husband who beats his wife was only punished three times less than the case of causing

injury to some other people (Article 482).

The regulations of marriage and family by Vietnam's feudal laws were in fact the institutionalisation of the Confucian ideas with its principle of "managing the family - governing the country - pacifying the world". Many norms and regulations of the Le dynasty in its royal court's penal laws were the very expression of Confucian ethics and morals. Crimes such as "undutiful", "disloyal", "cruel", and "traitorous" figured among the ten big crimes defined by the Royal court's penalty laws. Institutionalizing the ethics of filial" piety in children, the Ly dynasty defined for children several obligations such as: Not being allowed to sue their parents (Article 511); being forced to conceal any sin committed by the parents (Article 504); and to bear punishment by rod beatings in place of their parents (A. 38).

In fact, legal ideologies in Vietnam feudal dynasties were not only influenced by Confucian religious doctrines in shaping up their Confucius-oriented legal systems, they were also influenced by the ideologies of the law makers. Feudal dynasties made the law a tool for the consolidation of the King's power. In 1464 for instance, trying to strengthen his royal power, King Le Thanh Tong said: "The law is the public rule of the State, so everyone has to implement it, remember ..."¹

In the law-makers ideology, the law went hand in hand with reward and punishment. According to Han Phi, "the law is the root of the King whereas punishment is the clue to compassion" (Han Phi Tu – Eight Degrees). Imbued with that law making ideology, many Kings of the Le dynasty unceasingly developed and consolidated all those laws that had been created by their predecessors and previous dynasties. King Le Hien Tong, successor of King Le Thanh Tong, was constantly concerned with the correct and prompt implementation of laws. From what he conceived, the settlement of lawsuits was most important of all as people's life was endangered. He ordered all lawsuits to be urgently tried in the first year of his reign. King Le Hien Tong constantly paid attention to the selection of local mandarins and the rejection of those who were incapable. In 1499, he reformed the court department – a justice agency which originally belonged to the "Guards in brocade dress" – into an independent agency. Military mandarins in the department were replaced by civilians whose main functions were to try criminals for penal offences.

In traditional Vietnam society, enforcement of justice was the key point for the State and people to get closer to each other. Any injustice could easily create discontent, even rebellion, among the population. According to the rule by law, it was not the task of the King to attach special attention to ethics for his self-improvement but that of clearly defining the law and having it proclaimed for everyone to know and implement. The purpose of penal law was to use penalty for punishing the law-breaker. Under this viewpoint, Vietnam feudal laws, especially those in the Ly dynasty, gave prominence to penal law, the important place which was reserved to punishment system.

From the influence of Chinese feudal laws, Vietnam feudal laws, especially those of the Ly dynasty, had applied the Tang dynasty's five-penalty system to punish those who committed offences. The five-penalties system comprises: Reprimand, rod beating, deportation, detention and death (Art. 1 Royal court penal law) were seen as hard punishments. The same was slightly modified in the Le dynasty since rod beating was considered barbarous, as it caused painful physical injuries to the victim, staining the latter's honour and dignity.

The influence of Oriental legal ideologies on Vietnam's feudal dynasties was also defined in another aspect: Imitation of Chinese feudal laws in Vietnam feudal laws. Laws in the Ly and Tran dynasties, especially those of the Le dynasty's Royal court penal code were largely imitation of those from the Chinese Tang and Ming dynasties. Later, the Gia Long penal code was also another imitation of the Tsing dynasty's penal code.

Notwithstanding the influence of Confucian ideologies, the rules by law makers or the imitation of Chinese feudal dynasties' penal code, should by no means be understood as Vietnam's feudal dynasties lost their own character. Vietnam feudal dynasties, in building their own legal system, knew how to acquire the Chinese legal ideologies, methods and contents of the penal code to be applied to the reality of Vietnam, conforming to the local character, its socio-economic development level, culture, tradition, psychology, customs and habits. Such selected acquirement without mechanically copying the legal values of Chinese culture created a real Vietnamese legal system that expressed the nation's features. By comparing with the penal codes of Tang and Ming dynasties, it was found that the 722 articles of the (Vietnam) Royal court penal code contained 161 articles borrowed from the

Tang dynasty penal code and 53 other articles from the Ming dynasty penal code. Thus 408 articles of the Royal court penal code were unique to the laws of Le dynasty and had not been borrowed from any law of any other country.

In structure, the Le dynasty penal code was different from that of the Tang dynasty. The Tang dynasty penal code comprised 500 articles divided into 12 chapters. The Le dynasty penal code, for its part, was made of 722 articles divided into 13 chapters. Comparing the arrangement and the name of different chapters in these two penal codes, it was found that 6 chapters of the Le dynasty penal code did not figure in that of the Tang dynasty (namely in chapters regarding offences against the system, administration, land and property, in supplementary articles on land and property, inheritance, adultery, etc.). Prof. Insun Yu was of the opinion that

The imitation and copy of China law system by the Le dynasty had a specific aspect and its own character. It was of great importance for us to understand the traditional Vietnam society. On one hand, the law makers of the Le dynasty followed the Chinese legal system, on the other, they combined it to their own conditions.²

In the process of law promulgation, Vietnam's feudal dynasties selectively acquired ideologies and laws from the Chinese feudal states while taking as their basis the national features to be adjusted to their own social relations in an appropriate way. Thus, the acquirement and borrowing of Chinese feudal laws by Vietnam's feudal dynasties constituted a lively picture reflecting the Vietnamese life and society at each stage of its history. The content of feudal laws, especially that of the Le dynasty, were strongly embedded with its national character. It was especially so in those regulations related to family or human rights. For example, the laws of Le dynasty defended the legitimate rights of women in their marriage relations. A girl who was engaged but her marriage never happened was allowed to sue at the mandarin's office for returning all offerings in case the boy was infirm, was a criminal or was ruining properties (Article 322). When a man and a woman were married, the husband could lose his wife if he left her untouched for a period of 5 months_ this period could be prolonged to one year if the wife had given birth to a child. The law was not applied to those on assignment as mandarin working away from home. A husband who deserted his wife could be tried of perjury if he tried to hamper her

remarriage with somebody else (Article 308). Many regulations were made to defend the rights and interests of women. For example, girls were entitled to the same inheritance as boys were; wives were entitled to get divorce; all measures that expressed a traditional respect for women in Vietnam. This was in utter opposition to the ideology of Chinese Confucianism, which preached “respect for men and contempt for women.” The laws of Le dynasty did not see as 'undutiful' any act by children to have their own properties or live away from their parents while the latter were still alive. This also meant that there was a considerable difference between Vietnam and Chinese families.

In spite of being influenced by Chinese feudal legal ideologies and models, the various Vietnam feudal dynasties refused to have their laws “sinicised.” What were characteristics of Vietnam was constantly affirmed in its penal codes from one time to another: Its traditional character being the love for people.

The love for people in Vietnam nation was not simply a magnanimous deed of respect and compassion for people in the Ly and Tran royal dynasties; it expressed a resplendent development of legal regulations in the penal laws of the Le royal dynasty. This has been assessed by the historian Phan Huy Chu as “an example of country governance, a rule of conduct for administration over the people.”³

Today, at any time, when dealing with the heritage in terms of Vietnam legal values, we used to mention the Royal court's penal code. This is a code which went far beyond any imitation or influence by the Chinese feudal legal ideologies. It is always considered a product of Vietnam's intelligence, that of a national tradition imbued with a humanistic character throughout a long history. Professor Oliver Oldman, Chairman of the East Asian Law Division at the Harvard College of Law (USA) remarked that:

The law code of the Le dynasty in Vietnam was an immortal work of the traditional East Asian region ... which, in its special centuries, had built up a powerful nation for the defence of the people's legal ownership by a progressive law system that could be compared in many points as equal in function to the law viewpoints of the modern West⁴.

In its history of development, Vietnamese legal ideologies were not just influenced

by Oriental legal ideologies – i.e. laws and ideologies of ancient, feudal China – they were equally influenced by Western legal ideologies from the French colonisation and rule over Vietnam in the 19th century.

First, the way for, Western legal viewpoints and models to be introduced to Vietnam were the invasion by French colonialists. After the French expeditionary corps entered Vietnam in the 19th century, Western laws made their appearance in Vietnam society and step by step the French colonialists imposed the Western law model on a country that was originally alien to these sorts of legal regulations. It could be said that Vietnam's society was influenced by Western laws in a quite differently than was Japan, which quite voluntarily adopted western models. Vietnam's experience was the imposition of French laws as a result of invasion and use of force.

Since Vietnam was a French colony, the French colonialists imposed on Vietnam a legal system from France, and they partitioned Vietnam into three 'countries' under three different law systems.

In Cochinchina which acquired the status as an assimilated “colony,” the French colonialist law system was established in place of that by the Nguyen royal dynasty. A decree by the Governor General of Indochina (January 6, 1903) abolished “the native status” in Cochinchina. Every Vietnamese or Frenchman was to be tried by the French court on the basis of a French penal code. Every civil relation was adjusted along the 'French citizen elements' as proclaimed by the French President.

In Tonkin with the status as a “protectorate,” the French colonialists maintained in the first period two sorts of courts: A Western court to try Western people and a Vietnamese court to try the natives. Later, the Southern royal court was assigned to be a Revise Council, then a sort of Supreme Court. By a decree of 2 December, 1921 from the Indochina Governor General, 4 codes were promulgated and applied in Tonkin:

- The law on tribunal proceedings (37 articles) related to organisation, authority and activities of various tribunal levels.
- The law on civil lawsuits (373 articles) related to lawsuits, trials and execution of sentence.
- The law on criminal affairs (211 articles) related to the application and trial of

criminal cases.

- The penal law (328 articles) defining the principles of trial on offences and punishment.

In 1931, the Tonkin civil code proclaimed: by the Governor General of Indochina was applied in Tonkin. In essence, the law system in Tonkin was decided by the French administration which basically followed the French legal model, somewhat taking into account the characteristics and habits of the natives.

In Annam, the central part of the country, the Gia Long royal code was still applied but the French colonialists gradually forced the Hue royal court to issue documents that amended a number of legal regulations in many aspects according to the rulers' desire. Since 1936, the Tonkin civil code was amended to be partly (1938) and totally (1939) applied all over the central part of the country.

For nearly one hundred years of domination, the French colonialists rejected (or in practice nullified) Vietnam's feudal laws and replaced them with a French legal system that was imposed on Vietnamese social life. The imposition of alien colonialist laws met with a strong popular opposition and created a negative psychology among people regarding Western law. It should however be seen that the introduction of Western law into a feudal country as Vietnam also created an opportunity for Vietnam to be penetrated of those Western democratic legal ideologies.

Overcoming the negative psychology and consciousness of people towards a legal system imposed by the colonialists, several Vietnamese ideologists and revolutionaries had tried to understand the real values of Western European democracy because, as a result and at different levels, they were influenced by these values, too.

It was found that the harsh legal system imposed by the French colonialists in Vietnam ran counter to Western democratic values, values, which constituted an important ideological motive force for social progress in Western countries. The consciousness of people protesting against colonialist oppression and barbarous enslavement - the traditional patriotic values of the Vietnamese nation - were once again strengthened as soon as they met with Western progressive and democratic values. Western constitutionalism –

ideologies on human and civil rights with their slogans of freedom, equality, fraternity and human rights – were acquired by Vietnamese patriots who propagated them among the people and created revolutionary movements among different strata of the population to carry out their struggle for liberation. It was precisely the Western democratic values which, mixed with traditional patriotism and the historic cultural values of the Vietnamese nation, became an ideological force in the struggle against colonialism for independence, freedom and democratic liberties. Western constitutionalism, the ideologies of human and civil rights, had in these circumstances contributed to the creation of new legal ideologies for Vietnamese revolutionary forces in their struggle for national liberation.

Predecessors of the revolution, from Phan Boi Chau to Phan Chau Trinh, Huynh Thuc Khang and the great leader Ha Chi Minh, had acquired the Western legal values in various forms and applied them to the reality of Vietnam, making them a tool for a struggle that demanded the French colonialists to enforce democracy in Vietnam.

Phan Boi Chau advocated that a constitution must be built in Vietnam. He said:

I think our country has never had a constitution before. Now that a constitution is to be made, it would not only mean a good thing, it is necessary, too. There must be a constitution at all cost, and that is inevitable... For my part, I always have a constitution in my heart. That of mine was adjusted along the constitution of monarchies like England and Japan. But to have constitutions like these in the US, Germany and Russia would depend on our people's level to choose what was appropriate before we could have them perfected.⁵

The civil rights ideology of Phan Boi Chau stemmed from Western ideology of civil rights. According to Phan Boi Chau, "every civil right is meant to promote equality." "First, it was the right to vote to choose representatives to the Parliament. All people are entitled to vote, whether they are noble or not, rich or poor, big or small."⁶

Phan Chau Trinh was also deeply influenced by Western constitutionalism. He thought highly of having a constitution, considering it a legal tool for the abolition of monarchy and establishment of people's governance. Phan Chau Trinh maintained that

people in Europe had long practised their regime of “mutual governance by the King and people, which was translated into Chinese as constitutional monarchy”, “the regimes in England, Belgium and Japan of today.”⁷

He compared and affirmed that people's governance was much better than royal governance since with such regimes, people could set up their own constitution and regulations, and decide on agencies to take care of everybody's affairs. What the people wanted could be satisfied⁸.

Phan Chau Trinh's viewpoint on civil rights was strongly influenced by the bourgeois democratic system. He advocated the abolition of feudal monarchy, implementation of democracy, freedom for improvement of people's cultural standard, expansion of industry and commerce, and practice of non violence. Here he counted not on external aid but on support from the colonialist administration itself.

Though deeply influenced by Western democratic values with the wish to establish a constitutional regime and carry out civil rights in Vietnam, both Phan Boi Chau and Phan Chau Trinh failed to succeed because they were restricted in terms of their revolutionary method. But the ideologies they propagated in Vietnam were of a great significance for the preparation of ideological bases that would lead to a new revolutionary trend as it was later promoted by the leader Nguyen Ai Quoc.

With over thirty years of itinerant life abroad in search of a way for national salvation, President Ho Chi Minh largely acquired the cultural cream of humanity, especially the values of Western legal ideologies. From Western legal values, Ho Chi Minh used it as a weapon in the struggle' against the French colonialists' inhuman laws in Vietnam. He - received and inherited Western law values in his own way and requirement, making them his own dream and ideal. We can see from reading his “claims for the Annamite people” written in 1919:

1. Amnesty for all native political prisoners
2. Reform justice in Indochina by providing natives the right to enjoy legal assurance 'as Europeans, abolish all special courts which are being used as tools of terror and oppression against the most faithful part of the Annamite people

3. Freedom of the press and speech
4. Freedom of establishing associations and meetings
5. Freedom to go abroad and of tourism abroad
6. Freedom of education, establishment of technical and vocational schools in all provinces for the natives
7. Replace the regime of issuing decrees with that of laws [constitution]
8. Permanent, delegation of natives, elected by natives, at the French parliament to make it the aspirations of natives known.

In 1922, putting his "claims for' the Annamite people" into plain verse called "the song of demands by Vietnam", Ho Chi Minh (then under the name of Nguyen Ai Quoc wrote): "The seventh is the request for a constitution to be proclaimed. There should be among hundred items, deities of jurisdiction."⁹

From the above, we can see that Ho Chi Minh had approached and was deeply influenced by the legal ideologies of the progressive West with its constitutionalism, the spirit of law and viewpoints on civil and human rights by Montesquieu.

The idea of progressive constitutionalism and the aspiration to establish a democratic constitution by Ho Chi Minh was successfully expressed in the first constitution of Vietnam Democratic Republic led and built by President Ho Chi Minh himself - the 1946 Constitution.

The 1946 Constitution was a skilful expression of values both of constitutionalism and Vietnam. On one hand, it expressed the requirements of a democratic constitution and basic rights for people in the spirit of human, and civil rights. On the other, it reflected the specific democratic path followed by the Vietnamese revolution, which was not stereotyped on any Western democratic model.

In the history of the Vietnamese revolution, the "Claims for the Annamite people" (1919), the poem entitled "Song of demands by Vietnam" (1922) and the "Call to' the League of Nations" (1926) by Nguyen Ai Quoc were a profound application of value human values mixed to the thirst of an oppressed nation for freedom and was the first appearance of Vietnam declaration on human rights, the Declaration of Independence

(1945) which was worthy of the stature of a "Declaration on human rights by the colonial people".

The Vietnam Declaration of Independence (1945) began with the affirmed values of the US Declaration of Independence and the Declaration on human and civil rights by the French bourgeois revolution:

All men are created equal, they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness¹⁰

These human values were acquired and brought to a new height: "Right to equality," "right to life", "right of nations to live happy and free." In Ho Chi Minh's ideology, the basic rights of men should be further elevated and assured by the basic rights of national independence and self-determination. The truth of "nothing is more precious than independence and freedom" in Ho Chi Minh's ideology was the summing up the historical values and of the Vietnamese nation in its long history to freedom and independence.

The same truth can also be generalise for the 20th century's movement for national liberation in the world. It was not only a Vietnamese constitutional platform, a Vietnamese value; it was a universal value of mankind as well.

Studying the history of the formation and development of ideologies, we can see that the values of Vietnam legal ideologies, once acquired from its contact with Eastern and Western values, were developed and elevated to other heights finally become Vietnam's own values. .

It was for that reason that, in spite of having received legal ideologies from feudal China, the laws of Vietnam feudal dynasties were not 'sinicised'; they all bore Vietnam's national characters. Similarly, though having acquired and being influenced by Western law ideologies, even those imposed by a colonial law system, the Vietnamese nation always knew, once its independence recovered, how to build its own constitutions that would able to keep abreast with the times while remaining democratic and purely Vietnamese.

Today, in the cause of national "renovation, the need to build and perfect a legal

system demands a continued acquirement of legal values, experience building and implementation of law in the world to adapt them to the reality of our country.

Most legal branches in our country's law system, in conditions of a market economy, are built on comparison, consultation and acceptance of those rational legal values from many countries in the world, especially from developed market-economies in Europe.

The first civil code of the Socialist Republic of Vietnam (promulgated in 1996) was not simply the reflection and definition of ownership relations in Vietnam's socio-economic conditions, it was also the acquirement of principles from the Roman-German civil code which originated from the 12 law tables of ancient Rome. The acquirement of European civil legal values also finds its expression in the norms, structures and disposition of chapters in the Vietnam civil code.

The law on commerce proclaimed in 1997 was an important step forward in the efforts to bring trade, relations into the adjustment of law that conforms not only to the characteristics of Vietnam's market economy and its possibility of joining in the international trade relations, but also to the law standards as affirmed in the international trade laws, international customs and laws of many other countries, Important institutions in Vietnam's trade law, businessmen (individuals and companies); properties used in business activities, commercial affairs (transactions) are all built on the basis of consultation and acquirement of values from the trade laws of many European countries.

In the process of building and proclaiming draft laws in the economic field, experiences in the outlining of laws regarding economic relations with countries in the region and the world all had been consulted in the spirit of searching for the optimal. The laws on various companies, economic contracts, in the fields of finance, banking, credit, all expressed a large acquirement of law values from many countries.

In the field of formal laws, Vietnam laws acquired the principles of democratic litigation common in the laws of countries applying the Roman-German system. Penal lawsuit principles like: Public trial, equality before the court, assuring the right of defence for the defendant and the accused, not-guilty deduction etc. are being defined in Vietnamese laws regarding penal lawsuit as influenced by the principles of penal trial in various European countries.

The procedures for settlement of civil cases, especially those in economic and commercial disputes, are defined in Vietnamese laws, all on the basis of consulting experiences setting up regulations of formal legislation and activities by juridical agencies in many countries of the world. Principles and procedures in the settlement of disputes in civilian, economic and commercial fields in the form of court and arbitration of Vietnam laws have content basically similar to those international law regulations and customs on the settlement of disputes.

The process of development of a market economy in Vietnam had on different levels integrated Vietnam's socio-economic life in that of the region, an integration of Vietnam's laws step by step to the regional and international legal life.

The basis for this legal integration was the same traits in fields of Vietnamese law towards that of countries in the region and the world. The influence and process of introduction of several Oriental and Western democratic and progressive legal institutions to Vietnam have contributed to deeply improve the legal system. The system of legal norms which were subjective and voluntary in the period of the centralised economic mechanism had changed towards a legal system of a market economy. It was the acquirement of foreign legal values that created similarities to the laws of countries in the region and the world, thus providing conditions for Vietnam to join the regional and international organisations, but also increased the attraction to encourage foreign investors to invest their capital in Vietnam in order to strengthen the possibilities of international cooperation.

At any rate, Western or Oriental values cannot substitute the Vietnamese values. They merely constitute as precious supplements to our own efforts in building up a Vietnamese legal system.

C. Hierarchy of Law

The following scheme shows the hierarchy of law in Vietnam

Issuing institutions	LEGAL DOCUMENTS
National Assembly	<ul style="list-style-type: none"> - Constitution, Laws - Resolution - Declaration - Protocol and stenography of National Assembly Sessions. - Paper on opinions on the law draft of the member of NA. - Legislative initiatives on law drafts. - Protocol on interpellation. - Report on the opinions of electors on the activity of NA members - Report on inspection on complains of citizens.
National Assembly Standing Committee	<ul style="list-style-type: none"> - Ordinance - Protocol of SC meetings. - Decisions. - Legislative initiatives on law drafts
National Assembly Commissions and Committees	<ul style="list-style-type: none"> - Report on checking law drafts and legislative initiatives. - Legislative initiatives on law drafts.
President of Vietnam	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Annual report. - Ordinance
Government	<ul style="list-style-type: none"> - Decree - Resolution - Decision of the Prime Minister. - Directive of the PM - Annual report - Legislative initiatives on law drafts
Ministries	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Circular of the Minister
Supreme Court and other courts	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Annual report - Sentences, resolutions and decisions. - Evaluations on the cases and practicing judicial activity
General Prosecutor Office	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Annual report - Decisions. - Protest.
Vietnam Fatherland Front and other mass organizations	<ul style="list-style-type: none"> - Legislative initiatives on law drafts - Petitions
Local authorities	<ul style="list-style-type: none"> - Resolutions - Decisions

Legal agreements, economic agreements or treaties with legal content signed between Vietnamese Government and foreign governments are also need to be researched. For example: Treaty on Commercial relations between Vietnam and the USA, Treaty on legal promotion between Vietnamese Government and Chinese Government.

I. HOW TO FIND LEGISLATION

A. Publication of legal documents:

- Among the above-mentioned documents, the legal documents issued by National Assembly, the National Assembly Standing Committee, Government, Ministries and Prime Minister in the period from 1945 up to now are published on State Official Gazette (Cong Bao)
- Other documents, up to now, are archived at their own issued institutions, but not published on common and only one source like Cong Bao. For instance: one wishes to look for documents of Hanoi People's Committee, they only can find those documents and read only at the office of that People's Committee.
- The same situation with Court sentences, resolutions and decisions. In Vietnam now, the court legal documents usually don't have a common official form. Each court has its own form, either paper-printed or even hand-written. These documents are not open for public, but only archived at the offices of the courts. However, in some specific cases, for example: for research purpose, a student or a professor of a university staff can read these documents at these Courts if they are introduced by their faculty, school or institution.
- In addition, there are few laws and codes are translated into English. For example: the Civil Code of Vietnam translated by Phillips Fox Law Office in Hanoi in 1996.

B. Legal specialized library system

These libraries belong to legal specialized institutions are considered as valuable centers for sources of legal documents. The biggest ones are:

- Center for Information, libraries and academic research, which belongs to the National Assembly Office with more than 12,000 books.
- Ministry of Justice Library: 11,000 books, including more than 5,000 books published in Vietnamese.
- Institute of State and Law Library: 19,000 books, including more than 5,700 books written in Vietnamese.

Besides, all research and training institutions and faculties and universities relating to legal sphere in Vietnam, such as Hanoi National University School of Law, Hanoi Law College, Ho Chi Minh city National University School of Law, etc., have established legal information system or legal materials libraries, but basically it is just for simple reference purpose.

C. Computerization of legal information system:

Currently in Vietnam, there are law databases as follows:

- Database of legal research projects and programs at the national level, which are registered at Ministry of Science, Technology and Environment, National Science and Technology Institute.
- Database of commercial information at the Center for Commercial information, including legal information documents of Vietnam relating to commercial and economic sphere, circulated by transmitting through the network.
- Electronic database systemizing the legal commercial documents and company and enterprise files and records published by Vietnam Chamber of Commerce and Industry.
- Database of legal documents of Vietnam published by the National Assembly Office Library Information Center. The Center has published a CD-ROM consisting laws, decrees from 1945 and legal documents issued by Government

and Ministries from 1986 up to 2000 titled “Vietnam Law Database 2000”. This Center has also published a CD-ROM titled “Your lawyer” for legal assistance in general and simple knowledge of law for people. (Vietnam law database website: <http://www.vietlaw.gov.vn/>)

- Electronic database of legal library established by the National Assembly Office Library based on CDS/ISIS software of UNESCO.
- Database of foreign law information for reference: exist at some centers for cultural exchange between Vietnam and foreign countries, at Science and Technology Information Institute of Vietnam, at some consulting organizations in Vietnam in the form of LEXIS, NEXIS, WESTLAW (English) database or PARDOC and Alliance Francaise (French) database on the internet.
- Vietnam Law Database by Khai Tri Software Company: consisting the legal documents mainly from 1986 up to now.

II. OTHER MATERIALS

A. Village regulations (Huong uoc)

From the feudal time until now, beside the intellectual legal documents system issued by governmental authorities, there are village regulations.

Village regulations do not belong to the legal system of Vietnam, but they are self-regulation documents in the villages – the smallest community unit in the population. The position and role of village regulations are important in contribution to administration and management of the society. Village regulations have been used as a supportive and supplement instrument for the laws of the State and have embodied the spirit of ownership of the community of residents in a hamlet or village. For this reason, to study the Vietnamese legal system, the village regulations are needed to be understood too.

In Vietnam now, there are thousands of villages. Most of the villages have regulations. In order to expand democracy, the people in a commune, village, or hamlet must jointly discuss and form village rules or regulations on civilized way of life, cultured families,

procedures for marriage or funeral and so forth in conformity with the new way of life, the nation's fine traditions and the laws of the State. Therefore, for researching Vietnamese legal system, we need to gather and analyze village regulations.

With respect to old village regulations, depending on the practice of each locality, village, commune, and on the team or individual assigned with drafting, village regulations were named Huong Uoc, Khoan Uoc, Khoan Le, Huong Le, Huong Khoan, Huong Bien and so forth. Nowadays, the majority of villages call their regulations "Rules of a cultured village". The conception of "cultured village" which was initiated by the cultural authority of former Ha Bac Province is a matter under discussion. Therefore, many villages have prudentially called their regulations "Village rules" or "Rural rules." Some villages give them such specific names as "Regulations on Formation of a Civilized Way of Life and Restoration of Rules and Social Order."

Although names of village regulations are not the same, their contents have been quite similar, including rules relating to all aspects of life in each village, and their form is all in writing. Normally, village regulations include a preamble (outlining the social situation and issues referred to in the contents of the village regulations) and chapters consisting of specific articles (governing each issue relating to the life of each village or commune).

Since there are a big number of village regulations, for the purpose of studying they are needed to be collected with the big efforts and require a big time budget. Usually the village regulations are collected with the following methods:

- Collect old village regulations and mobilize number or group of people who can use Demotic script (Ancient Vietnamese script) and Chinese characters (Han script, Han ideograms).
- Conduct the collection, meetings, interviews and exchange of views with the local authority, old people, village patriarchs and heads of mountainous villages on each article of both old and new village regulations, their background, their application in practice and the effect of old village regulations on the current social life.
- Selecting the villages: following the sociological survey methods, the

systemization of village regulations should be conducted national wide: on Northern, Central and Southern parts of Vietnam. At each part, pick up the most typical village, which is famous for Huong uoc.

B. Publication on the legal matter

Monthly publications and reviews (magazines)

In the legal field, there are magazines such as:

- State and Law Review issued by Institute of State and Law.
- Legislative Studies Magazine issued by National Assembly Office.
- Jurisprudence Review issued by Hanoi Law College.
- Judiciary Review issued by the Supreme Court.
- Prosecution Study Review issued by General Prosecutor Office.
- Democracy and Law Review issued by Ministry of Justice.
- Law Forum issued by Vietnam Lawyers Association (in English and French).

There are some daily newspapers on the legal matter such as:

- Law Newspaper issued by Ministry of Justice.
- Law and Society issued by Vietnam Lawyers Associat
- Law Newspapers issued by Legal Department of Ho Chi Minh City.

Legal dictionaries and textbooks

Dictionaries:

Nowadays in Vietnam, dictionaries are important tool for researchers and anyone who studies Vietnamese law. Particularly, some of typical characteristics of Vietnamese language in general, especially Vietnamese legal language, are:

- Multiform in the unitedness. Although Vietnamese language is the only one official national language, it has many expressions.
- Import many Chinese-rooted vocabularies, especially in legal sphere. From

historical aspect, ancient laws of Vietnam have strong and deep influence from Chinese feudal laws.

Because of these features, there are 2 main types of dictionaries relating to legal matters in the dictionary system:

Encyclopedical and descriptive dictionaries

There are 3 sets of dictionaries as follows:

- The Vietnam Great Encyclopedia consists of 4 volumes published in Hanoi under the National Encyclopedia Consult in period of 1995 – 2002, including near to 3000 legal definitions.
- Legal dictionary published by Vietnam Lawyer Association published in Hanoi 1997.
- Law Dictionary published by Hanoi Law College in 1998.

Foreign language – Vietnamese dictionaries of legal definitions (up to now only English-Vietnamese, Russian-Vietnamese, French-Vietnamese):

- Russian-Chinese-French-Vietnamese Legal definition comparative dictionary published in Hanoi 1971 by Institute of State and Law of Vietnam.
- English - Vietnamese Legal dictionary published by Social Science Publishing House, Hanoi 1994.

Textbooks:

At present, there are some complete law textbook sets belonging to law faculties, law schools, law colleges and other academic institutions.

There are some textbook sets such as:

- Textbook sets for undergraduate students published by Hanoi Law College.
- Textbook sets for undergraduate students published by Hanoi National University School of Law.
- Textbook sets for undergraduate students published by Ho Chi Minh city National University School of Law.

- Textbook sets for graduate students published by Institute of State and Law of Vietnam.
- Textbook sets for undergraduate students published National Academy of Administration.

C. Judiciary and Law implementation practice

If all the legal documents and courts decisions are the formal side of Vietnamese legal system, the judiciary and law implementation are the legal realities. For this reason, in my opinion, research on ones legal system is not just to study the legal document collection and analysis, but also is to grasp the information about such reality. We need a correct method in order to have this information. The methods for these two components of the legal system: Judiciary and Law implementation are different, too.

Subjects of the study

(a) Study to determine the cases and level of cases:

- The number of application, decisions, and pending by levels such as the first, the second, the third, reexamination, the rate of criminal, civil and administrative cases.
- The number of acceptance, decisions, mediation, reconciliation, dismissal, pending in the following cases:
 - + Civil cases: contracts, debtor-creditor, domestic relations, inheritance, real property, damages, intellectual property, etc.
 - + Labor cases: labor contracts, wages, workers' compensation, collective bargaining agreements, labor disputes, etc.
 - + Administrative cases.
 - + Criminal cases.

(b) Study of parties' view points with regard to the Court system

Reason for choice of the court:

- The reasons for choosing or not choosing the court system.

- Whether there are any institutional constraints on the existing court system?
- Whether any cultural or mental factor influences the choice of litigation?
- Whether the cost and time for litigation matter?
- Does the existence of out-of-court dispute resolution facilities influence the parties' choice?

(c) Study of reputation of the Court:

- Whether people trust the courts?
- Do people expect the courts to resolve their disputes?
- Do people expect to get/receive/obtain the fair resolution at the courts?

(d) Study of problems of the Court system: Case backlog, corruption of judges, and any factor, which hinder enforcement of judgments.

(e) Study of legal professionals:

- Number of professionals
- Professional education
- Form of activity, etc.

(f) Study of law implementation level:

Study the law consciousness of citizens and legal professionals.

Methods of studying and collecting of the legal information from the judiciary and law implementation practice:

(a), (d), (e) can be approached by *statistical method*.

To study (b), (f), we need *sociological survey methods* (including interview, questionnaires)

Statistical method:

Now the judicial statistical data system exists in all the courts and institutions such as Prosecutor Office, Police and law firms. The data can be obtained through this system. However, in my opinion, this system still has some weak points as follows:

- Court sentences and decisions and statistics data on the cases are not open for public use.
- This system is not yet uniquely centralized. Therefore, there are many differences in data's degree of accuracy and even contrast each other.
- The main part of data is on paper-printed or even hand-written files. The computerization is not yet popular spread. The only computerized data is now data archived at Police departments as internal information system. For this reason, the data is hard to approach.

Sociological survey methods:

Sociological surveys are the most appropriate methods for the practical issues and the issues relating to legal consciousness. First, it is necessary to make correct questionnaires. Secondly, we need the sociological survey teams. Then, choose the appropriate base for survey such as: adequate numbers of professionals, the number of cases for evaluation, appropriate representable locations or regions. Finally, set up and arrange several numbers of sociological survey projects and teams.

(See Questionnaire sample on the next page)

Sample of a typical Questionnaire used in a sociological survey of one research institute

Question 1: How is your opinion on investment environment in Vietnam?

- Attractive
- Used to be attractive before
- Less attractive comparing with other countries in the ASEAN region
- Others

Question 2: Which factors influence an attractive investment environment?

- Improved legal system
- Open policies
- Large market
- Good infrastructure
- Cheap manpower
- High intellectual level of the society
- Others

Question 3: Investment level for the last 2 years has decreased. Its reason is:

- Rigidity of 1996 Law on Foreign Investment in Vietnam
- Regional and international financial crisis
- Low competitiveness of Law on Foreign Investment of Vietnam against other countries in the ASEAN region
- Land rent price higher than other countries in the ASEAN region
- Investment incentive policy is wrong
- Management level of local authority is low
- Bad law implementation
- Others

Some other methods

The legal system can also be understood at the historical aspect. Correspondingly, it can be approached with *historical study method*.

The legal system also can be reached by comparing the Vietnamese legal system with other foreign legal systems. The main method will be used is *legal comparative study method* – one of the popular methods in Vietnam now, which recently used in books and articles by researchers and scholars. I think it is one of the important methods of Vietnam legal system study.

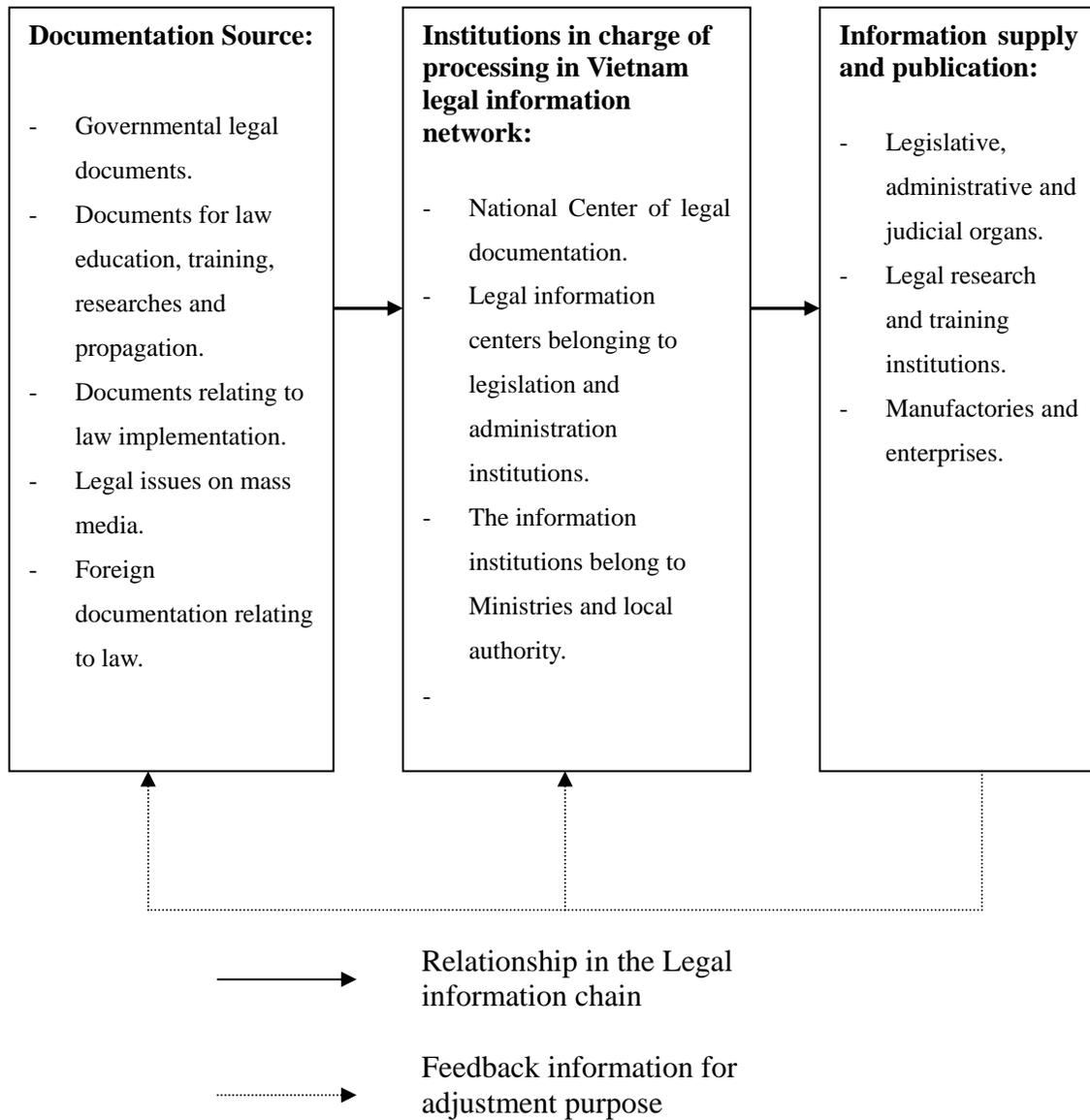
At the historical aspect, the Vietnamese legal system from the ancient time up till now is the open system. In the ancient time, this legal system has been influenced strongly by the ancient Chinese legal system. In the French colonial time, it has been influenced by continental legal system (civil law system). In the period from 1945 to the 90's of the XX century, the Vietnamese legal system has been influenced by the Soviet legal system. Currently, Vietnam is in the period of transition to the free market economy and international wide economic cooperation. There are influences of other foreign countries and international organizations. For example: regulations of WTO, AFTA, EU, etc. This process is the acceptance of legal concepts, legal norms and institutes, and experience exchange. Therefore, the historical study and legal comparative study methods allow us to understand better the current legal system of Vietnam, as well as its future legal system, its development direction through researching the interaction between tradition and modernization, through studying the process of receipt and transplantation of law.

CONCLUSION AND PROPOSALS:

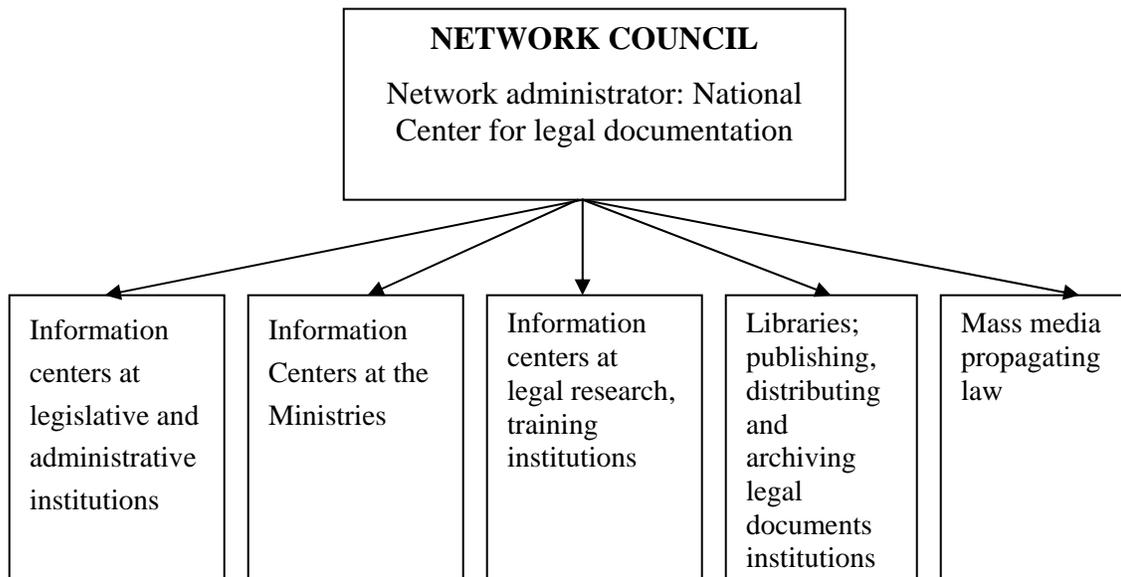
Legal information system in Vietnam now is still a closed and non-developing system. For that reason, it cannot meet the social and individual needs in searching for legal materials and specially is incompatible with the current international trends.

Here are my proposals summarized in the following illustrations:

VIETNAMESE LEGAL INFORMATION SYSTEM MODEL

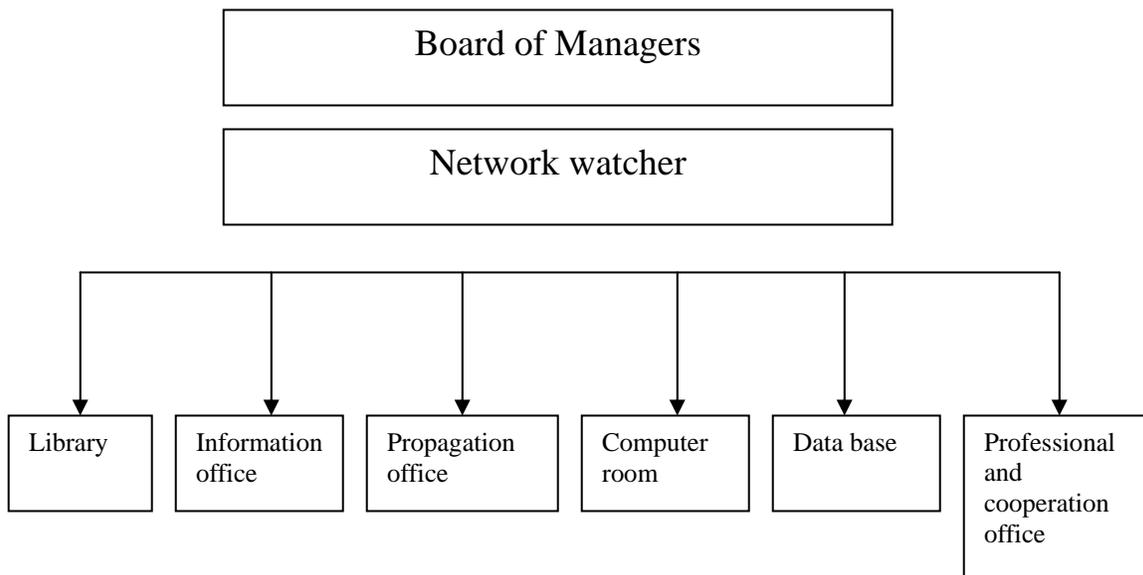


LEGAL INFORMATION NETWORK IN VIETNAM



MODEL FOR THE NATIONAL LEGAL INFORMATION CENTER

Manager of Legal Information Network of Vietnam



ENDNOTES

- ¹ *Comprehensive History of the Greater Vietnam Land*, p, 785.
- ² *Insun Yu: Law and Vietnam's Society in 17th and 18th Centuries*, Hanoi Social Sciences Publishing House, 1994, p.78.
- ³ Phan Huy Chu, *Royal Annals*, Hanoi: Social Sciences Publishing House, 1972, p.287.
- ⁴ Quoted from *A Few Problems of State Control and Consolidation of Jurisdiction in Vietnam History*, Hanoi: National Politics Publishing House, 1995.
- ⁵ Phan Boi Chau, *Complete Works*, Vol. 4, p.244.
- ⁶ *Ibid.*, p. 261.
- ⁷ *Ibid.*
- ⁸ *Ibid.*, p.871.
- ⁹ Ho Chi Minh, *Complete Works*, Hanoi: National Politics Publishing House, 1995.
- ¹⁰ Ho Chi Minh, *Complete Works*, Vol.1, 3-4.