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## **Prohibiting an activity when it cannot be managed by law: Legislative trends toward complex and sensitive economic and social activities in Vietnam today**

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### **Abstract**

Activities which are of sensitive and complex socio-economic characteristics have always been the principal focus of the legal system in every nation. “Prohibiting a sensitive and complex socio-economic activity when it cannot be managed by law” is a legislative trend in Vietnam which will be further clarified in the article by analyzing the activities that have been banned or just stopped at the level of banning proposals in Vietnam, namely debt collection, and sale and purchase of land in the suburbs of special urban areas. On the basis of analyzing the main causes leading to this legislative trend, the article will also propose solutions with a view to surmounting the current drawbacks and improve the Vietnamese legal system in the direction of democracy and transparency, which will contribute to the sustainable development of the economy and society.

### **Key words**

Economics; legislation; management; sensitive; Vietnam

### **Resumen**

Las actividades socioeconómicas sensibles y complejas siempre han estado en el centro del sistema jurídico de cualquier nación. La prohibición de actividades socioeconómicas sensibles y complejas cuando no pueden ser gestionadas por ley es una corriente legislativa de Vietnam que será objeto de mayor aclaración en este artículo, a través del análisis de actividades que han sido prohibidas o han quedado detenidas en el nivel de prohibición de propuestas, a saber, el cobro de deudas y la compraventa de terreno en suburbios de áreas urbanas especiales. Sobre la base del análisis de las causas

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principales conducentes a esa corriente legislativa, el artículo propondrá asimismo soluciones, con vistas a superar los actuales obstáculos y a mejorar el sistema jurídico de Vietnam en aras de la democracia y la transparencia, lo cual contribuirá al desarrollo sostenible de la economía y la sociedad.

**Palabras clave**

Economía; legislación; gestión; sensible; Vietnam

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## 1. Introduction

Since the implementation of the Doi Moi (December 1986) led by the Communist Party of Vietnam, and the transformation from a centrally planned economy following the model of the Soviet Union and Eastern European socialist countries in the past into a socialist-oriented market economy, Vietnam has reaped many remarkable achievements in economic growth, progress, and social stability, which have been recognized by the international community (Jeffries 2007). Basically, the so-called “socialist-oriented market economy” of Vietnam is similar to the socialist market economy model that China has been implementing (Clarke 2007). The only difference lies in the fact that the communist theorists of Vietnam believe that Vietnam has not reached socialism but is in the transitional period for socialist construction in the future; thus, the term “socialist-oriented market economy” must be used instead of “socialist market economy”. In terms of content, Vietnam’s socialist-oriented market economy recognizes the existence of the private economic sector and assumes most of the basic values of the market economy in developing countries, such as the law of value, the law of competition, and the law of supply and demand (Gregory and Stuart 2004). However, what is so-called “socialist-oriented market economy” in Vietnam means that it emphasizes the dominant role of state-owned enterprises (the state-owned economic sector), cooperatives (collective economic sector) and refuses to apply the “invisible hand” principle (Smith 1869/2010) by promulgating and enforcing laws so that the State could manage and run the economy in a very strict manner. The strict management of the socialist-oriented market economy has contributed significantly to the achievements of economic growth, progress, and social stability that Vietnam has achieved in recent years (Lim 2020). Nevertheless, this has also led to the undesirable phenomenon of the formation of a legislative trend in Vietnam: When a sensitive and complex economic and social activity cannot be managed, instead of researching on solutions to legally operating this activity under the effective management of the State, lawmakers issued regulations to ban such activities. Transforming a set of sensitive and complex social and economic activities into a prohibited activity entails that when individuals and organizations engage in such activities, their acts will be deemed illegal, and they will face legal liability. The fact in recent years has shown that it is impossible to erase the existence of sensitive and complicated socio-economic activities through prohibition; however, it has pushed these activities into the realm of illegal operation, resulting in negative consequences for people and loss of revenue for the state budget and lying inconsistent with the socialist oriented market economy. Therefore, the legislative trend of prohibiting an activity when it cannot be managed by law is hindering the current socio-economic development of Vietnam.

## 2. Expressions of the legislative trend of prohibiting an activity when it cannot be managed by law for sensitive and complex socioeconomic activities in Vietnam society currently.

### 2.1. *Debt collection services*

Debt collection services are new activities which are banned under the amended and supplemented Investment Law passed at the 9th session of the 14<sup>th</sup> National Assembly on June 17, 2020. Previously, debt collection services were business activities that

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required registration at state management agencies, had to satisfy the conditions prescribed by law,<sup>1</sup> and had to comply with law provisions.<sup>2</sup> This business is prohibited because, while operating legally, most of the debt collection businesses did not comply with the law on debt collection (Nguyễn 2020). Enterprises have used people who are considered gangsters and have applied all methods of force, have threatened to use force to infringe on the health, life, and honor of the person obliged to pay debts, and have resorted to other measures and means that adversely affect public order and security (Hai 2019). Considering this issue objectively, the main cause leading to the debt collection service enterprise being established *under* the law but operating *in violation of* the law is the responsibility of the state management agency. In the state management agency, weak management capacity, lack of managerial responsibility, and even the indulgence of competent persons in the management agency are the main reasons. Although it is prohibited, debt collection services certainly exist, because the property loan contract is recognized by law,<sup>3</sup> and if there is a loan relationship, there will be a large number of creditors in need of recovering debts from borrowers who do not voluntarily fulfill their debt repayment obligations. The ban on debt collection services that makes it turn to the underground without control will inevitably bring more negative consequences for society.

## *2.2. Proposing to ban division of plots and sale of plots in the suburbs of special cities*

If debt collection services are prohibited by law, the division of plots and sale of land in the suburbs of special cities such as Hanoi and Ho Chi Minh City is only stop at the proposed level in the draft Decree amending and supplementing a number of Decrees detailing the implementation of the Land Law in April 2020 of the Ministry of Natural Resources and Environment, to consult public opinion before submitting it to the government to issue the decree. The proposal has been met with strong opposition from most real estate organizations and legal experts. Therefore, by June 2020, the Ministry of Natural Resources and Environment withdrew this proposal from the draft. The reason for this proposal by the Ministry of Natural Resources and Environment is that the real estate market in Vietnam has developed dynamically with new economic growth (Lieser and Groh 2011). The demand for land investment to serve the needs of building houses and business establishments of the people is quite large, and this is an investment channel with huge profits. Meanwhile, the clean land fund in the inner-city areas of Hanoi and Ho Chi Minh City is almost full. If the subdivision of land for sale takes place, it will lead to the rupture of urban planning when dividing the land area for sale. Therefore, the prohibition was drafted and proposed to cease the activity of plotting and selling plots in the inner city.<sup>4</sup> This is acceptable, as it guarantees public benefits and maintains urban architectural space, which are the face of the nation. The division of plots and the sale of land are still allowed if these activities take place outside the inner-

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<sup>1</sup> These conditions include proof of business capital, labor conditions such as intermediate or higher qualifications in economics, legal conditions such as no prior criminal record, and management conditions such as holding university degrees and judicial records.

<sup>2</sup> Debt collection service enterprises cannot use or threaten to use force that affects public security and order to collect debts.

<sup>3</sup> The property loan contract is stipulated from Articles 463 to 471 under Chapter XVI of the Civil Code 2015.

<sup>4</sup> Article 42.1 Decree No. 43/2014/ND-CP dated May 15, 2014, of the Government guiding the implementation of the Land Law 2013

city areas. However, in recent years, there have been a number of real estate businesses taking advantage of the market's demand to create virtual projects of plots for sale in suburban districts of cities to fraudulently steal money from buyers in large amounts.<sup>5</sup>

Hence, to prevent such incidents from recurring, the Ministry of Natural Resources and Environment has developed a draft Decree amending the proposal to prohibit the sale of land lots that have been mentioned above. From an objective view, the proposal in the draft Decree of the Ministry of Natural Resources and Environment is contrary to the rights to legal residence, freedom of residence, ownership toward freedom of business, and property of citizenship that are defined in the Constitution of the Socialist Republic of Vietnam.<sup>6</sup> If this proposal is promulgated into a Decree, the real estate market, which is currently actively developing, will fall into a state of depression and crisis. If the demand for land plot of people are not met, an informal land market will be formed, which will make people face a higher risk of fraud and a loss of revenue to the national budget. At the same time, it can be clearly seen that all cases of fraud to sell land have long occurred, and state management agencies are unable to stop them in time. It is not until the consequences arise and impact public opinion that the state management agencies intervene.<sup>7</sup> Therefore, the key issue here is that the state management agencies have not been able to regulate land lot sales; therefore, they propose to ban them.

### **3. The cause of the legislative trend of prohibiting an activity when it cannot be managed by law for sensitive and complex socio-economic activities**

#### *3.1. Legislative process with the main participation of state management agencies in all sectors and local governments*

The system of state agencies in Vietnam comprises the legislative department, which is the National Assembly; the executive department, which is the Government (including the prime minister, ministries, and ministerial-level agencies); and the people's courts at all levels, which exercise judicial rights, and People's Procuracy at all levels, which exercises the right to supervise judicial activities. The local government includes People's Councils and People's Committees at all levels (commune, district, and provincial levels) (Quốc Hội 2015b). Legislative power as provided by the Constitution of Vietnam belongs to the National Assembly (Quốc Hội 2013).<sup>8</sup> However, the National Assembly has enacted the Law on Promulgation of Legal Documents, allowing other state agencies to

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<sup>5</sup> Alibaba Real Estate Joint Stock Company led by Nguyen Thai Luyen purchased about 600 hectares of agricultural land in the provinces of Ba Ria - Vung Tau, Binh Thuan, and Dong Nai, and created 40 virtual projects for sale, deceived 6,000 customers, and appropriated VND 2,500 billion. This shocked everyone in Vietnam in September 2019. Angel Lina Company led by Pham Thi Tuyet Nhung created 9 virtual projects for sale of plots in the districts of Ho Chi Minh City to swindle over 200 customers, and appropriated VND 285 billion. This case was discovered in November 2019.

<sup>6</sup> The right to have a legal residence is specified in Article 22; the right to freedom of residence in Article 23; the right to own property in Article 32; and the right to freedom of business in Article 33 of the 2013 Constitution.

<sup>7</sup> The fraudulent sale of land by Alibaba Real Estate Joint Stock Company took place between 2017 and mid-2019, when it was discovered and handled.

<sup>8</sup> Up to now, Vietnam has the Constitutions promulgated in 1946, the Constitution promulgated in 1980, the Constitution promulgated in 1980, the Constitution promulgated in 1992 and the Constitution promulgated in 2013. All of which are currently in force.

also have the authority to issue legal documents such as: the government has the right to issue decrees, the Prime Minister issues decisions, ministries and ministerial-level agencies issue circulars, People's Councils at all levels have the power to issue resolutions, People's Committees at all levels issue legal document.... (Quốc Hội 2015a). In order to ensure the consistency of the legal system, the principle that legal provisions must not contravene the Constitution and the legal regulations promulgated by the lower agencies must not contravene the laws issued by the superior agencies has been set.<sup>9</sup>

However, due to the fact that there are too many competent agencies to issue legal regulations, the result is that the legal system of Vietnam is very complicated with a very large number of legal regulations, which makes it difficult for this principle to be implemented and there have been many legal documents violating this principle. Also because there are too many state agencies that have the authority to issue legal regulations, in which most of these agencies are also state management agencies in various sectors and fields (the current Vietnamese government includes up to 18 ministries and 04 ministerial-level agencies under the government which are state management agencies in sectors and fields) and local state management agencies (including 63 provinces and cities directly under the central government) so when promulgating legal regulations, they tend to install legal regulations to create the most favorable conditions for their management activities,<sup>10</sup> and including those that prohibit social and economic activities which are of sensitive and nature (Chinhphu.vn 2019).

In addition, the National Assembly, as a law-making body, in the performance of this function it still need a great contribution from the state management agencies. Accordingly, the laws enacted are mainly by the government draft bill.<sup>11</sup> The National Assembly deputies who vote to approve the draft bill are mostly the people who hold the concurrent role of state management agencies.<sup>12</sup> This leads to the fact that when state agencies can't manage economic and social activities which are of sensitive and complicated nature, they then issue banning regulations.

### *3.2. Limitations of the current constitutional protection mechanism. In Vietnam, the constitution is considered the legal document with the highest legal force*

All laws, statutes, and legal documents are not contrary to the provisions of the constitution. Despite this constitutional supremacy, it lacks a specialized agency and

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<sup>9</sup> Article 5.1 Law on Promulgation of Legal Documents 2015 (amended and supplemented in 2020).

<sup>10</sup> The case is that the Ministry of Public Security issued Circular No. 02/2003/TT-BCA(C11) dated January 13, 2003, which stipulates that each person can only register one motorcycle. This regulation is unconstitutional because it is contrary to the regulations on the ownership right of citizens, but it was not until 2005 that the Ministry of Public Security issued Circular No. 17/2005/TT-BCA(C11) dated 21/11/ 2005 abolished this provision; Regulations on printing enterprises not to cooperate with other printing establishments in Decree No. 60/2014/ND-CP dated June 19, 2014 of the Government are contrary to the freedom of business of individuals, organizations, Specifically, the freedom to enter into and perform contracts is stipulated in the 2013 Constitution and the 2015 Civil Code...

<sup>11</sup> From 2009 to 2013, the National Assembly and the National Assembly Standing Committee approved 89 legal documents, of which 74 were drafted by the Government.

<sup>12</sup> The 14<sup>th</sup> National Assembly (2016-2021) has 496 delegates, but 170 (34%) are full-time delegates. The rest are concurrently holding positions in state management agencies or in the Communist Party of Vietnam and unions, organizations.

specialized law to protect the constitution from violation. The task of protecting the constitution is given to many different state agencies and with very general rules.<sup>13</sup> The people's court system also does not have the function of considering and deciding on a legal document that violates the constitution.<sup>14</sup> This leads to the protection of the constitution not being in best implementation and the constitutional violation that occurs when enacting legal documents is understandable (Sidel 2009).

*3.3. Public indignation towards cases related to economic and social activities of a sensitive and complicated nature and taking advantage of opportunities with reasonable grounds for promulgating Prohibition laws of state agencies*

The current laws in Vietnam ensure the right to comment on and discuss the formulation and promulgation of the constitution, laws, statutes, and other sub-legal documents.<sup>15</sup> However, when building a draft legal document, the large participation of individuals and organizations in society is limited even if it is directly related to their rights and interests (Le Anh 2020). This lies in complete contrast when a serious case related to complex sensitive socioeconomic activities occurs, it draws substantial attention from the public. The main catalyst is the dense frequency of the incident-related information provided by the media.<sup>16</sup> Social opinion has positive implications for improving democracy and the efficiency of state governance (Hoang Thi Minh Hong 2020), but its downside in this case is that, through the urgent reaction of the people, the competent agencies that have issued legal documents have reasonable grounds to issue regulations banning such sensitive socio-economic activities to relieve public opinion instead of taking responsibility for not have been able to managed them. Nevertheless, the serious cases that have happened cannot be the basis for confirming the need to remove such complicated and sensitive economic out of social and economic activities by issuing prohibiting regulations.

*3.4. The capacity and responsibility of the State's employees in implementing state management functions are inadequate.*

State employees in Vietnam are formed through the path of recruitment (examination, admission), election, and appointment in accordance with the Law on Cadres and Civil Servants and the Law on Public Employees with many conditions and standards and a

<sup>13</sup> The 2013 Constitution indicates the following. The National Assembly exercises supreme oversight vis-à-vis the observance of the Constitution. The Standing Committee of the National Assembly oversees the implementation of the Constitution. The President has the right to request the Standing Committee of the National Assembly to reconsider ordinances. The Prime Minister has the right to suspend or cancel legal documents of his immediate subordinates (Ministers, Heads of ministerial agencies, Presidents of the People's Committees of provinces, and the People's Councils of provinces) if they are unconstitutional.

<sup>14</sup> Article 2.1 of the Law on Organization of People's Courts 2014 stipulates that courts can adjudicate criminal, civil, marriage and family, business, commercial, labor, and administrative cases and handle other matters according to the provisions of the law.

<sup>15</sup> Article 6 of the Law on Promulgation of Legal Documents in 2015 (amended and supplemented in 2020).

<sup>16</sup> An example is the case of the fraudulent sale of land by Alibaba Real Estate Joint Stock Company. An online search (<https://www.google.com.vn/> at 16h07) on September 1, 2020 revealed 95,300 search results in 0.46 seconds with information from reputable websites in Vietnam, such as *Thanh Nien* newspaper, *Vietnamnet* newspaper, *Tuoi Tre* newspaper, *Investment* newspaper, and *Lao Dong* newspaper.



very complex process.<sup>17</sup> However, the management capacity and managerial responsibility of the state staff performing management tasks are inadequate because of the negative situation in recruitment (entrance examination, admission), election, and appointment which are occurring in a popular way (Bui 2018). Many people have no professional qualifications but still become state employees through dishonest ways.<sup>18</sup> When they become state employees, instead of performing tasks with a high sense of responsibility and dedication to the society, they *sáng cấp ô đi, chiều cấp về* [put the umbrella away in the morning and bring it back in the afternoon] (the author's sarcasm refers to the laziness at work) (Bich 2019), and even take advantage of their positions in state agencies to corrupt.<sup>19</sup> Therefore, the capacity and responsibility of state employees in implementing the state management function is not high, so it is understandable when it is impossible to manage the economic and social activities with a sensitive and complex nature.

#### **4. Some recommendations to eliminate the legislative trend of prohibiting an activity when it cannot be managed by law for sensitive and complex socio-economic activities in Vietnam**

The legislative trend of prohibiting an activity when it cannot be managed by law for sensitive and complex socio-economic activities is incompatible with the socialist-oriented market economy in which Vietnam is pursuing and this legislative trend hinders economic development and causes social instability in Vietnam. In the end, promulgating a law banning economic and social activities of a sensitive and complicated nature cannot completely eliminate the existence of these activities, but only push them into illegal activities, which will cause negative consequences for the people, loss of revenue for the national budget. Hence, it is necessary to eliminate this legislative trend with the following solutions:

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<sup>17</sup> Under the provisions of the Law, the person who is recruited, elected, or appointed to perform the task of state management in the branches and fields must satisfy the professional conditions (having a bachelor's degree suitable to the branch/field; have foreign language and computer skills) and conditions of lifestyle and morality (not violating the law, being loyal to the country).

<sup>18</sup> To have a position in a state agency in Vietnam, one will have to spend a large amount of money or have a relationship, the so-called "grandchildren of the father" (relationship with a person in charge of an important position in the State agency), in order to join the government and be appointed to high positions quickly. The people in Vietnam at the time of writing were frustrated by the fact that the son of the Provincial Party Secretary of Bac Ninh province, Nguyen Nhan Chien, Nguyen Nhan Chinh (born in 1984, graduated from Bac Ninh University, majoring in chess) was set to be the Provincial Party Secretary of Bac Ninh on July 22, 2020. With pressure from the public, Mr. Nguyen Nhan Chinh held this position until August 5, 2020, and was appointed as the Deputy Director of the Department of Labor, Invalids and Social Affairs directly under the People's Committee of Bac Ninh province.

<sup>19</sup> According to the Government's Report No. 381/BC-CP dated October 12, 2018 on the Report of the National Assembly on anti-corruption activities in 2018, the Police Department investigates crime in corruption, economics, and smuggling - C03 had enhanced professional activities; had directly investigated and handled many cases of corruption, serious economic, complex, public concern, especially cases, cases under the Steering Committee to monitor and direct: investigation of 18 cases, 67 defendants; of which the old sentence in 2017 was changed to 14 cases, 52 defendants; prosecuted 04 new cases, 15 accused; damage of the handled cases was over 4,224.9 billion VND; recovered over 2,180 billion VND, 23 certificates of land use rights. Conclusion of investigation, additional investigation of 08 cases, 22 suspects; Currently investigating 10 cases, 45 defendants.

*4.1. Participation of state management agencies in the legislative process should be limited*

The legislative function has to belong to the parliament, and the state management agencies only perform executive functions to avoid the parliament becoming a “rubber stamp” (Ferguson 1998). Accordingly, the authority to issue legal documents has to be narrowed down, and legal documents must be drafted by specialized agencies of the National Assembly to avoid a situation in which state management agencies intentionally implement regulations that are conducive to their management. At the same time, the proportion of full-time National Assembly deputies should be increased to 80%. Only when the National Assembly deputies work professionally and do not work concurrently in state management agencies can the draft law be guaranteed that it is not being imposed on the interests and desires of state management agencies.

*4.2. Establish a special institution to protect the supremacy of the constitution and enact special laws on constitutional protection*

To ensure the supremacy of the constitution, it is necessary to establish a special institution protecting this supremacy and enact a specialized law on constitutional protection. Only when this is done can the goal of building and operating the legal state in Vietnam be realized.<sup>20</sup> This specialized institution must be responsible for monitoring, reviewing, and making judgments on whether any legal document or act violates the constitution. The special act will prescribe the measures, procedures, and rights and obligations to protect the constitutional supremacy of individuals and organizations in society; moreover, specialized institutions have the function to protect the constitution.

Previously, when the socialist system in the Soviet Union and Eastern Europe existed, the Vietnamese legal system was almost completely influenced by this legal system. The collapse of the Soviet Union and the socialist countries in Eastern Europe forced Vietnam to follow the Doi Moi policy with the content of reforming and opening up all aspects of the economy, culture and society towards democratization since December 1986. During the 35 years of Doi Moi, the influence of the socialist legal system on the Vietnamese legal system has gradually faded. The imprint of this influence is only clear in the aspect of the law on organization of the state apparatus, the exercise of socialist state power under the leadership of the Communist Party.

The current Vietnamese legal system has many similarities in terms of legislative techniques and legal concepts with countries belonging to the Roman-German legal system (David and Brierley 1985). This is made possible by part of the policy: “The French regime regards the imposition of its civil legislation as an effective instrument to culturally integrate vassal states” (van der Burg 2015) which Vietnam was imposed during the period of its colonial rule. France and as well as the absorption of Vietnamese legislators with the advanced values of world legal science to build a legal system suitable to the development of the market economy, protection of human rights and the

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<sup>20</sup> Article 2.1 of the 2013 Constitution stipulates that the State of the Socialist Republic of Vietnam is a socialist state ruled by law.

democratization of social life.<sup>21</sup> Therefore, the constitutional court of the Federal Republic of Germany (Säcker 2003) is an exemplary model that Vietnamese lawmakers can refer to in order to build a constitutional defense mechanism for their country.

*4.3. Regulate the communication system to provide information in a healthy and democratic manner*

A communication system with heavy emphasis on exploiting an issue is one that has not really worked healthily (such as an incident that has happened to attract people's attention to get profits) (Long 2019). This is an ongoing reality in Vietnam, especially in electronic journalism, social networks, videos (e.g., YouTube), and digital television. As a result, public social opinion reacts in an extreme way to economic and social issues. Although the occurred incident has caused serious consequences, it is not a basis to completely ban socio-economic activities of a sensitive and complex nature. Currently, Vietnam has a mechanism for network security protection, a mechanism for publishing newspapers and books, mechanisms for ensuring the operation of the information technology system by special laws, and others. However, in the case of unhealthy communication, there has been no measure or handling of violations. Therefore, it is necessary to implement regulations to alter the communication system so that it serves the needs of people to access information in an objective manner, with enough relevant information that is necessary to clarify the content and avoid shocking information that is unrelated to the incident and may even infringe on the honor, dignity, and privacy of individuals.<sup>22</sup> However, to do this, it is essential to implement democracy in information provision and ensure the people's right to receive information.

*4.4. Improve the professional capacity and responsibility of state employees in performing state management functions.*

It is necessary to review the professional capacity of state staff in performing state management functions at both central and local levels. If they fail to meet the requirements, such as failing to meet the training qualifications according to the professional standards and qualifications prescribed for the current job position, it is

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<sup>21</sup> The current Vietnamese legal system has provisions on ensuring the right to freedom of business, attracting foreign investment, ensuring property rights, and ensuring human rights. These regulations before the implementation of Doi Moi are absent in the Vietnamese legal system

<sup>22</sup> It is not difficult to see the situation of electronic newspapers, television channels, and information sites on social networks in Vietnam exploiting information unrelated to an incident to increase views in order to gain from advertising. For example, in the case of the fraudulent sale of land by the Alibaba Real Estate Holding Company, electronic newspapers exploited unrelated information with headlines to attract readers, such as *Cách sống giờ bể của 3 anh em Nguyễn Thái Luyện* [How was the living of three brothers Nguyen Thai Luyen] published in *Dat Viet* online newspaper on September 26, 2019 (<https://baodatviet.vn/chinh-tri-xa-hoi/tin-tuc-u-su/way-from-the-from-3-brothers-you-nguyen-thai-practice-3388319/>); the article *Chủ tịch Alibaba vẫn nhậu đêm trước bị bắt* [Alibaba President who still drank the night before was arrested] was published in *Ho Chi Minh City Law Newspaper* on September 19, 2019 (<https://plo.vn/thoi-su/chu-tich-alibaba-nguyen-thai-practiced-together-nightbefore-billiard-859058.html>); the article *Nguyễn Thái Luyện, Chủ tịch Alibaba: Mơ làm Tào Tháo và lập Lương Sơn Ali Tu Nghĩa* [Nguyen Thai Luyen, Chairman of Alibaba: Dreaming of being Cao Cao and establishing Luong Son Ali Tu Nghia] was published in the *Real Estate Investment Newspaper* on September 27, 2019 (<https://bds.tinnhanhchungkhoan.vn/bat-dong-san/nguyen-thai-luyen-chu-tich-dia-oc-alibaba-mo-lam-cao-cao-va-lap-luong-son-ali-tu-nghia-221335.html>).

necessary to resolutely downsize.<sup>23</sup> However, the downsizing of payroll is also difficult, because the current law mandates that the individual must voluntarily accede to the downsizing and be agreed by directly agencies in which he or she is under.<sup>24</sup> Obviously, this is a backward supplement, because if government employees are not sufficiently qualified, the government should be able to downsize without the voluntary assent of that individual (because the mentality of “greed for power and position” is still popular or afraid of public opinion, it is difficult to have voluntariness when quitting the job). Only then will the state agencies’ apparatus be no longer cumbersome, reducing the state budget for payment to officials and placing people with professional qualifications in charge of the work. It will be effective and contribute to the socioeconomic development of the country. At the same time, it is necessary to regularly inspect and evaluate the professional qualifications of the state staff in an objective and transparent manner and use this as a standard to commend, appoint, and mobilize individuals to hold higher positions.

## 5. Conclusion

If Vietnam is to build and develop an economy that moves according to the laws of the market economy, it should accept the sensitive socioeconomic activities that exist in the economy. The legislative trend of prohibiting an activity when it cannot be managed by law is not suitable for a market economy. When the prohibition law is enacted, the complicated and sensitive economic and social activities cannot be completely abolished, which only makes these activities take place underground, causing harmful consequences for the country’s economy and society. Correspondingly, this legislative trend needs to be abolished, with solutions including (i) limiting the participation of state management agencies in the legislative process, (ii) establishing a special institution protecting the supremacy of the constitution and enacting specialized laws on constitutional protection, (iii) regulating the communication system to operate in a healthy and democratic way in providing information, and (iv) enhancing the professional capacity and responsibility of state staff in performing state management functions.

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<sup>23</sup> Article 6 of Decree No. 108/2014 /ND-CP dated November 20, 2014, of the Government on the Policy of Downsizing the Payroll.

<sup>24</sup> Article 1.2 of the Government’s Decree No. 113/2018/ND-CP dated August 31, 2018, amending and supplementing a number of articles of the Government’s Decree No. 108/2014/ND-CP dated November 20, 2014, on the Policy of Downsizing the Payroll.

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