

Building effective and efficient local government under the spirit of the 2013 Constitution

Xây dựng chính quyền địa phương hiệu lực, hiệu quả theo tinh thần của Hiến pháp 2013

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Abstract: The research highlights the significant progress made in decentralization and local autonomy, as guided by the directives of the XIII National Party Congress and the provisions of the 2013 Constitution. The author emphasizes the need for tailored approaches to local government organization, taking into account the diverse characteristics of rural, urban, island, and special administrative-economic units. Pilot programs in major cities like Hanoi, Ho Chi Minh City, and Da Nang exemplify efforts to streamline operations and maximize efficiency in urban settings. However, challenges remain, particularly in fully realizing the distinctiveness of governance and ensuring effective oversight mechanisms. The manuscript concludes by advocating for continued research, legislative adjustments, and administrative reforms to optimize local governance structures and processes. Ultimately, the pursuit of robust and responsive local governance is vital for advancing socio-economic development of Vietnam.

Keywords: *Effectiveness and efficiency; local Government; the 2013 Constitution.*

Tóm tắt: Bài viết này nêu bật những tiến bộ rõ rệt về phân cấp, tự chủ ở địa phương theo chỉ đạo của Đại hội XIII của Đảng và quy định của Hiến pháp năm 2013. Tác giả nhấn mạnh sự cần thiết phải có những cách tiếp cận phù hợp đối với tổ chức chính quyền địa phương, có tính đến đặc điểm đa dạng của các đơn vị hành chính - kinh tế nông thôn, thành thị, hải đảo và đặc thù của các ngành, lĩnh vực. Các chương trình thí điểm tại các thành phố lớn như Hà Nội, Thành phố Hồ Chí Minh và Đà Nẵng là minh chứng cho những nỗ lực hợp lý hóa hoạt động và tối đa hóa hiệu quả trong môi trường đô thị. Tuy nhiên, thực tiễn tồn tại những thách thức, đặc biệt là trong việc nhận thức đầy đủ sự khác biệt trong quản lý và đảm bảo các cơ chế giám sát hiệu quả. Tác giả ủng hộ việc tiếp tục nghiên cứu, điều chỉnh pháp luật và cải cách hành chính để tối ưu hóa cơ chế và quy trình quản trị địa phương. Việc theo đuổi nền quản trị địa phương hiệu quả và có tính ứng phó cao có vai trò quan trọng để thúc đẩy phát triển kinh tế-xã hội ở Việt Nam.

Từ khóa: *Chính quyền địa phương; Hiến pháp năm 2013; hiệu lực và hiệu quả.*

1. Introduction

Local Government is regulated in Chapter IX of the 2013 Constitution. Compared to the 1992 Constitution (amended and supplemented in 2001), in addition to inheriting rational provisions, many contents have been amended and supplemented to concretize the Party's policy on organizing rational and effective local Government, enhancing the operational capacity of local government levels, and improving the proximity to the people of administrative activities, establishing an independent responsibility regime for resources. The provisions of the 2013 Constitution serve as the constitutional basis for concretization in the Law on Organization of Local Government and related legal normative documents to establish the nature, position, function, and tasks of local Government and its agencies, overcome obstacles and limitations in the organization and operation of local Government in the past. The provisions of the Constitution pave the way for reforming the organization and operation of local Government in general and People's Councils and People's Committees in particular. Over the past ten years of implementing the 2013 Constitution, the innovations regarding local Government have been concretized and implemented in practice, contributing to enhancing the effectiveness and efficiency of local government activities. This article evaluates the implementation of the provisions of the 2013 Constitution, demonstrating the orientation of innovation in local Government in practice, contributing to the

construction of professional, effective local Government.

2. Concept of Local Government in the 2013 Constitution

In the state apparatus, alongside central Government, local government agencies also play a crucial role. It can be said that local Government serves as a bridge between the Party, the state, and the people, bringing the Party's guidelines and state laws into people's lives. Local Government has the task of building and managing various aspects of social life, including economy, culture, society, national defense, and security at the local level.

Currently, there are various understandings of what local Government entails. Although the term "local government" is used in political and legal documents, no document explains or defines this term. Therefore, local Government needs to be understood consistently as it is an important subject of state power.

According to the Common Vietnamese Dictionary, local Government is understood as: "1. The administrative machinery managing state affairs at various levels. 2. The right to manage and control the state apparatus at various levels" [1]. In this sense, local Government is associated with the term "central government" as central Government and with the term "local" as local Government - the administrative machinery managing state affairs at the local level.

According to the Oxford Advanced Learner's Dictionary, local Government is a group of people responsible for the administration of a district or county [2]. Therefore, local Government here is understood as state agencies at the local

level responsible for managing local affairs. According to the 2013 Constitution, the local Government in Vietnam includes People's Councils and People's Committees. Some argue that local Government, in addition to People's Councils and People's Committees, also includes other state agencies at the local level, such as People's Courts and People's Procuracies. If understood in this sense, local Government is broader than the concept of "government" - the administrative machinery that does not include judicial activities. The various understandings above show that the term "local government" can be understood in two ways:

- In the broad sense, local Government can be understood as the administrative machinery that executes state power at the local level, including the activities of all state agencies operating within the territorial jurisdiction of the locality. Thus, local Government in Vietnam will include People's Councils, People's Committees, People's Courts, and People's Procuracies.

- In a narrow sense, local Government is considered from an administrative perspective, namely the agencies performing administrative management activities for the state at the local level. Local Government, in the narrow sense, only includes People's Councils and People's Committees at various levels.

Local Government, in the narrow sense, has the following characteristics:

- Local Government is an administrative organization with a legal personality (public legal entity)

established, organized, and operated according to the law.

- The Government has the function of administrative management within a certain administrative unit.

- The primary function of local Government is to organize the implementation of central government decisions and resolve local issues in accordance with the law and the will of the local residents.

Thus, local Government can be understood as an administrative organization with a legal personality (public legal entity), established and operated according to the law, responsible for managing various aspects of social life within a specific administrative unit, aiming to ensure the implementation of state power at the local level and resolve local issues based on the principles of democratic centralism and harmonious combination of the interests of local residents with the common interests of the country.

The term "local government" was first mentioned in the 2013 Constitution. In previous Constitutions, the terms "People's Councils" and "People's Committees" (or "Administrative Committees" in the 1946 Constitution) were used to refer to local governing bodies. The provisions on local Government in the 2013 Constitution and the local government levels, including People's Councils and People's Committees, demonstrate the connection and unity in the activities of People's Councils and People's Committees in local Government. Although these two agencies have different positions, nature, organization, and operation methods, they both operate within the same administrative

unit with the common goal of building and developing the locality. Article 112, Clause 1 of the 2013 Constitution defines local Government as organizing and ensuring the implementation of the Constitution and laws at the local level; deciding local issues as prescribed by law; being subject to supervision and inspection by higher state authorities. In addition, using the term "local government" in the 2013 Constitution also clarifies the relationship between local government and state agencies at the central level, thereby harnessing the combined strength of various agencies in local Government to manage the locality effectively.

To concretize this direction, the Law on Organization of Local Government 2015 (amended and supplemented in 2019) has regulated local Government at provincial, district, and communal levels, including People's Councils, and stipulated the joint responsibilities of these two agencies for the locality by defining the common tasks of local Government at each level and the specific tasks of People's Councils and People's Committees. For example, Article 17 of the 2013 Constitution stipulates the tasks and powers of provincial-level local Government:

1. Organize and ensure the implementation of the Constitution and laws within the province.

2. Decide on issues of the province within the delegated scope and hierarchy as prescribed by this Law and other relevant laws.

3. Execute tasks and powers delegated by central government administrative agencies.

4. Inspect and supervise the organization and activities of local

governments in administrative units within the province.

5. Be responsible to the higher-level state authorities for the results of implementing the tasks and powers of the local Government in the province.

6. Coordinate with central government agencies and localities to promote economic regional linkages, implement regional planning, and ensure the unity of the national economy.

7. Decide on and organize the implementation of measures to promote people's sovereignty, mobilize social resources to build and develop the socio-economic conditions, and ensure national defense and security within the province.

Thus, the People's Council and People's Committee share common responsibilities in implementing these tasks alongside their respective duties. This shared responsibility binds the activities of both bodies toward achieving more unified and effective goals.

3. The tasks and powers of local Government

Clause 2, Article 112 of the 2013 Constitution states: "The tasks and powers of local Government are determined based on the division of authority between central and local state agencies and each level of local Government.

In necessary cases, local Government may be delegated to perform some tasks of higher-level state agencies under conditions to ensure the implementation of those tasks."

The principle of determining the tasks and powers of local Government has guided the Law on Organization of

Local Government 2015 (amended and supplemented in 2019) and related legal documents to define the jurisdiction of each level of local Government rationally, promoting administrative decentralization, and hierarchical decentralization between central and local levels, as well as among different levels of local Government. This is one of the important factors determining the effectiveness of local Government.

To specify this content, the Law on Organization of Local Government 2015 (amended and supplemented in 2019) has defined the principle of jurisdictional division of local Government as follows:

The tasks and powers of local Government at each level are determined based on the division of authority between central and local state agencies and between each level of local Government through decentralization and hierarchical delegation.

The division of jurisdiction is carried out based on the following principles:

Ensure unified state management in terms of structure, policies, strategies, and planning for various sectors and fields; ensure the unity and coherence of the national administrative system.

Promote the autonomy and accountability of local Government in implementing state management tasks within the local jurisdiction as prescribed by law.

Establish a close connection between sectoral and territorial management, clearly delineating the state management tasks between local governments at different levels regarding socio-economic activities within the territorial jurisdiction.

The division of jurisdiction must be appropriate to the conditions and characteristics of rural areas, urban areas, islands, and the specific nature of various sectors and fields.

Issues related to the scope of two administrative units at the communal level and above fall under the jurisdiction of the district-level local Government; issues related to the scope of two administrative units at the district level and above fall under the jurisdiction of the provincial-level local Government; issues related to the scope from two administrative units at the provincial level and above fall under the jurisdiction of central government agencies, except for cases where laws, resolutions of the National Assembly, ordinances, resolutions of the Standing Committee of the National Assembly, decrees of the Government have different provisions.

The delegation and decentralization of powers to local Government at various levels must ensure conditions related to finance, human resources, and other necessary conditions; link decentralization and delegation with mechanisms for inspection and supervision when implementing decentralization and delegation. Local Government implements the delegated and decentralized tasks and powers and is responsible within the delegated and decentralized scope.

Besides stipulating the principles of jurisdictional division, the Law on Organization of Local Government also specifies forms of jurisdictional division, including decentralization, hierarchical delegation, and authorization, as well as the conditions for implementing each form. This

provides a basis for implementing decentralization, hierarchical delegation, and authorization in practice.

To enhance decentralization and hierarchical delegation to local governments, Resolution No. 30c/NQ-CP dated November 8, 2011 [3], and Resolution No. 76/NQ-CP dated July 15, 2021, both issued by the Government, established comprehensive programs for state administrative reform in the periods 2011-2020 and 2021-2030 [4], respectively, with a focus on promoting decentralized state management. Additionally, the Government has issued Resolution No. 21/NQ-CP dated March 21, 2016, on decentralization of state management between the Government and provincial People's Committees, Resolution No. 99/NQ-CP dated June 24, 2020, on strengthening sectoral decentralization, and Resolution No. 04/NQ-CP dated January 10, 2022, on promoting decentralization and delegation in state management. Furthermore, Resolution No. 98/2023/QH15 on piloting certain mechanisms and policies for the development of Ho Chi Minh City was issued by the National Assembly.

The viewpoint of promoting decentralization, as stated in Resolution No. 04/NQ-CP, aims to institutionalize the Party's viewpoint, policies, and policies of the National Assembly on strengthening and improving the mechanisms of decentralization and delegation in state management based on compliance with the provisions of the 2013 Constitution, coupled with institutional improvement, to ensure unified and coherent state management

of the national administrative system. Defining the tasks and powers of local Government based on the provisions of the 2013 Constitution has created opportunities for people and communities to participate more in the decision-making process of state management, making the activities of local Government more closely aligned with the interests of the people and attracting local resources into the country's development process. Additionally, it provides an opportunity for the central Government and higher-level local governments to focus on macroeconomic and national activities, enhancing the capacity and responsibility of local governments at all levels and contributing to more effective operations.

4. The organizational model of local Government

To address the situation where administrative units have different characteristics but local governments have been organized similarly for many years, Article 111, Clause 2 of the 2013 Constitution stipulates: "Local government includes People's Councils and People's Committees organized in accordance with the characteristics of rural areas, urban areas, islands, and special administrative-economic units as prescribed by law." This provision guides the innovation of the organization of local Government.

To implement the provisions of the 2013 Constitution, the Law on Organization of Local Government 2015 (amended and supplemented in 2019) has specified and regulated that local Government is organized in administrative units of the Socialist Republic of Vietnam in accordance with

the characteristics of rural areas, urban areas, islands, and special administrative-economic units. Local Government in rural areas includes provincial, district, and communal-level governments. Local Government in urban areas includes governments of centrally affiliated cities, districts, towns, provincial cities, cities under central authority, wards, and townships. The organizational model of local Government in rural areas, urban areas, and islands has been differentiated to a certain extent, initially in line with the characteristics of each administrative unit from the organizational structure of the People's Councils and People's Committees at all levels to the organization of specialized agencies under the People's Committees, ensuring compatibility with the characteristics of rural areas, urban areas, islands, and the conditions and socio-economic development of each locality. However, organizing local Government in line with the characteristics of administrative units still fails to meet the requirements. Local Government in rural, urban, and island areas has been differentiated, but not clearly enough. Therefore, Government Resolution No. 76/NQ-CP dated July 15, 2021, on the comprehensive program for state administrative reform for the period 2021-2030, has identified the task of studying, amending, supplementing, and improving regulations on the organization of local Government towards clearer differentiation of the organizational structure of urban, rural, island, and special administrative-economic unit governments. Piloting the model of provincial-level urban governments and special

administrative-economic units in places with sufficient conditions.

To continue implementing the 2013 Constitution, we are currently piloting the model of organizing urban local Government in Hanoi, Ho Chi Minh City, and Da Nang as follows:

- The National Assembly issued Resolution No. 97/2019/QH14 on November 27, 2019, on the pilot organization of the urban local government model in Hanoi [5]. Accordingly, from July 1, 2021, Hanoi has implemented the urban local government pilot model, not organizing People's Councils in 175 wards of 12 districts and Son Tay town. Up to now, the pilot contents have been implemented synchronously and unified, basically meeting the requirements and achieving positive initial results despite some difficulties and obstacles. The non-organization of People's Councils inwards has changed the operating methods of ward People's Committees towards actively promoting administrative procedure reform and enhancing the effectiveness of the machinery.

Implementing Government Decree No. 32/2021/ND-CP dated March 29, 2021, detailing and implementing Resolution No. 97/2019/QH14 dated November 27, 2019, of the National Assembly on piloting the organization of the urban local government model in Hanoi, the People's Committees of wards have transitioned to operate under the leadership mode; the Chairman of the People's Committee of the ward is the head, responsible for leading, managing, and directing the work of the People's Committee of the ward. Changing the operating mode from

collective to leadership mode has provided conditions for the Chairman of the People's Committee of the ward to be more proactive in management, better serving the people and businesses, ensuring the democratic rights and oversight role of the people, and enhancing them.

- The XIV National Assembly issued Resolution No. 131/2020/QH14 on November 16, 2020, on organizing urban local Government in Ho Chi Minh [6] City. Starting on July 1, 2021, Ho Chi Minh City officially operates as an urban local government. Accordingly, the urban local government model of the City is organized as follows: Ho Chi Minh City, cities within Ho Chi Minh City, and district-level units, communes, and towns constitute the local government level, consisting of People's Councils and People's Committees; at the district and ward units, there are District People's Committees and Ward People's Committees. District and ward People's Committees are state administrative agencies operating under the leadership mode at the district and ward levels. In districts and wards where People's Councils are not organized, the representation rights of the people are maintained and promoted through channels such as: National Assembly deputies, Delegation of National Assembly deputies; Standing Committee of the City People's Council, delegate councils, People's Council delegates, Party committees, Vietnam Fatherland Front, political and social organizations at all levels.

By piloting the urban local government model, the Ho Chi Minh City government is gradually improving

to ensure centralized, unified, transparent, responsive, and effective state management to serve the interests of the people better, ensuring legitimate rights and interests for the people.

- The XIV National Assembly issued Resolution No. 119/2020/QH14 on June 19, 2020, on piloting the urban local government model and some specific mechanisms and policies for the development of Da Nang City [7].

According to Resolution No. 119/2020/QH14, the local government of Da Nang City is organized at the local government level and comprises people's councils and committees. The local Government in districts of Da Nang is the District People's Committee (without organizing District People's Councils). The District People's Committee is a state administrative agency in the district, performing tasks and powers as prescribed by this resolution and by decentralization and delegation of the City People's Committee, the Chairman of the City People's Committee.

Local government inwards is the Ward People's Committee (without organizing Ward People's Councils). The Ward People's Committee is a state administrative agency in the ward, performing tasks and powers as prescribed by this resolution and by decentralization and delegation of the City People's Committee, the Chairman of the City People's Committee, and the District People's Committee. Local government organizations in other administrative units of Da Nang are implemented according to the Law on Organization of Local Government provisions.

The resolution also stipulates the jurisdiction of the City People's Council in overseeing the activities of the District People's Committee, the Ward People's Committee, the District People's Court, the District People's Procuracy; reviewing responses to queries from delegates of the City People's Council to the Chairman of the District People's Committee, the Chief Judge of the District People's Court, the Chief Prosecutor of the District People's Procuracy. At the same time, to specify the accountability mechanism of the Chairman of the District People's Committee to the City People's Council, the resolution stipulates that the City People's Council has the authority to take a vote of confidence in the Chairman of the District People's Committee.

The pilot implementation of the urban local government model in Hanoi, Ho Chi Minh City, and Da Nang helps to build local Government suitable for the characteristics of urban areas, making urban local Government operate more effectively.

5. Issues to Implement the Provisions of the 2013 Constitution on Local Government

5.1. Continuing to Strengthen Decentralization and Devolution for Local Governments to Ensure Unified Management and Enhance the Proactive, Creative, and Responsible Nature of Local Government Levels

Recently, the process of decentralization and assignment of authority to local governments has gradually improved, becoming more reasonable, enhancing state management's effectiveness over

sectors and fields, and providing local governments with more initiative in carrying out local economic and social development tasks. However, based on reports from localities, especially those applying certain special mechanisms and policies and those balancing their state budget, there are still many limitations and shortcomings in the decentralization provisions. These need to be addressed. Specifically:

- Uniform and generalized decentralization (without differentiation based on natural conditions and socioeconomic factors among localities, implementing the exact mechanism and policies in decentralization).

- Inconsistent decentralization (such as decentralization of investment decision-making authority to localities without corresponding adjustments in the authority to decide on revenue sources for investment implementation by local authorities. As a result, while investment decision-making authority is expanded, insufficient financial resources exist to implement it). Some localities balance their budgets but are not proactive in regulating between different levels of budgets within their management scope, which limits overall economic and social development.

- Coordination mechanisms between localities are limited, failing to harmoniously address regional development relationships (some localities identified as the region's nucleus are prioritized with special policies to stimulate regional development but have not fulfilled their core role, leading to local competition instead of cooperation for development).

- Monitoring and supervisory mechanisms are not specific, lacking sanctions... In terms of technical aspects, time, budget, and other resources for supervision activities are extremely limited. Additionally, insufficient information and data lead to ineffective oversight activities. In terms of institutional aspects, there is a lack of management tools (planning, criteria, conditions, standards, regulations, and norms), and the proportion of specialized officials responsible for oversight activities is still limited (for example, People's Council delegates only account for about 10% to 30% of specialized activities, varying by locality).

-Decentralization is not synchronized with devolution (there are still control mechanisms from higher levels through various forms of opinions, approvals, permissions...), and regulations on standards, criteria, and norms (expenditure content, expenditure tasks) have not been revised, supplemented to be suitable for practical conditions in localities. Therefore, when implementing authority according to decentralization, many difficulties are encountered. [8]

To further promote reasonable decentralization and devolution for local governments, the following tasks should be implemented in the coming time:

- Review, amend, supplement, and improve the provisions of sectoral laws, focusing on strengthening decentralization and devolution, clearly defining responsibilities between the Government and ministries, between the Government, ministries, and local governments, ensuring compliance with

the spirit of the Resolution of the XIII Party Congress [9], provisions of the 2013 Constitution, and the Law on Government Organization [10].

- Improve special mechanisms and policies to develop provinces and centrally-run cities according to the Party Central Committee's direction to develop these localities into economic growth engines for regions, especially those self-sustaining their budgets.

-Strengthen inspection, examination, supervision, and control of power over state management agencies from central to local levels in implementing tasks and powers according to decentralization and devolution, including:

+ Enhancing inspection and examination activities on state management content by sector to timely identify difficulties, obstacles, and violations in the process of organizing and implementing provisions on decentralization and devolution in state management.

+ Improving mechanisms for controlling power and ensuring authority goes hand in hand with responsibility, especially accountability in the process of implementing tasks decentralized and devolved.

5.2. Continuing to Improve the Organization of Local Government to Suit the Characteristics of Different Types of Administrative Units

The documents of the XIII National Party Congress continue to emphasize the construction and improvement of local Government: "Continuing to improve the organization of local government to suit rural areas, urban areas, islands, and special

administrative-economic units as prescribed by law."

- It is necessary to implement and summarize the pilot implementation of urban governance (currently being piloted in Hanoi, Ho Chi Minh City, Da Nang) to build and operate urban governance models towards lean, effective operations.

- Laws regulating local government organizations in special administrative-economic units need to be issued to create conditions for these administrative units to unleash their potential strengths.

-Continued research and improvement of the local government organization model on islands are needed. Based on current regulations, local governments will be organized at either the district or commune level in Vietnamese islands and archipelagos. This organization depends on geographical conditions, population, and socioeconomic development requirements, ensuring national defense and security on islands and archipelagos. Thus, there is already differentiation in local government organization on islands compared to rural and urban areas. However, the organization of People's Councils and People's Committees on islands does not differ much from other administrative units, while the geographical, economic, security, and defense conditions on islands are very different.

5.3. Emphasizing the Autonomous Role of Local Governments at All Levels

To emphasize the autonomous role of local governments at all levels, it is necessary to clearly define the position

and nature of each local government level (provincial, district, commune) to be appropriate. Determine the authority for each level of local Government according to the principle that the level of Government that performs best should be assigned that authority. Avoid imposing tasks on local governments from the top down.

Local governments should actively carry out tasks and powers that are decentralized and devolved. Higher-level governments are responsible for inspecting lower-level governments in the implementation of tasks and powers. Other levels play a coordinating role if relevant. It is necessary to overcome interventions, directives, and improper management by higher levels in the implementation of tasks and powers by lower levels.

6. Conclusion

Developing and improving local government structures and functions are crucial in advancing governance effectiveness, decentralization, and local autonomy in Vietnam. Through the directives and guidelines set forth by the XIII National Party Congress documents, including the Constitution of 2013 and relevant laws, significant strides have been made in enhancing the organization and operation of local governments across different administrative units. The ongoing efforts to refine local government organization, tailored to the specific characteristics of rural areas, urban centers, islands, and special administrative-economic units, underscore a commitment to adaptability and responsiveness in governance. The pilot initiatives for urban governance in major cities like

Hanoi, Ho Chi Minh City, and Da Nang exemplify endeavors to streamline operations and maximize efficiency in urban settings [11]. Moreover, the emphasis on local autonomy and the principle of decentralization is fundamental in empowering local authorities to effectively fulfill their roles and responsibilities. By delineating clear mandates and ensuring accountability at each level of governance, the potential for local governments to drive development and address community needs is amplified. However, challenges persist, particularly in fully realizing the distinctiveness of island governance and ensuring effective oversight mechanisms. Addressing these challenges will require continued research, legislative adjustments, and administrative reforms to optimize local governance structures and processes.

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