

Current Trend of Power Devolution from Central to Local Levels in Vietnam through Decentralization Mechanisms

Xu hướng chuyển dịch quyền lực từ trung ương xuống địa phương ở Việt Nam hiện nay thông qua cơ chế phân quyền, phân cấp

Vu Thi Nga

Department of Law, Faculty of Accounting - Finance, Van Hien University

E-mail: NgaVT2@vhu.edu.vn

Abstract: In the context of constructing and perfecting the socialist rule of law state in Vietnam, the issue of decentralization and devolution is increasingly of concern to the Party and State. Resolution No. 27-NQ/TW [1] has outlined specific goals by 2030: "...reasonable devolution and decentralization between the central and local levels; fundamentally improving the organization of local government machinery." To clarify the Party's guiding principles and specific objectives regarding decentralization and devolution, this article will elucidate some theoretical and practical issues concerning decentralization and devolution in state administrative management, thereby assessing the current trend of power devolution from the central to local levels in our country.

Keywords: *Decentralization; Devolution; Shifting power; State administrative management.*

Tóm tắt: Trong bối cảnh xây dựng và hoàn thiện Nhà nước pháp quyền xã hội chủ nghĩa Việt Nam, vấn đề phân quyền, phân cấp ngày càng được Đảng, Nhà nước quan tâm, chú trọng. Nghị quyết số 27-NQ/TW [1] đã xác định mục tiêu cụ thể đến 2030: "...phân cấp, phân quyền hợp lý giữa Trung ương và địa phương; cơ bản hoàn thiện tổ chức bộ máy chính quyền địa phương". Để xác định rõ quan điểm chỉ đạo của Đảng và mục tiêu cụ thể về phân quyền, phân cấp, bài viết sẽ làm rõ một số vấn đề lý luận và thực tiễn về phân quyền, phân cấp trong quản lý hành chính nhà nước, qua đó đánh giá xu hướng chuyển dịch quyền lực từ trung ương xuống địa phương ở nước ta hiện nay.

Từ khóa: *Chuyển dịch quyền lực; Phân cấp, Phân quyền; Quản lý hành chính nhà nước.*

1. The Concept of Devolution and Decentralization in State Administrative Management from Central to Local Levels

1.1. Global Perspectives on Devolution of Power

Emerging from the philosophy of state governance in European history, John Locke (1632-1704) and especially Charles de Secondat Montesquieu (1689-1755) introduced the concept of devolution of power as the "separation of powers" or "trias politica." According to this concept, state power is not a unified entity but is divided into three branches: the legislative power vested in the Parliament, the executive power vested in the Government, and the

judicial power vested in the Courts. The principle of separation of powers dictates that these branches operate independently, exercising mutual control and restraint, and act as counterbalances to each other. However, the degree of implementation of this principle varies among countries. For instance, nations with a presidential republic system, such as the United States, strictly adhere to the doctrine of a rigid separation of powers. In contrast, countries with a parliamentary republic or constitutional monarchy, such as France and Germany [2], apply a more flexible approach to the principle of separation of powers. The global concept of devolution of power is

understood not only horizontally, as described above, but also vertically, which refers to the devolution of power between the central government and local governments, including provincial or state authorities.

Perspectives on Devolution and Decentralization in Vietnam

In Vietnam, the organization and operation of the state apparatus do not follow the principle of "separation of powers" or "division of power." Instead, they are based on the principle of "unified state power with the devolution, coordination, and control among state agencies in the exercise of legislative, executive, and judicial powers," as stipulated in Clause 3, Article 2 of the 2013 Constitution. This confirms that in Vietnam, there is no division of power accompanied by a balance of power between the legislative, executive, and judicial branches. The essence of the principle of state power organization in Vietnam lies in devolution associated with coordination and control of power, not to create counterbalances but primarily to facilitate effective devolution and coordination among state agencies in the exercise of unified state power [2].

Since the 2013 Constitution, which stipulates that the State "implements devolution, decentralization, and devolution in state management," the concepts of devolution and decentralization in Vietnam have not been fully unified. Moreover, no legal document has provided specific definitions for devolution or decentralization. According to Nguyen Dang Dung, devolution and decentralization in state management are directly related to the organizational model of local government and reflect the relationship between the central and local governments [3]. Bui Xuan Duc

noted that for a long time, decentralization was understood as the delineation of functions, tasks, and powers between central agencies (higher levels) and local governments (lower levels). Another perspective holds that decentralization involves the division of authority in two directions: horizontally (distribution among agencies or departments at the same level) and vertically (division according to hierarchical work structures among different levels) [4]. Nguyen Cuu Viet stated that management decentralization involves dividing administrative-territorial units and rationally delineating authority among government levels by law or sub-law documents to align with each level's functions, tasks, and characteristics, thereby enhancing the effective exercise of state power [5]. Tran Ngoc Duong emphasized that the essence of decentralization in Vietnam is that "various levels execute the same task with different extents, scopes, and contents," [6] or "the same task is divided for different levels to execute" [7]. Doan Thi To Uyen affirmed that with the decentralization approach, central agencies remain accountable for public duties even when these are devolved [8]. This viewpoint is supported by Clause 2, Points b and c of Article 1 of Resolution 02/2011/NQ-HDTP, which provides guidance on certain provisions of the 2010 Administrative Procedure Law (now replaced by the 2015 Administrative Procedure Law). It states that when the execution of specific duties or tasks by competent persons/state administrative agencies or other organizations is prescribed by law, these tasks remain administrative acts of those competent persons/ agencies/ organizations, regardless of whether they perform the

tasks directly or devolve them. This implies that devolution and authorization in such cases are forms of devolution and decentralization.

According to the Legal Dictionary of the Institute of Legal Science - Ministry of Justice, devolution means "assigning a collective or an administrative-territorial unit self-management, with legal personality, certain powers, and resources, under the State's supervision" [9]. Decentralization means "transferring the tasks and powers of higher-level state management agencies to lower-level state management agencies for regular, long-term, stable execution based on the law" [9, p.312].

According to the 2013 Constitution (Clause 3, Article 2), the 2015 Law on Organization of Local Government (amended in 2019), and relevant legal documents, the concepts of devolution and decentralization in state administrative management in Vietnam are understood as follows:

- Devolution: This involves the National Assembly (the highest representative body of the people and the highest state power body of the Socialist Republic of Vietnam) enacting laws that assign certain tasks to different levels of government to be carried out autonomously and responsibly. These laws must also specify the tasks and powers that local governments cannot devolve or authorize to lower-level state agencies or other organizations.

- Decentralization: This involves central or local state agencies transferring tasks and powers within their authority to local governments or lower-level state agencies, unless otherwise provided by law. This transfer is continuous and regular, established through normative legal documents of the delegating state agency (such as Government decrees, ministerial

circulars, or decisions of the People's Committees at various levels). These documents must clearly define the tasks and powers being decentralized to local governments or lower-level state agencies, as well as the responsibilities of both the delegating and the devolved agencies.

2. Party Leadership and Current Vietnamese State Law Perspectives on Devolution and Decentralization from Central to Local Government

2.1. The 2013 Constitution

The 2013 Constitution lays the foundation for the devolution and decentralization of power from central to local governments. Although the Constitution does not extensively detail devolution and decentralization, aside from the provisions in Article 52, its spirit is clearly reflected in the provisions of Chapter IX on Local Government, which is further specified in the Law on Organization of Local Government (2015, amended in 2019).

Specifically [11], (i) The Constitution acknowledges the potential for diverse local government models, recognizing that some localities might require unique organizational structures. Article 111, Clause 2 states: Local government levels include People's Councils and People's Committees, organized to suit the characteristics of rural areas, urban areas, islands, and special administrative-economic units as prescribed by law. (ii) Article 112, Clauses 2 and 3 state: The tasks and powers of local governments are determined based on the delineation of authority between central and local state agencies and among different levels of local government. When necessary, local governments may be assigned certain tasks of higher-level state agencies, provided the conditions for

performing those tasks are ensured. (iii) Article 113, Clause 2 recognizes the independent authority of local governments: The People's Council decides on local matters as prescribed by law.

2.2. The 2015 Law on Organization of Local Government (Amended in 2020)

This law is the current legislative document regulating specific issues of devolution and decentralization of state power. Devolution and decentralization are distinctly defined in two separate articles. The similarities and differences between devolution (Article 12) and decentralization (Article 13) in state administrative management can be summarized as follows:

Table 1. Similarities and differences between devolution and decentralization

Criteria	Devolution	Decentralization
Nature	Clearly defined and statutory.	Not clearly defined; based on work requirements, implementation capacity, and specific local conditions. It involves the continuous and regular execution of one or more tasks or powers within the authority of the decentralizing entity, unless otherwise specified by law.
Form	Specified in laws enacted by the National Assembly.	Specified in normative legal documents of the decentralizing state agency.
Entities	Narrower. Delegating Entity: National Assembly [12]. Devolved Entities: Local governments (People's Councils and People's Committees at various levels).	Broader. Decentralizing Entities: Central and local state agencies. Decentralized Entities: Local governments or lower-level state agencies.
Scope and Further Devolution/Decentralization	- No specific fields or levels of devolution are defined, meaning devolution is not limited by content or field. - The specific tasks and powers that local governments cannot further devolve or authorize must be defined. To prevent derivative devolution or decentralization, the National Assembly must clearly specify the tasks	- Specific tasks and powers decentralized to local governments or lower-level state agencies must be clearly defined, along with the responsibilities of both the decentralizing and decentralized agencies. - Based on specific local conditions, local state agencies may further decentralize the tasks and powers assigned to them by higher-level state agencies, provided they obtain consent from the decentralizing agency. This further decentralization may be

	and powers that local governments are prohibited from delegating further.	stipulated in normative legal documents or may require case-by-case approval from the decentralizing agency.
Responsibility	Local governments (the devolved entities) are autonomous and bear full responsibility for executing the devolved tasks and powers. This autonomy reflects the self-governance function of local governments.	Higher-level state agencies (the decentralizing entities) must ensure financial, human, and other necessary resources for local governments or lower-level state agencies to execute the decentralized tasks and powers. They must also provide guidance, oversight, and assume responsibility for the outcomes of the decentralized tasks and powers.
Entities Responsible for Monitoring and Oversight	The higher-level state agency responsible for the devolved entity has the authority to monitor the legality and constitutionality of the devolved tasks and powers assigned to the devolved entity (local governments at various levels).	The decentralized state agency is accountable to the higher-level state agency for the implementation of the devolved tasks and powers.
Principles of Devolution	To comply with the principles outlined in Article 11(2) of the Constitution: (i) Ensure unified and transparent state management; (ii) Empower local governments to exercise autonomy and bear responsibility; (iii) Integrate sectoral management closely with territorial management; (iv) Allocate jurisdiction in line with the conditions and characteristics of rural areas, urban areas, islands, and the specific nature of various sectors and fields; (v) Ensure that higher-level authorities have jurisdiction over matters involving two or more administrative units, except as otherwise provided by law, resolutions of the National Assembly, ordinances, or resolutions of the Standing Committee of the National Assembly, or decrees of the Government; (vi) Provide financial, human, and other necessary resources and conditions for devolution and decentralization; Integrate devolution and decentralization with mechanisms for inspection and supervision. Local governments are responsible for carrying out the devolved and decentralized tasks and powers within the scope provided.	

2.3. Resolution No. 27-NQ/TW

Resolution No. 27-NQ/TW of the Central Committee of the Communist Party of Vietnam, XIIIth term (6th plenum) in 2022, emphasizes the requirement for decentralization and devolution in state administrative management during the new period. Specifically, the Party identifies one of the four specific objectives by 2030 as building a state administrative system to serve the People, which includes "rational decentralization and devolution between the central and local levels; essentially completing the organization of local government machinery." Furthermore, one of the three key tasks outlined is "Completing the mechanism for controlling state power, intensifying the prevention and combat against corruption and negativity; continuing to promote administrative reform, enhancing decentralization and devolution, clarifying the functions, tasks, and powers of organizations and individuals within the state apparatus alongside enhancing enforcement capacity; building a streamlined, efficient state machinery." In the section on tasks and solutions, the Party continues to affirm "Strengthening scientific and rational decentralization and devolution, coupled with increasing responsibility, linked to ensuring resources, and capacity to enforce the law for localities and ministries; enhancing inspection and supervision; ensuring the unified management of the Government, promoting the proactive, creative, and responsible roles of each locality and ministry. Clearly defining responsibilities between the Government and ministries; among ministries; between the Government, ministries, and local authorities; thoroughly addressing the overlapping

functions, tasks, powers; clearly defining responsibilities between individuals and collectives, emphasizing the role and individual responsibility, especially those in leadership positions in state administrative agencies".

2.4. Government Resolutions

The Government, as the highest state administrative agency of the Socialist Republic of Vietnam, has issued several legal documents aimed at enhancing the effectiveness and efficiency of state management, promoting the proactive, responsible, and innovative spirit of local governments. Specifically:

-Resolution No. 21/NQ-CP dated March 21, 2016, on decentralization of state management between the Government and People's Committees of provinces and centrally-run cities.

-Resolution No. 99/2020/NQ-CP dated June 24, 2020, on enhancing sectoral and field-based decentralization of state management.

-Resolution No. 04/NQ-CP dated January 10, 2022, on promoting decentralization and devolution in state management.

It can be affirmed that decentralization and devolution are both objectives and key tasks and solutions in the construction and completion of the socialist rule of law state of Vietnam in the past period and in the new phase.

3. Current Trends in Power Shift from Central to Local Levels in Vietnam through Decentralization and Devolution Mechanisms

Since the adoption of the 2013 Constitution, which recognizes the foundation of decentralization and devolution in state management, policies and laws regarding decentralization and devolution between the central and local levels have been progressively improved and

made more reasonable. This demonstrates a clear trend of power shifting from the central to local levels. Decentralization and devolution serve as levers to enhance the effectiveness and efficiency of state management in various sectors, enabling local governments to be more proactive in implementing local socio-economic development tasks. In recent years, ministries and sectors have actively promoted decentralization, while inter-ministerial agencies have proactively reviewed and proposed content for decentralized state management by sector and field. Based on this, the state has introduced numerous proactive solutions to innovate the delineation of authority between different levels of local government, enhancing their decision-making powers regarding economic and social development planning, investment projects, budget allocation and management, land and natural resource management, enterprise management, organizational structure, officials, civil servants, and employees [13]. The practical results of decentralization and devolution between the central and local governments have achieved certain outcomes [8, pp.208-209].

First, the enforcement of laws on decentralization and devolution aligns with the Party and State's directions and the local development tasks, ensuring the unity and coherence of the national administrative system.

Second, the content of decentralization and devolution reflects the integration of sectoral management and territorial management, delineating the management authority of ministries and sectors from that of local governments.

Third, decentralization and devolution are tailored to local

conditions, management capacity, and reception capabilities, in line with the spirit of Article 11(2) of the Law on Local Government Organization.

However, there are still some limitations in the implementation of laws on decentralization and devolution, overall failing to meet the pressing demands of practical realities [14]:

Firstly, currently, the devolution and decentralization in each specific sector of state management are regulated in specialized laws. However, these laws mainly focus on the devolution and decentralization between the central government and provincial-level local governments. There is still a lack of clear and detailed regulations regarding the scope of devolution and decentralization between different levels of local government. In specialized laws, there are still general provisions such as "People's Committees at all levels within their jurisdiction perform state management tasks in the field... within their locality." This leads to multiple levels of management, making it difficult to determine the responsibility of each level when issues arise [15]. Furthermore, some specialized laws lack detailed provisions on specific content requiring devolution among different levels of local government in management sectors, resulting in a lack of specific legal frameworks for devolution in state management in various sectors [16].

Secondly, the regulations on delineating authority between different levels of local government are not uniform. They still show signs of decentralization and fragmentation, lacking emphasis on inspection and supervision of matters devolved to localities [13]. Devolution and decentralization still tend to be

generalized and superficial, without considering the suitability to rural, urban, and island characteristics. Some localities manage their budgets independently but lack proactive regulation among different levels of budget within their management scope, limiting the overall socio-economic development of the locality.

Thirdly, essential conditions for implementation have not been ensured, resulting in a lack of coordination among related sectors and fields, failing to create practical conditions for local governments at all levels to proactively balance their resources and specific needs. Some devolved tasks have not been timely implemented, and many tasks that could be addressed by local authorities lack the authority to execute them. Certain areas of devolution and decentralization between levels of local government, as regulated by law, have been slow to be implemented or have been implemented inadequately, failing to align with the realities of each region or territory and failing to differentiate between urban and rural areas.

Fourthly, regulations on devolution and decentralization between the central government and local authorities have only begun to address the issue of delineating authority between the government and provincial People's Committees. The problem of overlapping functions, tasks, and powers of various levels of local government has not been fundamentally resolved. The organizational structure of the four levels of government remains fragmented, and the delineation of authority has not sufficiently clarified the unique characteristics of urban compared to rural governments. The coordination mechanism between localities remains limited, failing to harmonize regional development

relationships (some areas designated as regional nuclei, prioritized for special policies to drive regional development, still operate in a local and competitive manner instead of cooperating for mutual development) [13].

These limitations and shortcomings indicate that the main causes lie in the perception and perspective on devolution and decentralization. The strategies and solutions for decentralized state management and delineating authority between the central and local levels, as well as among different levels of local government, are not yet clear. Additionally, lingering concerns about excessive decentralization leading to fragmentation and dispersion persist. There is a lack of determination and strength in organizing directives, from institution building and policy formulation to implementation, and insufficient emphasis on evaluation, assessment, and learning from experience. The legal system lacks coherence to meet the requirements of the country's socio-economic development in the current situation, and the oversight and monitoring mechanisms lack specificity and adequate enforcement measures. The ratio of specialized officials and civil servants dedicated to oversight activities remains limited.

Therefore, to ensure an effective mechanism of devolution and decentralization, along with the achieved results and accomplishments, the state needs to continue implementing several measures to improve legislation and practical implementation in the coming time, specifically:

Firstly, continue amending, supplementing, and improving regulations on the functions, tasks,

powers, and organizational structure of ministries, branches, and localities, integrating devolution and decentralization with continued efforts to promote administrative reforms, especially procedural reforms. Prioritize ensuring the resources to accelerate the implementation of online public services at level 4; enhance the quality of civil service and restructuring of the civil service corps to meet the requirements and political tasks in the new situation; strengthen administrative responsibility, discipline, and integrity in performing public duties and the responsibility of agency heads [16].

Secondly, it is necessary to promote the autonomy and accountability of local governments at all levels in carrying out state management tasks according to legal provisions and based on ensuring the capacity and conditions for local governments to carry out devolved tasks, powers, and responsibilities within the devolved scope.

Thirdly, refine regulations on devolution and decentralization in state management to be consistent with the level of socio-economic development in each stage; with the specificities of state management in each sector and field, and ensure suitability with the characteristics of administrative units - territories. Administrative units - territories are formed based on criteria such as population, geography, area, rural or urban areas, deltas, border areas, mountains, islands... The nature of the managed objects and territories governs the nature of state management tasks, content, and methods. Therefore, different administrative territories require different levels of devolution and decentralization between the central government and local authorities.

Fourthly, enhance inspection, examination, and supervision of the implementation of devolved tasks, decentralization, and enhance the role of supervising and controlling the power of the central government and local institutions. Strengthen coordination between state agencies, between state agencies and political - social organizations, social organizations in providing information, and responsibility for explaining relevant contents related to devolution and decentralization to ensure effective supervision [2].

Fifthly, supplement the jurisdiction to adjudicate disputes between local government levels within the administrative judicial system of the People's Courts [14, p. 201]. This is also an effective solution to the provision at point d, clause 2, Article 11 of the Law on Organization of Local Governments.

References

- [1] Resolution No. 27-NQ/TW of the 13th Central Committee of the Communist Party of Vietnam (6th Plenum) on continuing to build and improve the socialist rule of law state of Vietnam in the new period.
- [2] L. T. Huyen, "Some theoretical and practical issues on devolution and decentralization in state administrative management", *Journal of Democracy and Law*, 2023, <https://danchuphapluat.vn/mot-so-van-de-ly-luan-va-thuc-tien-ve-phan-quyen-phan-cap-trong-quan-ly-hanh-chinh-nha-nuoc>.
- [3] N. D. Dung, "Organization and activities of local governments", *Legal Science Information*, 2001, p. 21
- [4] B. X. Duc, dissertation "Devolution and decentralization between central and local governments in Vietnam in recent times" at the Seminar "Factors affecting devolution and decentralization in the process of building the socialist rule of law state of Vietnam", Institute of Legislative Studies, Hanoi, 2018, pp. 1-2.

- [5] N. C. Viet, "Management devolution in the relationship between central and local authorities", *Journal of Legislative Research*, No. 7, 2005.
- [6] T. N. Duong (editor), *Some issues on assignment, coordination, and control of power in building the socialist rule of law state of Vietnam*, National Political Publishing House – Truth, Hanoi, 2011, p. 330.
- [7] T. N. Duong, *Assignment, coordination, and control of power in amending the 1992 Constitution*, National Political Publishing House – Truth, Hanoi, 2012, p. 284.
- [8] D. T. T. Uyen, "Requirements for devolution and decentralization in state administrative management between central and local authorities in the period of building and completing the socialist rule of law state of Vietnam", in *Vietnamese administrative law, from tradition to the socialist rule of law state*, co-editors: Vu Cong Giao – Nguyen Quoc Suu – Dang Minh Tuan, National Political Publishing House – Truth, Hanoi, 2023, p. 203.
- [9] Ministry of Justice, Institute of Legal Science, *Legal dictionary, Encyclopedia Publishing House - Ministry of Justice*, Hanoi, 2006, pp. 614, 615.
- [10] Article 52 of the 2013 Constitution stipulates: The state builds and completes the economic system, regulates the economy based on respecting market laws; implements devolution, decentralization, and empowerment in state management; promotes regional economic linkages, ensuring the unity of the national economy.
- [11] N. H. Anh, "Devolution, decentralization, and practical implementation according to the 2013 Constitution", *Journal of Law*, Volume 34, No. 4, 2018, p.41-50.
- [12] Although the Law on Organization of Local Government does not specify that only the National Assembly has the authority to devolve powers, according to general perception, Vietnam is a unitary state, and state power is concentrated entirely at the central level, with the National Assembly being the highest state power organ. According to [8, p. 206].
- [13] D. X. Hoan, "Discussion on the scientific and rational nature of devolution and decentralization between the Central and local governments in Vietnam today", *Journal of State Organization*, 2023, <https://tcnn.vn/news/detail/60985/Ban-ve-tinh-khoa-hoc-hop-ly-cua-phan-cap-phan-quyen-giua-Trung-uong-va-dia-phuong-o-Viet-Nam-hien-nay.html>.
- [14] T. N. Thin, "Devolution of jurisdiction between Central and local governments in building and completing the socialist rule of law state of Vietnam", in *Vietnamese administrative law, from tradition to the socialist rule of law state*, National Political Publishing House – Truth, Hanoi, 2023, p. 194.
- [15] P. Q. Su, "Strengthening devolution and decentralization in state management is an urgent requirement in the current situation", 2021. [Online] Available: <http://pbgdpl.camau.gov.vn/day-manh-phan-cap-phan-quyen-trong-quan-ly-nha-nuoc-la-yeu-cau-cap-bach-trong-dieu-kien-hien-nay.1346>. [Accessed June, 22th , 2024]
- [16] N. T. T. Ha, "Continuing to improve legal regulations on devolution and decentralization to ensure unified and effective state management", *Journal of State Organization*, 2023, <https://tcnn.vn/news/detail/56885/Tiep-tuc-hoan-thien-quy-dinh-phap-luat-ve-phan-cap-phan-quyen-nham-bao-dam-quan-ly-nha-nuoc-thong-nhat-hieu-qua.html>.

Ngày nhận bài: 11/06/2024

Ngày hoàn thành sửa bài: 22/06/2024

Ngày chấp nhận đăng: 22/06/2024